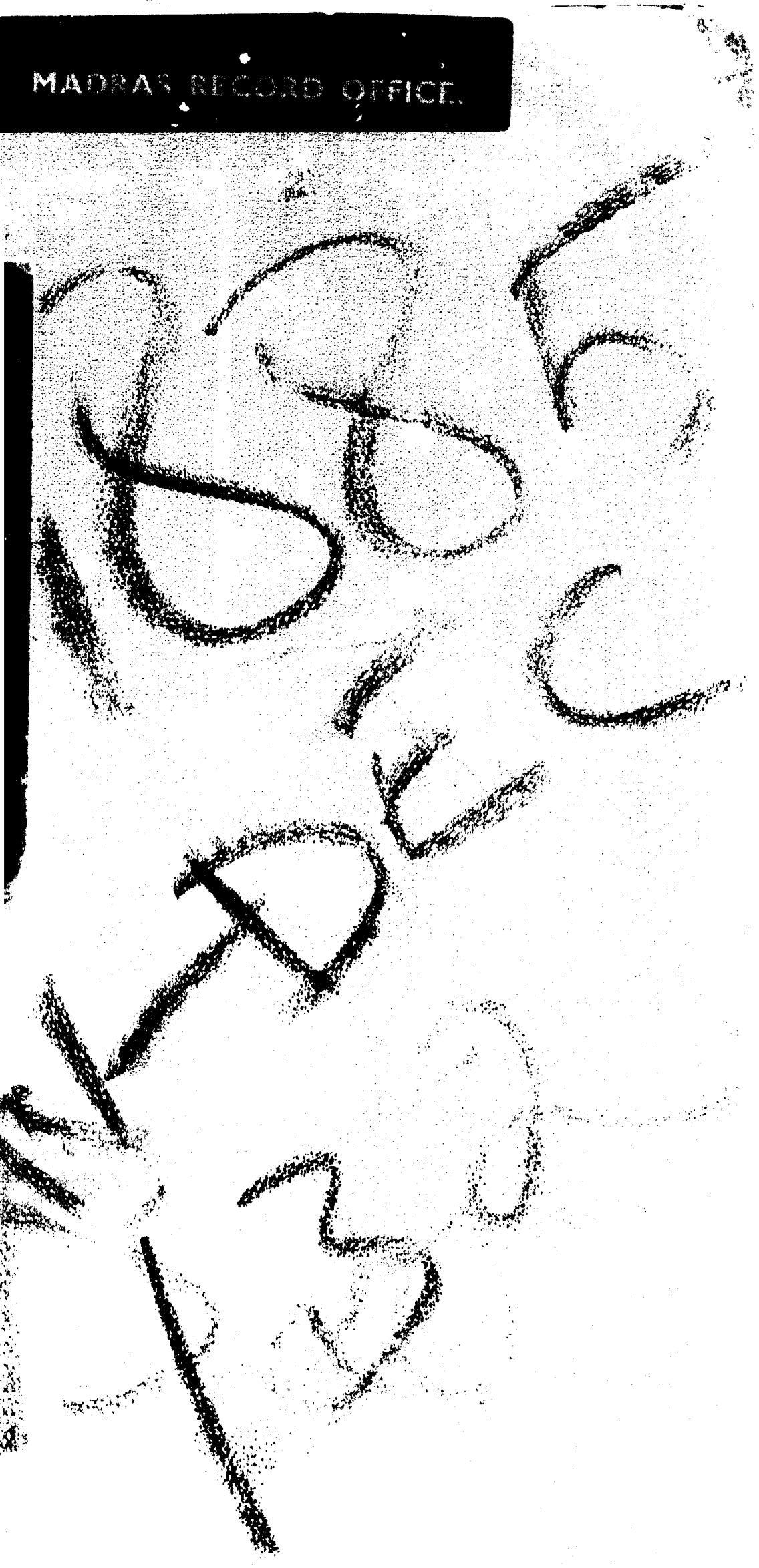
MADRAS RECORD OFFICE



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 3, 1885.

☞ 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 19th December, 1884, and was referred to a Select Committee :—

No. 18 OF 1884.

A Bill to repeal part of section 6 of the Indian Tariff Act, 1882, and to amend the Excise Act, 1881, and the Bengal Excise Act, 1878.

XI of 1882. XXII of 1881. Beng. Act VII of 1878.

WHEREAS it is expedient to repeal part of section 6 of the Indian Tariff Act, 1882, and to amend section 7 of the Excise Act, 1881, and section 18 of the Bengal Excise Act, 1878; It is hereby enacted as follows:—

XI of 1882.

1. The part of section 6 of the Indian Tariff Act, 1882, beginning with the words "And whereas," down to and including the words "been paid," is repealed.

Repeal of part of section 6 of Act XI of 1882.

XXII of 1881.

2. For clause (*a*) of section 7 of the Excise Act, 1881, the following clause shall be substituted :—

Amendment of section 7 of Act XXII of 1881.

"(*a*) such duty as the Local Government may from time to time fix in respect of such spirit has been paid."

Beng. Act VII of 1878.

3. In section 18 of the Bengal Excise Act, 1878 for the words "at the rate leviable under any Tariff Act for the time being in force" the words "at such rate as the Local Government may from time to time fix in respect of such spirituous liquor" shall be substituted; but nothing in this section shall affect any Act passed after this Act comes into force by the Lieutenant-Governor of Bengal in Council.

Amendment of section 18 of Bengal Act VII of 1878.

XI of 1882. XXII of 1881. Beng. Act VII of 1878.

4. The duty now fixed by the Local Government under section 6 of the Indian Tariff Act, 1882, as leviable on spirit manufactured in all or any of the distilleries situate in the territories under its administration, or in any part of such territories, shall, in places in which the Excise Act, 1881, or the Bengal Excise Act, 1878, is in force, be deemed to be the duty fixed by the Local Government under sections 7 and 18 of those Acts, as amended by this Act, respectively,

Saving of duties already fixed under section 6 of Act XI of 1882.

STATEMENT OF OBJECTS AND REASONS.

THE Government of Madras recently submitted a draft Bill to consolidate and amend the Abkari law of the Presidency of Madras, for sanction to its introduction in the local Legislative Council, and, on examination of its provisions, it was found that two clauses of one of its sections, imposing a duty on liquor, were, as applied to spirit, *ultra vires* of the local legislature, as the mode of fixing the excise duty on spirit is determined by section 6 of the Indian Tariff Act, 1882. It was also feared that the penultimate clause of the latter section, by keeping in force, under the authority of the Governor General's Legislative Council, an unexplored mass of law existing on the 10th March, 1882, might render other provisions of that Bill *ultra vires*.

This in itself would make it necessary that legislation should be resorted to in the Council of the Governor General in order to prevent the Madras Bill from being declared invalid; and as,

moreover, section 6 of the Tariff Act must seriously hamper any local legislature contemplating legislation like that proposed by the Madras Government, it is proposed to repeal that section, leaving it to the Local Governments to deal with the mode of fixing the duties of excise on spirit, under the other enactments locally in force, subject, so far as any discretion is allowed to them by those enactments, to the general executive control of the Government of India.

The present Bill has accordingly been prepared. It first repeals section 6 of the Tariff Act except the last clause amending section 1 of Act XVI of 1863, which Act is still in force. It then amends section 7 of the Excise Act, 1881, and section 18 of the Bengal Excise Act, 1878, which at present contain references to the provisions of section 6 of the Tariff Act, by omitting these references and conferring on the Local Governments concerned power to fix the duty payable in respect of country spirit. Lastly, in order to prevent any question being raised as to the effect of the repeal of section 6 of the Tariff Act, the Bill declares that duties already fixed by the Local Government under section 6 of the Tariff Act shall be deemed to be duties fixed by the Local Government under sections 7 and 18 of the Excise Act, 1881, and the Bengal Excise Act, 1878, as amended by this Act, respectively.

The 13th December 1884. A. COLVIN.

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 19th December, 1884, and was referred to a Select Committee:—

No. 19 OF 1884.

A Bill to amend the law relating to the carriage of passengers by sea.

[Act II of 1860, preamble.] WHEREAS by section 99 of an Act of the Imperial Parliament called "the Passengers Act, 1855," 18 & 19 Vic., c. 119. it is enacted that "it shall be lawful for the Governor General of India in Council, from time to time, by any Act or Acts to be passed for that purpose, to declare that this Act or any part thereof shall apply to the carriage of passengers upon any voyage, from any ports or places within the territories of British India, to be specified in such Act or Acts, to any other places whatsoever, to be also specified in such Act or Acts;" and it is thereby also enacted that "on the passing of such Indian Act or Acts, and whilst the same shall remain in force, all such parts of this Act as shall be adopted therein shall apply to and extend to the carriage of passengers upon such voyages as in the said Indian Act or Acts shall be specified. The provisions of such Indian Act shall be enforced in all Her Majesty's possessions in like manner as the provisions of this Act may be enforced;"

[New.] And whereas certain parts of the said Act of Parliament were by Act II of 1860 (*to amend the law relating to the carriage of passengers by sea*) made applicable to the carriage of passengers upon certain specified voyages;

[New.] And whereas by an Act of the Imperial Parliament called "the Passengers Act Amendment Act, 1863," 26 & 27 Vic., c. 51. certain parts of the Passengers Act, 1855, which were so made applicable have been amended, and it is provided that the said Acts of 18 & 19 Vic., c. 119. the Imperial Parliament shall be construed together as one Act;

[New.] And whereas it is expedient that the amendments so made in the Passengers Act, 1855, 18 & 19 Vic., c. 119. should also be made in the parts of that Act so made applicable, and it is also expedient to apply those parts so amended to the carriage of passengers upon certain voyages not specified in Act II of 1860;

It is hereby enacted as follows:—

Short title and commencement. **1.** (*1*) This Act may be called the Indian Sea Passengers Act, 1885: and [New.]

(*2*) It shall come into force on the first day of March, 1885. [New.]

Repeal of Act II of 1860. **2.** On and from the day on which this Act comes into force, Act II of 1860 (*to amend the law relating to the carriage of passengers by sea*) shall be repealed. [New.]

Certain provisions of the Statutes made applicable to specified voyages from India. **3.** The provisions contained in sections 4, 5 and 6 of this Act, and the schedule hereto annexed (being parts of the Passengers Act, 1855, as amended by the Passengers Act Amendment Act, 1863), are declared applicable to the carriage of passengers upon the following voyages, namely:— [Act II of 1860 s. 1, Act VII of 1871, ss. 23 and 24.] [New.] 18 & 19 Vic., c. 119. 26 & 27 Vic., c. 51.

(*a*) Voyages from the ports of Calcutta, Madras and Bombay to the British Colonies of Mauritius, Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, Natal, St. Kitts, Nevis and Fiji; [New.]

(*b*) Voyages from the ports of Calcutta, Madras and Bombay to the French Colonies of Réunion, Martinique, Guadeloupe and its dependencies, and Guiana; [New.]

(*c*) Voyages from the ports of Calcutta, Madras and Bombay to the Netherlands colony of Dutch Guiana; [New.]

(*d*) Voyages from the ports of Calcutta, Madras and Bombay to the Danish colony of St. Croix; [New.]

(*e*) Voyages under the Native Passenger Ships Act, 1876, from Calcutta Madras, Bombay, Karáchí, Rangoon and other ports in British India to the Straits Settlements, to the protected Native States adjoining the Straits Settlements, to Australia, and to ports in the Red Sea or Persian Gulf. VIII of 1876.

[Act II of 1860, s. 2.]

Governors or Consuls may pay expenses of passengers taken off passenger-ship.

4. If the passengers upon any such voyage as is specified in the last preceding section are taken off from the ship carrying such passengers, or are picked up at sea from any boat, raft or otherwise, it shall be lawful, if the port or place to which they shall be conveyed is in any of Her Majesty's colonial possessions, for the Governor of such colony, or for any person authorized by him for the purpose, or, if in any foreign country, for Her Majesty's Consular officer, at such port or place therein, to defray all or any part of the expenses thereby incurred.

[Act II of 1860, s. 3, 26 & 27 Vic., c. 51, New.]

Governors or Consuls may send on passengers, if the master of the ship fail to do so.

5. If any passenger of any such passenger-ship as aforesaid, without any neglect or default of his own, finds himself within any colonial or foreign port, or place other than that for which the ship was originally bound, or at which he, or the Emigration Agent, or any public officer or other person on his behalf, has contracted that he should land, it shall be lawful for the Governor of the colony, or for any person authorized by him for the purpose or for Her Majesty's Consular officer at the foreign port or place, as the case may be, to forward the passenger to his intended destination, unless the master of the ship, within forty-eight hours of the arrival of such passenger, gives to the Governor or Consular officer, as the case may be, a written undertaking to forward or carry on within six weeks thereafter the passenger to his original destination, and unless the master accordingly forwards or carries him on within that period.

Act II of 1860, s. 4, 26 & 27 Vic., c. 51, s. 6.]

Expenses incurred under sections 4 and 5 to be a Crown debt.

6. (*1*) All expenses incurred under the last two preceding sections, or either of them, by or by the authority of a Governor or Consular officer, or other person as therein respectively mentioned, including the cost of maintaining the passengers until forwarded to their destination, and of all necessary bedding, provisions and stores, shall become a debt to Her Majesty and Her successors from the owner, charterer and master of the ship, and shall be recoverable from them, or from any one or more of them, at the suit and for the use of Her Majesty, in like manner as in the case of other Crown debts.

[New.]

(*2*) A certificate in the form given in the Schedule hereto annexed, or as near thereto as the circumstances of the case will admit, purporting to be under the hand of any such Governor or Consular officer (as the case may be), stating the total amount of the expenses, shall, in any suit or other proceeding for the recovery of the debt, be received in evidence without proof of the handwriting or of the official character of the Governor or Consular officer, and shall be deemed sufficient evidence of the amount of the expenses, and that the same were duly incurred;

[New.]

nor shall it be necessary to adduce on behalf of Her Majesty any other evidence in support of the claim, but judgment shall pass for the Crown, with costs of suit, unless the defendant specially pleads and duly proves that the certificate is false or fraudulent, or specially pleads and duly proves any facts showing that the expenses were not duly incurred:

Provided, nevertheless, that in no case shall any larger sum be recovered on account of the expenses than a sum equal to twice the total amount of passage-money received or due to and recoverable by or on account of the owner, charterer or master of the passenger-ship or any of them from or on account of the whole number of passengers who may have embarked in the ship; which total amount of passage-money shall be proved by the defendant if he will have the advantage of this limitation of the debt: but if any such passengers are forwarded or conveyed to their intended destination under the provisions of the last preceding section, they shall not be entitled to the return of their passage-money, or to any compensation for loss of passage.

THE SCHEDULE.

[26 & 27 Vic., cap. 51, Sched. New.]

Form of Governor's or Consul's Certificate of expenditure in the case of Passengers shipwrecked &c.

(*See section 6.*)

I hereby certify that acting under, and in conformity with, the provisions of the Indian Sea Passengers Act, 1885, I have defrayed the expenses incurred in rescuing, maintaining, supplying with necessary bedding, provisions and stores (*a*), and in forwarding to their destination passengers who were proceeding from to in the passenger-ship which was wrecked at sea, &c. (*b*).

And I further certify, for the purposes of the sixth section of the said Indian Sea Passengers Act, 1885, that the total amount of such expenses is , and that such expenses were duly incurred by me under the said Act.

Given under my hand this day of , 18 .

{ *Governor of* &c., (or, as the case may be), *Her Britannic Majesty's Consul at* .

(*a*). *N. B.*—1. If more passengers were rescued than forwarded, or if bedding, &c., was not supplied, alter the certificate to suit the facts of the case.

(*b*). *N. B.*—2. State generally the nature of the disaster and where it occurred. But if the passengers were only left behind without any default of their own, state the fact accordingly.

STATEMENT OF OBJECTS AND REASONS.

ACT II of 1860 declares certain parts (namely, sections 52, 53 and 54) of the English Passengers Act, 1855 (18 & 19 Vic., cap. 119) to be applicable to the carriage of passengers upon voyages from the ports of Calcutta, Madras and Bombay to the colonies of Mauritius, Jamaica, British Guiana, Trinidad, St. Lucia and Grenada, and from ports in British India to ports in the Red Sea or Persian Gulf. The colonies mentioned were the places to which emigration was then lawful. Since 1860, emigration to the colonies of Fiji, Natal, Réunion, St. Croix, Guadeloupe, Martinique, Dutch Guiana, St. Vincent, Nevis and St. Kitts has been sanctioned. With respect, however, to voyages to places not specified in Act II of 1860, that

Act gives no power to any authority to recover expenses incurred in forwarding shipwrecked passengers to their destination and in maintaining them until they are so forwarded. At present, therefore, the voyages to which the Act does not apply are more numerous than those to which it does.

2. Again, the Act, as it stands at present, is, if strictly construed, inapplicable to the conditions under which emigration from India is usually conducted. Section 3 of the Act, following section 53 of the English Passengers Act, 1855, runs as follows:—"If any passenger * * * * find himself within any colonial or foreign port or place other than that at which *he may have contracted to land*," &c. But as a rule, emigrants from India do not themselves contract with the owners or charterers of the vessels in which they emigrate. In all cases falling under the Indian Emigration Act VII of 1871 (or which may fall under the Indian Emigration Act XXI of 1883, when that Act is brought into force) the contract is made by a recruiter for the colony importing labour, under the supervision of the Protector of Emigrants. Emigrants despatched in this way are therefore technically excluded from the provisions of Act II of 1860. A similar difficulty appears to have arisen in England, and to have been met by an amendment of the law. Section 12 of the English Passengers Act Amendment Act, 1863 (26 & 27 Vic., cap. 51), repeals section 53 of the English Passengers Act, 1855, and section 15 of the former Act substitutes for the words "other than that at which he may have contracted to land" the words "other than that for which the ship was originally bound, or at which he or the Emigration Commissioners, or any public officer, or other person on his behalf, may have contracted that he should land".

3. These two defects in the Act came to notice in connection with the following occurrence. In the end of April last, the steamer *Laleham*, carrying emigrants from Calcutta to Dutch Guiana, grounded off Ceylon, and was compelled to land her passengers at Trincomalee. The *Laleham* returned to Calcutta, where she was examined by the Engineer-Surveyor to the port, and reported "unseaworthy and unfit to proceed to sea without serious danger to human life". The Agents of the *Laleham* at first proposed to substitute another vessel, but subsequently declined to do so, offering merely to have the *Laleham* repaired at Calcutta, and to fulfil her charter-party by re-embarking the coolies at Trincomalee and taking them on to Surinam.

The Advocate General of Bengal, on being consulted, was of opinion that no action could be taken under Act II of 1860, and that the matter would be governed by the charter-party. Surinam, he said, being in Dutch Guiana, is not a place to which Act II of 1860 applies. He thought further that the English Passengers Act Amendment Act, 1863, would be construed strictly, and according to such construction he did not think that the words of section 3 of Act II of 1860 would cover the break-down in a voyage to which that Act applied, in any case other than that in which the passenger had himself contracted.

Under these circumstances legislation seems necessary in order to bring Act II of 1860 into conformity with the present system of emigration and the English Passengers Act Amendment Act, 1863.

The present Bill has accordingly been prepared. It repeals and re-enacts Act II of 1860 with the necessary amendments. Section 3 of the present Bill declares the subsequent provisions of the Bill (being parts of the English Passenger Act, 1855, as amended by the Passengers Act Amendment Act, 1863) to be applicable to all voyages to certain specified colonies and places, which are, in fact, the colonies and places to which under the existing law emigration is now lawful or is likely to be legalized; and in sections 5 and 6 the amendments made by the English Passengers Act Amendment Act, 1863, in sections 53 and 54 of the English Passengers Act, 1855 (which formed sections 3 and 4 of Act II of 1860) are incorporated with some slight modifications so as to adapt them to this country.

The 5th December, 1884.

C. P. ILBERT.

D. FITZPATRICK,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 17, 1885.

☞ 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 16th January 1885, and was referred to a Select Committee :—

No. 1 OF 1885.

THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL, 1885.

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The Births, Deaths and Marriages Registration Bill, 1885.

(*Chapter II.—General Registry Offices of Births, Deaths and Marriages.—Sections 1-9.*)

A Bill to Provide for the voluntary Registration of certain Births and Deaths, for the establishment of General Registry Offices for keeping Registers of certain Births, Deaths and Marriages, and for certain other purposes.

WHEREAS it is expedient to provide for the voluntary registration of births and deaths among certain classes of persons, for the more effectual registration of those births and deaths and of the marriages registered under Act III of 1872 or the Indian Christian Marriage Act, 1872, and for the establishment of general registry offices for keeping registers of those births, deaths and marriages; XV of 1872.

And whereas it is also expedient to provide for the collection and preservation of certain existing registers made otherwise than in the performance of a duty specially enjoined by the law of the country in which the register was kept, and to declare that copies of the entries in those registers shall be admissible in evidence;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title and commencement.

1. (*1*) This Act may be called the Births, Deaths and Marriages Registration Act, 1885; and

[Act XV of 1872, s. 1.]

(*2*) It shall come into force on such day as the Governor General in Council, by notification in the *Gazette of India*, directs.

Local extent.

2. This Act extends to the whole of British India, and, so far only as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty.

Definitions.

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

"prescribed" means prescribed by a rule made by the Governor General in Council under this Act; and

"Registrar of Births and Deaths" means a Registrar of Births and Deaths appointed under this Act.

Saving of local laws.

4. Nothing in this Act, or in any rule made under this Act, shall affect any law heretofore or hereafter passed providing for the registration of births and deaths within particular local areas.

CHAPTER II.

GENERAL REGISTRY OFFICES OF BIRTHS, DEATHS AND MARRIAGES.

[Cf. 6 & 7 Wm. IV, c. 86, s. 2.]

Establishment of general registry offices and appointment of Registrars General.

5. (*1*) Each Local Government—

(*a*) shall establish a general registry office, for keeping such certified copies of registers of births and deaths registered under this Act, or marriages registered under Act III of 1872 (*to provide a form of marriage in certain cases*), or the Indian Christian Marriage Act, 1872, as may be sent to it under this Act, or under either of the two last-mentioned Acts as amended by this Act; and XV of 1872.

(*b*) may, from time to time, appoint to the charge of that office an officer, to be called the Registrar General of Births, Deaths and Marriages, for the territories under its administration.

X of 1865.

[Cf. Act III of 1877, s. 4.]

(*2*) Provided that the Governor of Bombay in Council may, with the previous sanction of the Governor General in Council, establish two general registry offices and appoint two Registrars General of Births, Deaths and Marriages for the territories under his administration; one of such general registry offices and of such Registrars General being established and appointed for Sindh and the other for the other territories under the administration of the Governor of Bombay in Council.

[Cf. 6 & 7 Wm. IV, c. 67, ss. 37 & 38. See also Act III of 1877, s. 77.]

Indexes to be kept at general registry office.

6. Each Registrar General of Births, Deaths and Marriages shall cause indexes of all the certified copies of registers sent to his office under this Act, Act III of 1872, or the Indian Christian Marriage Act, 1872, as amended by this Act, to be made and kept in his office in the prescribed form. XV of 1872.

Indexes to be open to inspection.

7. Subject to the payment of the prescribed fees, the indexes so made shall be at all reasonable times open to inspection by any person applying to inspect them, and copies of entries in the certified copies of the registers to which they relate shall be given to all persons applying for them.

Copies of entries to be admissible in evidence.

8. A copy of an entry given under the last foregoing section shall be signed by the Registrar General of Births, Deaths and Marriages, and shall be admissible in evidence for the purpose of proving the birth, death or marriage to which the entry relates.

Superintendence of Registrars by Registrar General.

9. Each Registrar General of Births, Deaths and Marriages shall exercise a general superintendence over the Registrars of Births and Deaths in the territories for which he is appointed.

The Births, Deaths and Marriages Registration Bill, 1885.

(*Chapter III.—Registration of Births and Deaths.—Sections 10-18.*)

CHAPTER III.

REGISTRATION OF BIRTHS AND DEATHS.

A.—Application of this Chapter.

Persons whose births and deaths are registrable.

10. The persons whose births and deaths shall be registrable under this chapter are as follows, namely:—

(*a*) in British India, the members of every race, sect or tribe to which the Indian Succession Act, 1865, applies, and in respect of which an order under section 332 of that Act is not for the time being in force, and all persons professing the Christian religion;

(*b*) in the dominions of Princes and States in India in alliance with Her Majesty, subjects of Her Majesty being members of a like race, sect or tribe or professing the Christian religion.

B.—Registration Establishment.

Power for Local Government to appoint Registrars for its territories.

11. (*1*) The Local Government may, from time to time, appoint, either by name or by virtue of their office, so many persons as it thinks fit to be Registrars of Births and Deaths for such local areas within the territories under its administration as it may, from time to time, define.

[Cf. Act III of 1877, s. 13.]

(*2*) The Local Government may suspend, remove or dismiss any person appointed under this section and appoint another person in his stead.

(*3*) A Registrar of Births and Deaths may resign by notifying in writing to the Local Government his intention to do so, and, on his resignation being accepted by the Local Government, he shall be deemed to have vacated his office.

Power for Governor General in Council to appoint Registrars of Births and Deaths for Native States.

12. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, appoint, either by name or by virtue of their office, so many persons as he thinks fit to be Registrars of Births and Deaths for such local areas within the territories of any Prince or State in India in alliance with Her Majesty as he may, from time to time, define.

[Cf. 37 & 38 Vic., c. 88, s. 26.]

Office and attendance of Registrar.

13. (*1*) Every Registrar of Births and Deaths shall have an office in the local area for which he is appointed.

(*2*) Every Registrar of Births and Deaths to whom the Local Government may direct this sub-section to apply shall attend at his office for the purpose of registering births and deaths on such days and at such hours as the Registrar General of Births, Deaths and Marriages may, from time to time, direct, and shall cause to be placed in some conspicuous place on or near the outer door of his office, his name, with the addition of Registrar of Births and Deaths for the local area for which he is appointed, and the days and hours of his attendance.

[Cf. Act III of 1877, s. 10, also 37 & 38 Vic., c. 88, ss. 24 & 25.]

Absence of Registrar from his district or vacancy in his office.

14. (*1*) When any Registrar of Births and Deaths to whom the Local Government may direct this section to apply, not being a Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay, is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, shall be the Registrar of Births and Deaths during such absence or until the Local Government fills the vacancy.

(*2*) When any such Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf shall be the Registrar of Births and Deaths during such absence or until the Local Government fills the vacancy.

(*3*) The Registrar General of Births, Deaths and Marriages shall report all appointments made under this section to the Local Government.

[Cf. Act III of 1877, s. 13.]

Register books to be supplied and preservation of records to be provided for.

15. The Local Government shall supply every Registrar of Births and Deaths with a sufficient number of register books of births and of register books of deaths, and shall make suitable provision for the preservation of the records connected with the registration of births and deaths.

C.—Mode of Registration.

[Cf. 6 & 7 Wm. IV, c. 86, ss. 17 & 18; also Act III of 1877, s. 16.]

Duty of Registrar to enter births and deaths of which notice is given in register.

16. Every Registrar of Births and Deaths, on receipt of notice of a birth or death within the local area for which he is appointed, shall, if the notice is given within the prescribed time and in the prescribed mode by a person authorized by this Act to give the notice, forthwith make an entry of the birth or death in the proper register book.

[Cf. 37 & 38 Vic., c. 88, s. 10.]

Persons authorized to give notice of birth.

17. The following persons are hereby authorized to give notice of a birth, namely, the father or mother of the child, or, in default of the father or mother, the occupier of the house in which to his knowledge the child is born, or any person present at the birth, or the person having charge of the child.

[Cf. 37 & 38 Vic., c. 88, s. 10.]

Persons authorized to give notice of death.

18. The following persons are hereby authorized to give notice of a death, namely:—

(*a*) In the case of any person dying in a house

The Births, Deaths and Marriages Registration Bill, 1885.

(Chapter III.—Registration of Births and Deaths.—Sections 19-25.)

after the date on which this Act comes into force, the nearest relatives of the deceased present at the death or in attendance during the last illness of the deceased, or, in default of such relatives, any other relative of the deceased dwelling or being in the local area of the Registrar of Births and Deaths within which the deceased was at the time of his death, or, in default of such relatives, any person present at the death, or the occupier of the house in which to his knowledge the death took place, or, in default of the persons hereinbefore in this section mentioned, any inmate of that house; and

[Cf. 37 & 38 Vic., c. 88, s. 11.]

(*b*) in the case of any person dying in a place which is not a house, or of a dead body being found elsewhere than in a house, after the date on which this Act comes into force, any relative of the deceased person having knowledge of any of the particulars required to be registered concerning the death, or, in default of such relative, any person present at the death, or finding, or taking charge of, the body.

Entry of birth or death to be signed by person giving notice.

19. (*1*) When an entry of a birth or death has been made by the Registrar of Births and Deaths as required by section 16, the person giving notice of the birth or death must sign the entry in the register in the presence of the Registrar.

(*2*) Until the entry has been so signed, the birth or death shall not be deemed to be registered under this Act.

[Cf. 37 & 38 Vic., c. 88, s. 10.]

Grant of certificate of registration of birth or death.

20. The Registrar of Births and Deaths shall, on application made at the time of registering any birth or death by the person giving notice of the birth or death, and on payment by him of the prescribed fee, give to the applicant a certificate in the prescribed form, signed by the Registrar, of having registered the birth or death.

[Cf. 6 & 7 Wm. IV, c. 86, s. 35 & 34; Act III of 1872, s. 56.]

Duty of Registrars as to sending certified copies of entries in register books to Registrar General.

21. (*1*) Every Registrar of Births and Deaths in British India shall send to the Registrar General of Births, Deaths and Marriages for the territories within which the local area for which he is appointed is situate, at the prescribed intervals, a true copy, certified by him under his hand, in the prescribed form, of all the entries of births and deaths in the register book kept by him since the last of those intervals:

Provided that, in the case of Registrars of Births and Deaths who are clergymen of the Churches of England, Rome and Scotland, the Registrar may send the certified copies in the first instance to his ecclesiastical superior, who shall send them to the proper Registrar General of Births, Deaths and Marriages.

In this sub-section, "Church of England" and "Church of Scotland" mean the Church of England and the Church of Scotland as by law established respectively; and "Church of Rome" means the Church which regards the Pope of Rome as its spiritual head.

(*2*) The provisions of sub-section (*1*) shall apply to every Registrar of Births and Deaths in the territories of any Prince or State in India in alliance with Her Majesty, with this modification, that the certified copies referred to in that sub-section shall be sent to such one of the Registrars General of Births, Deaths and Marriages as the Governor General in Council, from time to time, by notification in the *Gazette of India*, appoints in this behalf. [Act XV of 1872, s. 56.]

Searches and copies of entries in register books.

22. (*1*) Every Registrar of Births and Deaths shall, on payment of the prescribed fees, at all reasonable times allow searches to be made in the register books kept by him, and give a copy of any entry in the same. [Cf. 6 & 7 Wm. IV, c. 86, s. 35; also Act XV of 1872, s. 79.]

(*2*) Every copy of an entry in a register book given under this section shall be signed by the Registrar of Births and Deaths, and shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates.

D.—Penalties.

Penalty for wilfully giving false information.

23. If any person wilfully makes, or causes to be made, for the purpose of being inserted in any register of births or deaths, any false statement in connection with any notice of a birth or death under this Act, he shall be punished with imprisonment for a term which may extend to three years and with fine. [Cf. 6 & 7 Wm. IV, c. 86, s. 41: 37 & 38 Vic., c. 88, s. 40: Act XV of 1872, s. 66.]

Penalty for omission to enter birth or death in register, or loss of register.

24. If any Registrar of Births and Deaths refuses, or without reasonable cause omits, to make an entry in the proper register of any birth or death which he ought so to enter under this Act, or if any person having the custody of any register book of births or deaths carelessly loses or injures or allows the injury of the book, he shall be punished with fine which may extend to five hundred rupees. [37 & 38 Vic., c. 88, s. 35.]

E.—Correction of Errors.

Correction of entry in register of births and deaths.

25. (*1*) If a Registrar of Births and Deaths discovers any error in the form or substance of any entry of a birth or death in any register kept by him under this Act, he may, in the presence of the persons who gave the notice of the birth or death, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction. [Cf. 6 & 7 Wm. IV, c. 86, s. 44: 37 & 38 Vic. c. 88, s. 36. See also Act XV of 1872, s. 78.]

(*2*) Every entry made under this section must be attested by the witnesses in whose presence it was made.

(*3*) If a certified copy of the entry has already been sent to the Registrar General of Births, Deaths and Marriages, the Registrar of Births and Deaths shall make and send a separate certified copy of the original erroneous entry and of the marginal correction therein made.

The Births, Deaths and Marriages Registration Bill, 1885.

(Chapter IV.—Amendment of Marriage Acts, 1872. Chapter V.—Special Provisions as to certain existing Registers.—Sections 26-31.)

CHAPTER IV.

AMENDMENT OF MARRIAGE ACTS, 1872.

Addition of new section after section 13, Act III of 1872.

26. After section 13 of Act III of 1872 (*to provide a form of marriage in certain cases*), the following section shall be inserted:—

Transmission of certified copies of entries in marriage-certificate book to the Registrar General of Births, Deaths and Marriages.

"13A. The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the territories within which his district is situate, at such intervals as the Governor General in Council, from time to time, directs, a true copy certified by him under his hand, in such form as the Governor General in Council, from time to time, prescribes, of all entries made by him in the said marriage-certificate book since the last of such intervals."

Amendment of the Indian Christian Marriage Act, 1872.

27. In the Indian Christian Marriage Act, 1872, the following amendments shall be made, namely:— XV of 1872.

(*a*) at the end of section 3 the words "'Registrar General of Births, Deaths and Marriages' means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1885," shall be added;

(*b*) for the words "Secretary to the Local Government", wherever they occur, and for the words "Secretary to a Local Government" in section 79, the words "Registrar General of Births, Deaths and Marriages" shall be substituted;

(*c*) for the words "at such places as the Local Government directs" in section 62, the words "in the office of the Registrar General of Births, Deaths and Marriages for the territories of the Local Government by which the person who keeps the register-book was licensed" shall be substituted;

(*d*) in section 81, after the words "Registrar General of Births, Deaths and Marriages" the words "in England" shall be added.

CHAPTER V.

SPECIAL PROVISIONS AS TO CERTAIN EXISTING REGISTERS.

[Cf. 3 & 4 Vic., c. 92, s. 1.]

Permission to persons having custody of certain records to send them within one year to Registrar General.

28. If any person in British India, or in the dominions of any Prince or State in India in alliance with Her Majesty, has for the time being the custody of any register or record of birth, baptism, naming, dedication, death or burial of any persons of the classes specified in section 10, or of any register or record of marriage of persons of the class of those to whom Act III of 1872 or the Indian Christian Marriage Act, 1872, applies, and, if such register or record has been made by him otherwise than in performance of a duty specially enjoined by the law of the country in which the register or record was kept, he may, within one year from the date on which this Act comes into force, send the register or record to the office of the Registrar General of Births, Deaths and Marriages for the territories within which he resides, or, if he resides within the dominions of any such Prince or State as aforesaid, to such one of the Registrars General as aforesaid as the Governor General in Council, by notification in the *Gazette of India*, from time to time, directs in this behalf. XV of 1872.

Appointment of Commissioners to examine registers.

29. (*1*) The Governor General in Council may appoint so many persons as he thinks fit to be Commissioners for examining the registers or records sent to the Registrar General of Births, Deaths and Marriages under the last foregoing section. [Cf. 3 & 4 Vic., c. 94, s. 2.]

(*2*) The Commissioners so appointed shall hold office for such period as the Governor General in Council, by the order of appointment, or any subsequent order, directs.

Duties of Commissioners.

30. (*1*) The Commissioners appointed under the last foregoing section shall enquire into the state, custody and authenticity of every such register or record as may be sent to the Registrar General of Births, Deaths and Marriages under section 28, [Cf. 3 & 4 Vic., c. 92, ss. 2 and 4.]

and shall, from time to time, deliver to the Registrar General a descriptive list or lists of all such registers or records, or portions of registers or records, as they find to be accurate and faithful.

(*2*) The list or lists shall contain the prescribed particulars and refer to the registers or records, or to the portions of the registers or records, in the prescribed manner.

(*3*) The Commissioners shall also certify in writing, upon some part of every separate book or volume containing any such register or record, or portion of a register or record, as is referred to in any list or lists made by the Commissioners, that it is one of the registers or records, or portions of registers or records, referred to in the said list or lists.

Searches of lists prepared by Commissioners and grant of certified copies of entries.

31. (*1*) Subject to the payment of the prescribed fees, the descriptive list or lists of registers or records, or portions of registers or records, delivered by the Commissioners to the Registrar General of Births, Deaths and Marriages shall be, at all reasonable times, open to inspection by any person applying to inspect them, and copies of entries in [Cf. 3 & 4 Vic., c. 92, s. 3.]

The Births, Deaths and Marriages Registration Bill, 1885.

(*Chapter VI.—Rules.—Sections 32-33.*)

those registers, or records shall be given to all persons applying for them.

(2) A copy of an entry given under this section shall be signed by the Registrar General of Births, Deaths and Marriages, and shall be admissible in evidence for the purpose of proving the birth, baptism, naming, dedication, death, burial or marriage to which the entry relates.

CHAPTER VI.

RULES.

[Cf. 37 & 38 Vic., c. 88, s. 27; also Act XV of 1872, s. 82.]

Power for Governor General in Council to make rules.

32. The Governor General in Council may, from time to time, make rules—

(*a*) to fix the fees payable under this Act;

(*b*) to prescribe the forms required for the purposes of this Act;

(*c*) to prescribe the time within which, and the mode in which, persons authorized under this Act to give notice of a birth or death to a Registrar of Births and Deaths must give the notice;

(*d*) to prescribe the registers to be kept, and the form and manner in which Registrars of Births and Deaths are to register births and deaths under this Act, and the intervals at which they are to send true copies of the entries of births and deaths in the registers kept by them;

(*e*) to prescribe the particulars which the descriptive list or lists to be prepared by the Commissioners appointed under Chapter V are to contain, and the manner in which they are to refer to the records or registers, or portions of records or registers to which they relate; and

(*f*) generally to carry out the purposes of this Act.

Procedure for making and publication of rules.

33. (*1*) The Governor General in Council shall, before making rules under the last foregoing section, publish a draft of the proposed rules in such manner as may, in his opinion, be sufficient for the information of persons likely to be affected thereby.

(2) There shall be published with the draft a note specifying a date at or after which the draft will be taken into consideration.

(*3*) The Governor General in Council shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*4*) Every rule made under this section shall be published in the *Gazette of India*, and the publication in the *Gazette of India* of a rule purporting to be made under the last foregoing section shall be conclusive evidence that it has been duly made.

STATEMENT OF OBJECTS AND REASONS.

IT is proposed by this Bill (1) to establish a system of voluntary registration of births and deaths for the benefit of such classes of the community as would be likely to avail themselves of such registration, (2) to establish general registry offices for keeping registers of the births and deaths so registered, and of marriages registered under Act III of 1872 or the Indian Christian Marriage Act, 1872 (XV of 1872), and (3) to provide machinery for giving evidential value to certain existing registers of births, baptisms, deaths, burials and marriages, which have been kept under no law.

2. The subject of the registration of births and deaths among Europeans in India has been long under the consideration of the Government, whose attention has, moreover, been frequently directed to it by memorials from various Christian religious bodies urging very strongly the need for legislation.

3. The Indian Statute-book contains at present no general law for the registration of births and deaths. There are, indeed, enactments which provide for the registration of births and deaths within certain specified areas, principally municipalities and cantonments, but, in the first place, these enactments are strictly local in their nature, leaving the greater portion of the country unprovided for, and, in the next place, their provisions, being directed primarily to statistical purposes, are not of such a nature as to make the registers of births and deaths kept under them of value for purposes of evidence.

4. As to the numerous registers of baptisms and burials which are kept by ministers of religion in all parts of the country, it is doubtful how far they can be relied on for giving accurately the requisite particulars as to births and deaths, and most of them would, moreover, be inadmissible in evidence.

5. This being the state of the law, and considering the importance of the subject generally, and the memorials above referred to, and having regard to the fact that references are frequently made to the Secretary of State for India and to the Government of India for proof of age or of deaths in connection with questions involving large individual interests, such as rights to property, the Government of India is of opinion that it is expedient to enact a permissive law under which full facilities for registering births and deaths should be given to persons valuing unimpeachable evidence of these events.

6. As to the second object of the Bill, it is obvious that no system of registration of births and deaths can be complete or of practical value unless it provides for the establishment, at certain centres, of general offices where the information registered at the various local offices shall be collected and so arranged as to be readily available for public reference.

7. In this connection, the attention of the Government of India has been directed to the unsatisfactory nature of the system of registration of marriages under the Indian Christian Marriage Act, 1872, and Act III of 1872.

Documentary evidence of all marriages under the former Act is, by the provisions of the Act or the orders thereunder, sent to the Secretary to the Local Government, who is also empowered to grant certified copies which are receivable in evidence. It would seem, therefore, at first sight, that nothing further was required. But, as a matter of fact, not only are no arrangements made for maintaining an index to the marriages the records of which are retained in the local Secretariat, but the greater portion of the marriage records which are received in the local Secretariat have, under section 81 of the Act and the orders in force, to be sent on *in original* to the Government of India in the Home Department for transmission to the Secretary of State; so that the greater number of the marriage records which reach the local Secretariat do not remain there for purposes of reference, and such as do remain are, owing to the absence of an index, practically valueless.

As to Act III of 1872, this Act makes no provision for the marriages solemnized under it being reported to any central authority. The marriage-certificate books for which it provides are retained by the Registrar, who is not even required to index them. Their value as records of the marriages to which they refer is accordingly much diminished.

8. The Government of India have, therefore, availed themselves of the opportunity of the proposed legislation for the registration of births and deaths to remove these defects in the marriage-registration law, by providing for general registry offices for keeping registers, not only of the births and deaths which may be registered under the proposed law, but also of marriages which may be registered under Act III of 1872 or the Indian Christian Marriage Act, 1872.

9. The present Bill extends (section 2) to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty.

10. As there seems to be no way of utilizing for the special purposes in view the compulsory system of registration of births and deaths which is prescribed by the local laws referred to in paragraph 3 above, or of separating the registration of the limited classes affected by the Bill from that of the general population which is required under those laws, it has been found necessary to save the laws providing for the registration of births and deaths within particular local areas at present in force or which may hereafter be passed; and this is done by section 4. The result of this section will, therefore, be that the persons to whom the provisions of the Bill relating to the registration of births and deaths are applicable will be bound, as heretofore, to satisfy the statistical requirements of such local Acts, and will be at liberty to re-register births and deaths under the Bill for evidential purposes.

11. Chapter II provides (section 5) for the establishment by the Local Governments of general registry offices of births, deaths and marriages, and the appointment of Registrars General of Births, Deaths and Marriages. By section 6 indexes are to be kept at the general registry offices of all the certified copies of registers which may be sent to them under the Bill or under Act III of 1872 or the Indian Christian Marriage Act, 1872. These indexes (section 7) are to be open to public inspection, and copies of the entries in the certified copies of the registers to which they relate are to be given to all persons applying for them; and such copies are (section 8) to be admissible in evidence. By section 9 the Registrar General is given the superintendence of the Registrars of Births and Deaths.

12. Chapter III deals with the subject of registration of births and deaths. Section 10 defines the persons whose births and deaths are registrable as, in British India, the members of every race, sect or tribe to which the Indian Succession Act, 1865, applies and in respect of which an order under section 332 of that Act is not for the time being in force, and all persons professing the Christian religion, and in Native States all like persons who are British subjects. These provisions of the Bill will therefore, generally speaking, apply to East Indians, Jews, Armenians and Pársís as well as to Europeans and Native Christians. These are believed to be the only classes of persons in the country who are likely to avail themselves of the benefits of a law of this nature.

13. The chapter then provides for a registration establishment, empowering (sections 11 and 12) the Local Government in British India and the Governor General in Council in Native States to appoint either by name or by virtue of their office fit persons to be Registrars of Births and Deaths for definite local areas. It is proposed to appoint under the general powers given by these sections persons authorized or licensed to perform marriages under either Act III of 1872 or the Indian Christian Marriage Act, 1872, and, in order to provide for the receipt of notices from persons who may prefer not to resort to the Marriage Registrars, other suitable persons, one of whom it is intended should be appointed for each local area for which a person who is also a Marriage Registrar is appointed. It is to the latter class of Registrars that sections 13 and 14, which lay down certain provisions as to the office of such

Registrars, and for the filling up temporary vacancies in the office of such Registrars, are intended to apply. Section 15 provides for the supply of register books and the preservation of records.

14. The chapter next treats of the mode of registration. It imposes (section 16) a duty on every Registrar of Births and Deaths to make an entry in his register book of all births and deaths of which notice may be given to him within the prescribed time and in the prescribed mode by a person authorized to give him such notice. It then (sections 17 and 18) specifies the persons who shall be authorized to give notice of births and deaths respectively.

Section 19 provides that the entry of the birth or death is to be signed by the person giving notice, and declares that until it is so signed the birth or death shall not be deemed to be registered. By section 20 every Registrar of Births and Deaths is required to give on application made at the time of registering any birth or death by the person giving notice of the same, and on payment by him of the prescribed fee, a certificate of having registered the birth or death.

Section 21 provides for the sending by every Registrar of Births and Deaths at prescribed intervals to the Registrar General of Births, Deaths and Marriages of certified copies of all entries in his register books. In the case of Registrars in British India, the copies are to be sent to the Registrar General within whose jurisdiction the local areas for which the Registrar is appointed is situate, an exception being made in the case of Registrars who are clergymen of the Churches of England, Rome and Scotland, who may send them to their ecclesiastical superiors to be forwarded by them to the Registrar General. In the case of Registrars in Native States, the copies are to be sent to such one of the Registrars General as the Governor General in Council may, by notification in the *Gazette of India*, direct in this behalf. Section 22 provides for searches, and grant of copies of entries in register books which shall be admissible in evidence.

15. Sections 23 and 24 prescribe penalties of imprisonment which may extend to three years and fine for wilfully giving false information to a Registrar of Births and Deaths, and of fine, which may extend to five hundred rupees, for Registrars of Births and Deaths omitting to enter births or deaths in the register or losing or injuring register books.

16. Lastly, section 25 prescribes the procedure by which errors in the form or substance of any entry in a register book of births and deaths may be corrected.

17. Chapter IV (sections 26 and 27) makes the amendments in Act III of 1872 and the Indian Christian Marriage Act, 1872, which are necessary in order to make the provisions of these Acts fit in with the scheme of the Bill, under which certified copies of entries in the registers kept under these Acts are in future to be sent to the Registrar General of Births, Deaths and Marriages.

18. Chapter V deals with the last of the three subjects referred to in the first paragraph of this Statement. As noted above, registers of births or baptisms and deaths or burials are at present kept in all parts of the country by ministers of religion. Registers of marriages were also similarly kept before the marriage-registration law came into force. Most of these registers are, as the law now stands, inadmissible in evidence, and possibly many of them should never be admitted in evidence owing to the irregular manner in which they have been compiled. At the same time, others are probably fit for admission as public registers. Under these circumstances, it seems advisable to follow the analogy of what was done in England (see 3 & 4 Vic., c. 92) and provide a procedure under which such of these registers as are worthy of recognition may be validated and certified copies of entries made in them declared admissible in evidence. This is accordingly done by Chapter V.

19. That chapter first (section 28) declares that any person having custody of any such records may, within one year from the date on which the Bill comes into force, send them to the Registrar General of Births, Deaths and Marriages for the territories within which the person resides, or, if he resides in a Native State, to such one of those Registrars General as the Governor General in Council, by notification, directs. It then (section 29) provides for the appointment by the Governor General in Council of Commissioners to examine the registers so sent to the various Registrars General, and prescribes (section 30) the duties of the Commissioners, which are to inquire into the state, custody and authenticity of every register submitted to them, and to prepare lists of all such registers or portions of registers as they find to be accurate and faithful, and to certify upon some part of every book or volume containing any such register or portion of a register as is referred to in any such list that it is one of the registers referred to in the list. Section 31 permits, on payment of a fee, searches to be made of the lists so prepared, and provides for the grant of certified copies of the entries in the registers which shall be admissible in evidence.

20. Finally, Chapter VI (sections 32 and 33) empowers the Governor General in Council to make rules with regard to certain matters connected with the purposes of the Act, and prescribes the usual procedure for the making and publication of such rules.

The 2nd January, 1885.

C. P. ILBERT.

R. J. CROSTHWAITE,
Officiating 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 16th January 1885:—

No. 2 OF 1885.

A Bill to provide for the temporary appointment from time to time of an Additional Judicial Commissioner for Oudh.

WHEREAS it is expedient to provide for the temporary appointment from time to time of an Additional Judicial Commissioner to assist the Judicial Commissioner of Oudh; It is hereby enacted as follows:—

1. (*1*) This Act may be called the Oudh Additional Judicial Commissioner's Act, 1885; and

Short title and commencement.

(*2*) It shall come into force at once.

2. (*1*) 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, appoint such person as it thinks fit to be an Additional Judicial Commissioner, and to sit as such in the Court of the Judicial Commissioner of Oudh.

Appointment of Additional Judicial Commissioner of Oudh.

(*2*) Every person so appointed shall hold his office during the pleasure of the Local Government.

3. Every Additional Judicial Commissioner shall exercise such jurisdiction and powers of the Judicial Commissioner under the Oudh Civil Courts Act, 1879, as the Local Government may, from time to time, prescribe, but only in such cases as the Judicial Commissioner may direct.

Jurisdiction and powers of Additional Judicial Commissioner.

XIII of 1879.

4. Every enactment for the time being applicable to the Judicial Commissioner shall apply to the Additional Judicial Commissioner when exercising any jurisdiction or powers under the last foregoing section as if he were the Judicial Commissioner.

Law applicable to Additional Judicial Commissioner.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide for the temporary appointment, from time to time, as it may be deemed necessary, of an Additional Judicial Commissioner of Oudh.

The steady increase in the work that falls upon the Judicial Commissioner of Oudh, and the accumulation of arrears, have made it necessary to adopt some plan for assisting him in the discharge of his functions; and the simplest arrangement would seem to be the appointment, as occasion requires, of an Additional Judicial Commissioner.

The Bill (section 2) empowers the Local Government, with the sanction of the Governor General in Council, from time to time, to appoint an Additional Judicial Commissioner, who is to hold office during the pleasure of the Local Government. The Additional Judicial Commissioner so appointed is (section 3) to exercise such jurisdiction and powers of the Judicial Commissioner under the Oudh Civil Courts Act as the Local Government may prescribe, but only in such cases as the Judicial Commissioner directs. The Local Government will thus be able to regulate the jurisdiction and powers of the Additional Judicial Commissioner in such a way as to prevent any conflict between them and those of the Judicial Commissioner, while the latter officer will be able to arrange for the distribution of business as may appear to him to be most convenient. Lastly (section 4), all enactments applicable to the Judicial Commissioner are declared to be applicable to the Additional Judicial Commissioner, so that his legal status generally will be identical with that of the Judicial Commissioner.

The 16th January, 1885.

J. W. QUINTON.

R. J. CROSTHWAITE,
Offg. Secretary to the Government of India.

5 *b*

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 24, 1885.

☞ 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 16th January 1885, and was referred to a Select Committee:—

No. 1 OF 1885.

THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL, 1885.

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CHAPTER VI.

RULES.

32. Power for Governor General in Council to make rules.
33. Procedure for making and publication of rules.

The Births, Deaths and Marriages Registration Bill, 1885.

(Chapter II.—General Registry Offices of Births, Deaths and Marriages.—Sections 1-9.)

A Bill to Provide for the voluntary Registration of certain Births and Deaths, for the establishment of General Registry Offices for keeping Registers of certain Births, Deaths and Marriages, and for certain other purposes.

WHEREAS it is expedient to provide for the voluntary registration of births and deaths among certain classes of persons, for the more effectual registration of those births and deaths and of the marriages registered under Act III of 1872 or the Indian Christian Marriage Act, 1872, and for the establishment of general registry offices for keeping registers of those births, deaths and marriages; XV of 1872.

And whereas it is also expedient to provide for the collection and preservation of certain existing registers made otherwise than in the performance of a duty specially enjoined by the law of the country in which the register was kept, and to declare that copies of the entries in those registers shall be admissible in evidence;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title and commencement.

1. (*1*) This Act may be called the Births, Deaths and Marriages Registration Act, 1885; and

[Act XV of 1872, s. 1.]

(*2*) It shall come into force on such day as the Governor General in Council, by notification in the *Gazette of India*, directs.

Local extent.

2. This Act extends to the whole of British India, and, so far only as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty.

Definitions.

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

"prescribed" means prescribed by a rule made by the Governor General in Council under this Act; and

"Registrar of Births and Deaths" means a Registrar of Births and Deaths appointed under this Act.

Saving of local laws.

4. Nothing in this Act, or in any rule made under this Act, shall affect any law heretofore or hereafter passed providing for the registration of births and deaths within particular local areas.

CHAPTER II.

GENERAL REGISTRY OFFICES OF BIRTHS, DEATHS AND MARRIAGES.

[Cf. 6 & 7 Wm. IV, c. 86, s. 3.]

Establishment of general registry offices and appointment of Registrars General.

5. (*1*) Each Local Government—

(*a*) shall establish a general registry office, for keeping such certified copies of registers of births and deaths registered under this Act, or marriages registered under Act III of 1872 (*to provide a form of marriage in certain cases*), or the Indian Christian Marriage Act, 1872, as may be sent to it under this Act, or under either of the two last-mentioned Acts as amended by this Act; and XV of 1872.

(*b*) may, from time to time, appoint to the charge of that office an officer, to be called the Registrar General of Births, Deaths and Marriages, for the territories under its administration.

[Cf. Act III of 1877, s. 4.]

(*2*) Provided that the Governor of Bombay in Council may, with the previous sanction of the Governor General in Council, establish two general registry offices and appoint two Registrars General of Births, Deaths and Marriages for the territories under his administration; one of such general registry offices and of such Registrars General being established and appointed for Sindh and the other for the other territories under the administration of the Governor of Bombay in Council.

[Cf. 6 & 7 Wm. IV, c. 87, ss. 37 & 38. See also Act III of 1877, s. 77.]

Indexes to be kept at general registry office.

6. Each Registrar General of Births, Deaths and Marriages shall cause indexes of all the certified copies of registers sent to his office under this Act, Act III of 1872, or the Indian Christian Marriage Act, 1872, as amended by this Act, to be made and kept in his office in the prescribed form. XV of 1872.

Indexes to be open to inspection.

7. Subject to the payment of the prescribed fees, the indexes so made shall be at all reasonable times open to inspection by any person applying to inspect them, and copies of entries in the certified copies of the registers to which they relate shall be given to all persons applying for them.

Copies of entries to be admissible in evidence.

8. A copy of an entry given under the last foregoing section shall be signed by the Registrar General of Births, Deaths and Marriages, and shall be admissible in evidence for the purpose of proving the birth, death or marriage to which the entry relates.

Superintendence of Registrars by Registrar General.

9. Each Registrar General of Births, Deaths and Marriages shall exercise a general superintendence over the Registrars of Births and Deaths in the territories for which he is appointed.

The Births, Deaths and Marriages Registration Bill, 1885.

(Chapter III.—Registration of Births and Deaths.—Sections 10-18.)

CHAPTER III.

REGISTRATION OF BIRTHS AND DEATHS.

A.—Application of this Chapter.

Persons whose births and deaths are registrable.

10. The persons whose births and deaths shall be registrable under this chapter are as follows, namely:—

(*a*) in British India, the members of every race, sect or tribe to which the Indian Succession Act, 1865, applies, and in respect of which an order under section 332 of that Act is not for the time being in force, and all persons professing the Christian religion; X of 1865.

(*b*) in the dominions of Princes and States in India in alliance with Her Majesty, subjects of Her Majesty being members of a like race, sect or tribe or professing the Christian religion.

B.—Registration Establishment.

Power for Local Government to appoint Registrars for its territories.

11. (*1*) The Local Government may, from time to time, appoint, either by name or by virtue of their office, so many persons as it thinks fit to be Registrars of Births and Deaths for such local areas within the territories under its administration as it may, from time to time, define.

[Cf. Act III of 1877, s. 5.]

(*2*) The Local Government may suspend, remove or dismiss any person appointed under this section and appoint another person in his stead.

(*3*) A Registrar of Births and Deaths may resign by notifying in writing to the Local Government his intention to do so, and, on his resignation being accepted by the Local Government, he shall be deemed to have vacated his office.

Power for Governor General in Council to appoint Registrars of Births and Deaths for Native States.

12. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, appoint, either by name or by virtue of their office, so many persons as he thinks fit to be Registrars of Births and Deaths for such local areas within the territories of any Prince or State in India in alliance with Her Majesty as he may, from time to time, define.

[Cf. 37 & 38 Vic., c. 88, s. 26.]

Office and attendance of Registrar.

13. (*1*) Every Registrar of Births and Deaths shall have an office in the local area for which he is appointed.

(*2*) Every Registrar of Births and Deaths to whom the Local Government may direct this sub-section to apply shall attend at his office for the purpose of registering births and deaths on such days and at such hours as the Registrar General of Births, Deaths and Marriages may, from time to time, direct, and shall cause to be placed in some conspicuous place on or near the outer door of his office, his name, with the addition of Registrar of Births and Deaths for the local area for which he is appointed, and the days and hours of his attendance.

[Cf. Act III of 1877, s. 10, also 37 & 38 Vic., c. 88, ss. 24 & 25.]

Absence of Registrar from his district or vacancy in his office.

14. (*1*) When any Registrar of Births and Deaths to whom the Local Government may direct this section to apply, not being a Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay, is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, shall be the Registrar of Births and Deaths during such absence or until the Local Government fills the vacancy.

(*2*) When any such Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf shall be the Registrar of Births and Deaths during such absence or until the Local Government fills the vacancy.

(*3*) The Registrar General of Births, Deaths and Marriages shall report all appointments made under this section to the Local Government.

[Cf. Act III of 1877, s. 13.]

Register books to be supplied and preservation of records to be provided for.

15. The Local Government shall supply every Registrar of Births and Deaths with a sufficient number of register books of births and of register books of deaths, and shall make suitable provision for the preservation of the records connected with the registration of births and deaths.

C.—Mode of Registration.

[Cf. 6 & 7 Wm. IV, c. 86, ss 17 & 18; also Act III of 1877, s. 16.]

Duty of Registrar to enter births and deaths of which notice is given in register.

16. Every Registrar of Births and Deaths, on receipt of notice of a birth or death within the local area for which he is appointed, shall, if the notice is given within the prescribed time and in the prescribed mode by a person authorized by this Act to give the notice, forthwith make an entry of the birth or death in the proper register book.

[Cf. 37 & 38 Vic., c. 88, s. 10.]

Persons authorized to give notice of birth.

17. The following persons are hereby authorized to give notice of a birth, namely, the father or mother of the child, or, in default of the father or mother, the occupier of the house in which to his knowledge the child is born, or any person present at the birth, or the person having charge of the child.

[Cf. 37 & 38 Vic., c. 88, s. 10.]

Persons authorized to give notice of death.

18. The following persons are hereby authorized to give notice of a death, namely:—

(*a*) In the case of any person dying in a house

The Births, Deaths and Marriages Registration Bill, 1885.

(Chapter III.—Registration of Births and Deaths.—Sections 19-25.)

after the date on which this Act comes into force, the nearest relatives of the deceased present at the death or in attendance during the last illness of the deceased, or, in default of such relatives, any other relative of the deceased dwelling or being in the local area of the Registrar of Births and Deaths within which the deceased was at the time of his death, or, in default of such relatives, any person present at the death, or the occupier of the house in which to his knowledge the death took place, or, in default of the persons hereinbefore in this section mentioned, any inmate of that house; and

[Cf. 37 & 38 Vic., c. 88, s. 11.]

(*b*) in the case of any person dying in a place which is not a house, or of a dead body being found elsewhere than in a house, after the date on which this Act comes into force, any relative of the deceased person having knowledge of any of the particulars required to be registered concerning the death, or, in default of such relative, any person present at the death, or finding, or taking charge of, the body.

Entry of birth or death to be signed by person giving notice.

19. (*1*) When an entry of a birth or death has been made by the Registrar of Births and Deaths as required by section 16, the person giving notice of the birth or death must sign the entry in the register in the presence of the Registrar.

(*2*) Until the entry has been so signed, the birth or death shall not be deemed to be registered under this Act.

[Cf. 37 & 38 Vic., c. 88, s. 30.]

Grant of certificate of registration of birth or death.

20. The Registrar of Births and Deaths shall, on application made at the time of registering any birth or death by the person giving notice of the birth or death, and on payment by him of the prescribed fee, give to the applicant a certificate in the prescribed form, signed by the Registrar, of having registered the birth or death.

[Cf. 6 & 7 Wm IV, c. 86, ss. 32 & 34; also Act III of 1877, s. 56.]

Duty of Registrars as to sending certified copies of entries in register books to Registrar General.

21. (*1*) Every Registrar of Births and Deaths in British India shall send to the Registrar General of Births, Deaths and Marriages for the territories within which the local area for which he is appointed is situate, at the prescribed intervals, a true copy, certified by him under his hand, in the prescribed form, of all the entries of births and deaths in the register book kept by him since the last of those intervals:

Provided that, in the case of Registrars of Births and Deaths who are clergymen of the Churches of England, Rome and Scotland, the Registrar may send the certified copies in the first instance to his ecclesiastical superior, who shall send them to the proper Registrar General of Births, Deaths and Marriages.

In this sub-section, "Church of England" and "Church of Scotland" mean the Church of England and the Church of Scotland as by law established respectively; and "Church of Rome" means the Church which regards the Pope of Rome as its spiritual head.

[Act XV of 1872, s. 56.]

(*2*) The provisions of sub-section (*1*) shall apply to every Registrar of Births and Deaths in the territories of any Prince or State in India in alliance with Her Majesty, with this modification, that the certified copies referred to in that sub-section shall be sent to such one of the Registrars General of Births, Deaths and Marriages as the Governor General in Council, from time to time, by notification in the *Gazette of India*, appoints in this behalf.

[Cf. 6 & 7 Wm IV, c. 86, s. 35; also Act XV of 1872, s. 79.]

Searches and copies of entries in register books.

22. (*1*) Every Registrar of Births and Deaths shall, on payment of the prescribed fees, at all reasonable times allow searches to be made in the register books kept by him, and give a copy of any entry in the same.

(*2*) Every copy of an entry in a register book given under this section shall be signed by the Registrar of Births and Deaths, and shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates.

D.—Penalties.

[Cf. 6 & 7 Wm IV, c. 86, s. 41; 37 & 38 Vic., c. 88, s. 40; Act XV of 1872, s. 66.]

Penalty for wilfully giving false information.

23. If any person wilfully makes, or causes to be made, for the purpose of being inserted in any register of births or deaths, any false statement in connection with any notice of a birth or death under this Act, he shall be punished with imprisonment for a term which may extend to three years and with fine.

[37 & 38 Vic. c. 88, s. 36.]

Penalty for omission to enter birth or death in register, or loss of register.

24. If any Registrar of Births and Deaths refuses, or without reasonable cause omits, to make an entry in the proper register of any birth or death which he ought so to enter under this Act, or if any person having the custody of any register book of births or deaths carelessly loses or injures or allows the injury of the book, he shall be punished with fine which may extend to five hundred rupees.

E.—Correction of Errors.

[Cf. 6 & 7 Wm IV, c. 86, s. 44; 37 & 38 Vic. c. 88, s. 36. See also Act XV of 1872, s. 78.]

Correction of entry in register of births and deaths.

25. (*1*) If a Registrar of Births and Deaths discovers any error in the form or substance of any entry of a birth or death in any register kept by him under this Act, he may, in the presence of the persons who gave the notice of the birth or death, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction.

[Cf. 3 & 4 Vic., c. 92, s. 1.]

(*2*) Every entry made under this section must be attested by the witnesses in whose presence it was made.

(*3*) If a certified copy of the entry has already been sent to the Registrar General of Births, Deaths and Marriages, the Registrar of Births and Deaths shall make and send a separate certified copy of the original erroneous entry and of the marginal correction therein made.

The Births, Deaths and Marriages Registration Bill, 1885.

(Chapter IV.—Amendment of Marriage Acts, 1872. Chapter V.—Special Provisions as to certain existing Registers.—Sections 26-31.)

CHAPTER IV.

AMENDMENT OF MARRIAGE ACTS, 1872.

Addition of new section after section 13, Act III of 1872.

26. After section 13 of Act III of 1872 (*to provide a form of marriage in certain cases*), the following section shall be inserted:—

Transmission of certified copies of entries in marriage-certificate book to the Registrar General of Births, Deaths and Marriages.

"13A. The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the territories within which his district is situate, at such intervals as the Governor General in Council, from time to time, directs, a true copy certified by him under his hand, in such form as the Governor General in Council, from time to time, prescribes, of all entries made by him in the said marriage-certificate book since the last of such intervals."

Amendment of the Indian Christian Marriage Act, 1872.

27. In the Indian Christian Marriage Act, 1872, the following amendments shall be made, namely:—

(*a*) at the end of section 3 the words "'Registrar General of Births, Deaths and Marriages' means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1885," shall be added;

(*b*) for the words "Secretary to the Local Government", wherever they occur, and for the words "Secretary to a Local Government" in section 79, the words "Registrar General of Births, Deaths and Marriages" shall be substituted;

(*c*) for the words "at such places as the Local Government directs" in section 62, the words "in the office of the Registrar General of Births, Deaths and Marriages for the territories of the Local Government by which the person who keeps the register-book was licensed" shall be substituted;

(*d*) in section 81, after the words "Registrar General of Births, Deaths and Marriages" the words "in England" shall be added.

CHAPTER V.

SPECIAL PROVISIONS AS TO CERTAIN EXISTING REGISTERS.

Permission to persons having custody of certain records to send them within one year to Registrar General.

28. If any person in British India, or in the dominions of any Prince or State in India in alliance with Her Majesty, has for the time being the custody of any register or record of birth, baptism, naming, dedication, death or burial of any persons of the classes specified in section 10, or of any register or record of marrige of persons of the class of those to whom Act III of 1872 or the Indian Christian Marriage Act, 1872, applies, and, if such register or record has been made by him otherwise than in performance of a duty specially enjoined by the law of the country in which the register or record was kept, he may, within one year from the date on which this Act comes into force, send the register or record to the office of the Registrar General of Births, Deaths and Marriages for the territories within which he resides, or, if he resides within the dominions of any such Prince or State as aforesaid, to such one of the Registrars General as aforesaid as the Governor General in Council, by notification in the *Gazette of India*, from time to time, directs in this behalf. XV of 1872.

[Cf. 3 & 4 Vic., c. 92, ss. 2 and 4.]

Appointment of Commissioners to examine registers.

29. (*1*) The Governor General in Council may appoint so many persons as he thinks fit to be Commissioners for examining the registers or records sent to the Registrar General of Births, Deaths and Marriages under the last foregoing section.

(*2*) The Commissioners so appointed shall hold office for such period as the Governor General in Council, by the order of appointment, or any subsequent order, directs.

[Cf. 3 & 4 Vic., c. 92, ss. 2 and 4.]

Duties of Commissioners.

30. (*1*) The Commissioners appointed under the last foregoing section shall enquire into the state, custody and authenticity of every such register or record as may be sent to the Registrar General of Births, Deaths and Marriages under section 28,

and shall, from time to time, deliver to the Registrar General a descriptive list or lists of all such registers or records, or portions of registers or records, as they find to be accurate and faithful.

(*2*) The list or lists shall contain the prescribed particulars and refer to the registers or records, or to the portions of the registers or records, in the prescribed manner.

(*3*) The Commissioners shall also certify in writing, upon some part of every separate book or volume containing any such register or record, or portion of a register or record, as is referred to in any list or lists made by the Commissioners, that it is one of the registers or records, or portions of registers or records, referred to in the said list or lists.

[Cf. 3 & 4 Vic., c. 92, s. 5.]

Searches of lists prepared by Commissioners and grant of certified copies of entries.

31. (*1*) Subject to the payment of the prescribed fees, the descriptive list or lists of registers or records, or portions of registers or records, delivered by the Commissioners to the Registrar General of Births, Deaths and Marriages shall be, at all reasonable times, open to inspection by any person applying to inspect them, and copies of entries in

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(*Chapter VI.—Rules.—Sections 32-33.*)

those registers or records shall be given to all persons applying for them.

(2) A copy of an entry given under this section shall be signed by the Registrar General of Births, Deaths and Marriages, and shall be admissible in evidence for the purpose of proving the birth, baptism, naming, dedication, death, burial or marriage to which the entry relates.

CHAPTER VI.

RULES.

[Cf. 37 & 38 Vic., c. 88, s. 27; also Act XV of 1872, s. 82.]

32. The Governor General in Council may, from time to time, make rules—

Power for Governor General in Council to make rules.

(*a*) to fix the fees payable under this Act;

(*b*) to prescribe the forms required for the purposes of this Act;

(*c*) to prescribe the time within which, and the mode in which, persons authorized under this Act to give notice of a birth or death to a Registrar of Births and Deaths must give the notice;

(*d*) to prescribe the registers to be kept, and the form and manner in which Registrars of Births and Deaths are to register births and deaths under this Act, and the intervals at which they are to send true copies of the entries of births and deaths in the registers kept by them;

(*e*) to prescribe the particulars which the descriptive list or lists to be prepared by the Commissioners appointed under Chapter V are to contain, and the manner in which they are to refer to the records or registers, or portions of records or registers to which they relate; and

(*f*) generally to carry out the purposes of this Act.

33. (*1*) The Governor General in Council shall, before making rules under the last foregoing section, publish a draft of the proposed rules in such manner as may, in his opinion, be sufficient for the information of persons likely to be affected thereby.

Procedure for making and publication of rules.

(2) There shall be published with the draft a note specifying a date at or after which the draft will be taken into consideration.

(*3*) The Governor General in Council shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*4*) Every rule made under this section shall be published in the *Gazette of India*, and the publication in the *Gazette of India* of a rule purporting to be made under the last foregoing section shall be conclusive evidence that it has been duly made.

STATEMENT OF OBJECTS AND REASONS.

IT is proposed by this Bill (1) to establish a system of voluntary registration of births and deaths for the benefit of such classes of the community as would be likely to avail themselves of such registration, (2) to establish general registry offices for keeping registers of the births and deaths so registered, and of marriages registered under Act III of 1872 or the Indian Christian Marriage Act, 1872 (XV of 1872), and (3) to provide machinery for giving evidential value to certain existing registers of births, baptisms, deaths, burials and marriages, which have been kept under no law.

2. The subject of the registration of births and deaths among Europeans in India has been long under the consideration of the Government, whose attention has, moreover, been frequently directed to it by memorials from various Christian religious bodies urging very strongly the need for legislation.

3. The Indian Statute-book contains at present no general law for the registration of births and deaths. There are, indeed, enactments which provide for the registration of births and deaths within certain specified areas, principally municipalities and cantonments, but, in the first place, these enactments are strictly local in their nature, leaving the greater portion of the country unprovided for, and, in the next place, their provisions, being directed primarily to statistical purposes, are not of such a nature as to make the registers of births and deaths kept under them of value for purposes of evidence.

4. As to the numerous registers of baptisms and burials which are kept by ministers of religion in all parts of the country, it is doubtful how far they can be relied on for giving accurately the requisite particulars as to births and deaths, and most of them would, moreover, be inadmissible in evidence.

5. This being the state of the law, and considering the importance of the subject generally, and the memorials above referred to, and having regard to the fact that references are frequently made to the Secretary of State for India and to the Government of India for proof of age or of deaths in connection with questions involving large individual interests, such as rights to property, the Government of India is of opinion that it is expedient to enact a permissive law under which full facilities for registering births and deaths should be given to persons valuing unimpeachable evidence of these events.

6. As to the second object of the Bill, it is obvious that no system of registration of births and deaths can be complete or of practical value unless it provides for the establishment, at certain centres, of general offices where the information registered at the various local offices shall be collected and so arranged as to be readily available for public reference.

7. In this connection, the attention of the Government of India has been directed to the unsatisfactory nature of the system of registration of marriages under the Indian Christian Marriage Act, 1872, and Act III of 1872.

Documentary evidence of all marriages under the former Act is, by the provisions of the Act or the orders thereunder, sent to the Secretary to the Local Government, who is also empowered to grant certified copies which are receivable in evidence. It would seem, therefore, at first sight, that nothing further was required. But, as a matter of fact, not only are no arrangements made for maintaining an index to the marriages the records of which are retained in the local Secretariat, but the greater portion of the marriage records which are received in the local Secretariat have, under section 81 of the Act and the orders in force, to be sent on *in original* to the Government of India in the Home Department for transmission to the Secretary of State; so that the greater number of the marriage records which reach the local Secretariat do not remain there for purposes of reference, and such as do remain are, owing to the absence of an index, practically valueless.

As to Act III of 1872, this Act makes no provision for the marriages solemnized under it being reported to any central authority. The marriage-certificate books for which it provides are retained by the Registrar, who is not even required to index them. Their value as records of the marriages to which they refer is accordingly much diminished.

8. The Government of India have, therefore, availed themselves of the opportunity of the proposed legislation for the registration of births and deaths to remove these defects in the marriage-registration law, by providing for general registry offices for keeping registers, not only of the births and deaths which may be registered under the proposed law, but also of marriages which may be registered under Act III of 1872 or the Indian Christian Marriage Act, 1872.

9. The present Bill extends (section 2) to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty.

10. As there seems to be no way of utilizing for the special purposes in view the compulsory system of registration of births and deaths which is prescribed by the local laws referred to in paragraph 3 above, or of separating the registration of the limited classes affected by the Bill from that of the general population which is required under those laws, it has been found necessary to save the laws providing for the registration of births and deaths within particular local areas at present in force or which may hereafter be passed; and this is done by section 4. The result of this section will, therefore, be that the persons to whom the provisions of the Bill relating to the registration of births and deaths are applicable will be bound, as heretofore, to satisfy the statistical requirements of such local Acts, and will be at liberty to re-register births and deaths under the Bill for evidential purposes.

11. Chapter II provides (section 5) for the establishment by the Local Governments of general registry offices of births, deaths and marriages, and the appointment of Registrars General of Births, Deaths and Marriages. By section 6 indexes are to be kept at the general registry offices of all the certified copies of registers which may be sent to them under the Bill or under Act III of 1872 or the Indian Christian Marriage Act, 1872. These indexes (section 7) are to be open to public inspection, and copies of the entries in the certified copies of the registers to which they relate are to be given to all persons applying for them; and such copies are (section 8) to be admissible in evidence. By section 9 the Registrar General is given the superintendence of the Registrars of Births and Deaths.

12. Chapter III deals with the subject of registration of births and deaths. Section 10 defines the persons whose births and deaths are registrable as, in British India, the members of every race, sect or tribe to which the Indian Succession Act, 1865, applies and in respect of which an order under section 332 of that Act is not for the time being in force, and all persons professing the Christian religion, and in Native States all like persons who are British subjects. These provisions of the Bill will therefore, generally speaking, apply to East Indians, Jews, Armenians and Pársís as well as to Europeans and Native Christians. These are believed to be the only classes of persons in the country who are likely to avail themselves of the benefits of a law of this nature.

13. The chapter then provides for a registration establishment, empowering (sections 11 and 12) the Local Government in British India and the Governor General in Council in Native States to appoint either by name or by virtue of their office fit persons to be Registrars of Births and Deaths for definite local areas. It is proposed to appoint under the general powers given by these sections persons authorized or licensed to perform marriages under either Act III of 1872 or the Indian Christian Marriage Act, 1872, and, in order to provide for the receipt of notices from persons who may prefer not to resort to the Marriage Registrars, other suitable persons, one of whom it is intended should be appointed for each local area for which a person who is also a Marriage Registrar is appointed. It is to the latter class of Registrars that sections 13 and 14, which lay down certain provisions as to the office of such

Registrars, and for the filling up temporary vacancies in the office of such Registrars, are intended to apply. Section 15 provides for the supply of register books and the preservation of records.

14. The chapter next treats of the mode of registration. It imposes (section 16) a duty on every Registrar of Births and Deaths to make an entry in his register book of all births and deaths of which notice may be given to him within the prescribed time and in the prescribed mode by a person authorized to give him such notice. It then (sections 17 and 18) specifies the persons who shall be authorized to give notice of births and deaths respectively.

Section 19 provides that the entry of the birth or death is to be signed by the person giving notice, and declares that until it is so signed the birth or death shall not be deemed to be registered. By section 20 every Registrar of Births and Deaths is required to give on application made at the time of registering any birth or death by the person giving notice of the same, and on payment by him of the prescribed fee, a certificate of having registered the birth or death.

Section 21 provides for the sending by every Registrar of Births and Deaths at prescribed intervals to the Registrar General of Births, Deaths and Marriages of certified copies of all entries in his register books. In the case of Registrars in British India, the copies are to be sent to the Registrar General within whose jurisdiction the local areas for which the Registrar is appointed is situate, an exception being made in the case of Registrars who are clergymen of the Churches of England, Rome and Scotland, who may send them to their ecclesiastical superiors to be forwarded by them to the Registrar General. In the case of Registrars in Native States, the copies are to be sent to such one of the Registrars General as the Governor General in Council may, by notification in the *Gazette of India*, direct in this behalf. Section 22 provides for searches, and grant of copies of entries in register books which shall be admissible in evidence.

15. Sections 23 and 24 prescribe penalties of imprisonment which may extend to three years and fine for wilfully giving false information to a Registrar of Births and Deaths, and of fine, which may extend to five hundred rupees, for Registrars of Births and Deaths omitting to enter births or deaths in the register or losing or injuring register books.

16. Lastly, section 25 prescribes the procedure by which errors in the form or substance of any entry in a register book of births and deaths may be corrected.

17. Chapter IV (sections 26 and 27) makes the amendments in Act III of 1872 and the Indian Christian Marriage Act, 1872, which are necessary in order to make the provisions of these Acts fit in with the scheme of the Bill, under which certified copies of entries in the registers kept under these Acts are in future to be sent to the Registrar General of Births, Deaths and Marriages.

18. Chapter V deals with the last of the three subjects referred to in the first paragraph of this Statement. As noted above, registers of births or baptisms and deaths or burials are at present kept in all parts of the country by ministers of religion. Registers of marriages were also similarly kept before the marriage-registration law came into force. Most of these registers are, as the law now stands, inadmissible in evidence, and possibly many of them should never be admitted in evidence owing to the irregular manner in which they have been compiled. At the same time, others are probably fit for admission as public registers. Under these circumstances, it seems advisable to follow the analogy of what was done in England (see 3 & 4 Vic., c. 92) and provide a procedure under which such of these registers as are worthy of recognition may be validated and certified copies of entries made in them declared admissible in evidence. This is accordingly done by Chapter V.

19. That chapter first (section 28) declares that any person having custody of any such records may, within one year from the date on which the Bill comes into force, send them to the Registrar General of Births, Deaths and Marriages for the territories within which the person resides, or, if he resides in a Native State, to such one of those Registrars General as the Governor General in Council, by notification, directs. It then (section 29) provides for the appointment by the Governor General in Council of Commissioners to examine the registers so sent to the various Registrars General, and prescribes (section 30) the duties of the Commissioners, which are to inquire into the state, custody and authenticity of every register submitted to them, and to prepare lists of all such registers or portions of registers as they find to be accurate and faithful, and to certify upon some part of every book or volume containing any such register or portion of a register as is referred to in any such list that it is one of the registers referred to in the list. Section 31 permits, on payment of a fee, searches to be made of the lists so prepared, and provides for the grant of certified copies of the entries in the registers which shall be admissible in evidence.

20. Finally, Chapter VI (sections 32 and 33) empowers the Governor General in Council to make rules with regard to certain matters connected with the purposes of the Act, and prescribes the usual procedure for the making and publication of such rules.

The 2nd January, 1885.

C. P. ILBERT.

R. J. CROSTHWAITE,
Offg. Secretary to the Government 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 16th January 1885:—

No. 2 OF 1885.

A Bill to provide for the temporary appointment from time to time of an Additional Judicial Commissioner for Oudh.

WHEREAS it is expedient to provide for the temporary appointment from time to time of an Additional Judicial Commissioner to assist the Judicial Commissioner of Oudh; It is hereby enacted as follows:—

1. (*1*) This Act may be called the Oudh Additional Judicial Commissioner's Act, 1885; and

Short title and commencement.

(*2*) It shall come into force at once.

2. (*1*) 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, appoint such person as it thinks fit to be an Additional Judicial Commissioner, and to sit as such in the Court of the Judicial Commissioner of Oudh.

Appointment of Additional Judicial Commissioner of Oudh.

(*2*) Every person so appointed shall hold his office during the pleasure of the Local Government.

3. Every Additional Judicial Commissioner shall exercise such jurisdiction and powers of the Judicial Commissioner under the Oudh Civil Courts Act, 1879, as the Local Government may, from time to time, prescribe, but only in such cases as the Judicial Commissioner may direct.

Jurisdiction and powers of Additional Judicial Commissioner.

4. Every enactment for the time being applicable to the Judicial Commissioner shall apply to the Additional Judicial Commissioner when exercising any jurisdiction or powers under the last foregoing section as if he were the Judicial Commissioner.

Law applicable to Additional Judicial Commissioner.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide for the temporary appointment, from time to time, as it may be deemed necessary, of an Additional Judicial Commissioner of Oudh.

The steady increase in the work that falls upon the Judicial Commissioner of Oudh, and the accumulation of arrears, have made it necessary to adopt some plan for assisting him in the discharge of his functions; and the simplest arrangement would seem to be the appointment, as occasion requires, of an Additional Judicial Commissioner.

The Bill (section 2) empowers the Local Government, with the sanction of the Governor General in Council, from time to time, to appoint an Additional Judicial Commissioner, who is to hold office during the pleasure of the Local Government. The Additional Judicial Commissioner so appointed is (section 3) to exercise such jurisdiction and powers of the Judicial Commissioner under the Oudh [illegible] Act as the Local Government may prescribe, but only in such cases as [illegible] Commissioner directs. The Local Government will thus be able to regulate the [illegible] powers of the Additional Judicial Commissioner in such a way as to prevent any conflict between them and those of the Judicial Commissioner, while the latter officer will be able to arrange for the distribution of business as may appear to him to be most convenient. Lastly (section 4), all enactments applicable to the Judicial Commissioner are declared to be applicable to the Additional Judicial Commissioner, so that his legal status generally will be identical with that of the Judicial Commissioner.

The 16th January, 1885.

J. W. QUINTON.

[illegible] CROSTHWAITE,
Offg. [illegible] to the Government of India.

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The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 31, 1885.

☞ 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 16th January 1885, and was referred to a Select Committee :—

No. 1 OF 1885.

THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL, 1885.

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The Births, Deaths and Marriages Registration Bill, 1885.

(*Chapter II.—General Registry Offices of Births, Deaths and Marriages.—Sections 1-9.*)

A Bill to Provide for the voluntary Registration of certain Births and Deaths, for the establishment of General Registry Offices for keeping Registers of certain Births, Deaths and Marriages, and for certain other purposes.

WHEREAS it is expedient to provide for the voluntary registration of births and deaths among certain classes of persons, for the more effectual registration of those births and deaths and of the marriages registered under Act III of 1872 or the Indian Christian Marriage Act, 1872, and for the establishment of general registry offices for keeping registers of those births, deaths and marriages; XV of 1872.

And whereas it is also expedient to provide for the collection and preservation of certain existing registers made otherwise than in the performance of a duty specially enjoined by the law of the country in which the register was kept, and to declare that copies of the entries in those registers shall be admissible in evidence;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title and commencement.

1. (*1*) This Act may be called the Births, Deaths and Marriages Registration Act, 1885; and

[Act XV of 1872, s. 1.]

(*2*) It shall come into force on such day as the Governor General in Council, by notification in the *Gazette of India*, directs.

Local extent.

2. This Act extends to the whole of British India, and, so far only as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty.

Definitions.

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

"prescribed" means prescribed by a rule made by the Governor General in Council under this Act; and

"Registrar of Births and Deaths" means a Registrar of Births and Deaths appointed under this Act.

Saving of local laws.

4. Nothing in this Act, or in any rule made under this Act, shall affect any law heretofore or hereafter passed providing for the registration of births and deaths within particular local areas.

CHAPTER II.

GENERAL REGISTRY OFFICES OF BIRTHS, DEATHS AND MARRIAGES.

[Cf. 6 & 7 Wm. IV, c. 86 s. 2.]

Establishment of general registry offices and appointment of Registrars General.

5. (*1*) Each Local Government—

(*a*) shall establish a general registry office, for keeping such certified copies of registers of births and deaths registered under this Act, or marriages registered under Act III of 1872 (*to provide a form of marriage in certain cases*), or the Indian Christian Marriage Act, 1872, as may be sent to it under this Act, or under either of the two last-mentioned Acts as amended by this Act; and XV of 1872.

(*b*) may, from time to time, appoint to the charge of that office an officer, to be called the Registrar General of Births, Deaths and Marriages, for the territories under its administration. X of 1865.

(*2*) Provided that the Governor of Bombay in Council may, with the previous sanction of the Governor General in Council, establish two general registry offices and appoint two Registrars General of Births, Deaths and Marriages for the territories under his administration; one of such general registry offices and of such Registrars General being established and appointed for Sindh and the other for the other territories under the administration of the Governor of Bombay in Council. [Cf. Act III of 1877, s. 4.]

Indexes to be kept at general registry office.

6. Each Registrar General of Births, Deaths and Marriages shall cause indexes of all the certified copies of registers sent to his office under this Act, Act III of 1872, or the Indian Christian Marriage Act, 1872, as amended by this Act, to be made and kept in his office in the prescribed form. [Cf. 6 & 7 Wm. IV, c. 86 ss. 37 & 38. See also Act III of 1877, s. 77.] XV of 1872. [Cf. Act III of 1877, s. 12.]

Indexes to be open to inspection.

7. Subject to the payment of the prescribed fees, the indexes so made shall be at all reasonable times open to inspection by any person applying to inspect them, and copies of entries in the certified copies of the registers to which they relate shall be given to all persons applying for them.

Copies of entries to be admissible in evidence.

8. A copy of an entry given under the last foregoing section shall be signed by the Registrar General of Births, Deaths and Marriages, and shall be admissible in evidence for the purpose of proving the birth, death or marriage to which the entry relates.

Superintendence of Registrars by Registrar General.

9. Each Registrar General of Births, Deaths and Marriages shall exercise a general superintendence over the Registrars of Births and Deaths in the territories for which he is appointed.

The Births, Deaths and Marriages Registration Bill, 1885.

(*Chapter III.—Registration of Births and Deaths.—Sections 10-18.*)

CHAPTER III.

REGISTRATION OF BIRTHS AND DEATHS.

A.—Application of this Chapter.

Persons whose births and deaths are registrable.

10. The persons whose births and deaths shall be registrable under this chapter are as follows, namely:—

(*a*) in British India, the members of every race, sect or tribe to which the Indian Succession Act, 1865, applies, and in respect of which an order under section 332 of that Act is not for the time being in force, and all persons professing the Christian religion;

(*b*) in the dominions of Princes and States in India in alliance with Her Majesty, subjects of Her Majesty being members of a like race, sect or tribe or professing the Christian religion.

B.—Registration Establishment.

Power for Local Government to appoint Registrars for its territories.

11. (*1*) The Local Government may, from time to time, appoint, either by name or by virtue of their office, so many persons as it thinks fit to be Registrars of Births and Deaths for such local areas within the territories under its administration as it may, from time to time, define.

(*2*) The Local Government may suspend, remove or dismiss any person appointed under this section and appoint another person in his stead.

(*3*) A Registrar of Births and Deaths may resign by notifying in writing to the Local Government his intention to do so, and, on his resignation being accepted by the Local Government, he shall be deemed to have vacated his office.

Power for Governor General in Council to appoint Registrars of Births and Deaths for Native States.

12. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, appoint, either by name or by virtue of their office, so many persons as he thinks fit to be Registrars of Births and Deaths for such local areas within the territories of any Prince or State in India in alliance with Her Majesty as he may, from time to time, define.

[Cf. 37 & 38 Vic., c. 88, s. 26.]

Office and attendance of Registrar.

13. (*1*) Every Registrar of Births and Deaths shall have an office in the local area for which he is appointed.

(*2*) Every Registrar of Births and Deaths to whom the Local Government may direct this sub-section to apply shall attend at his office for the purpose of registering births and deaths on such days and at such hours as the Registrar General of Births, Deaths and Marriages may, from time to time, direct, and shall cause to be placed in some conspicuous place on or near the outer door of his office, his name, with the addition of Registrar of Births and Deaths for the local area for which he is appointed, and the days and hours of his attendance.

Absence of Registrar from his district or vacancy in his office.

14. (*1*) When any Registrar of Births and Deaths to whom the Local Government may direct this section to apply, not being a Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay, is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, shall be the Registrar of Births and Deaths during such absence or until the Local Government fills the vacancy. [Cf. Act III of 1877, s. 10, also 37 & 38 Vic, c. 88, ss. 24 & 25.]

(*2*) When any such Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf shall be the Registrar of Births and Deaths during such absence or until the Local Government fills the vacancy.

(*3*) The Registrar General of Births, Deaths and Marriages shall report all appointments made under this section to the Local Government.

Register books to be supplied and preservation of records to be provided for.

15. The Local Government shall supply every Registrar of Births and Deaths with a sufficient number of register books of births and of register books of deaths, and shall make suitable provision for the preservation of the records connected with the registration of births and deaths. [Cf. Act III of 1877, s. 13.]

C.—Mode of Registration.

Duty of Registrar to enter births and deaths of which notice is given in register.

16. Every Registrar of Births and Deaths, on receipt of notice of a birth or death within the local area for which he is appointed, shall, if the notice is given within the prescribed time and in the prescribed mode by a person authorized by this Act to give the notice, forthwith make an entry of the birth or death in the proper register book. [Cf. 6 & 7 Wm. IV, c. 86, ss. 17 & 18; also Act III of 1877, s. 16.]

Persons authorized to give notice of birth.

17. The following persons are hereby authorized to give notice of a birth, namely, the father or mother of the child, or, in default of the father or mother, the occupier of the house in which to his knowledge the child is born, or any person present at the birth, or the person having charge of the child. [Cf. 37 & 38 Vic., c. 88, s. 10.]

Persons authorized to give notice of death.

18. The following persons are hereby authorized to give notice of a death, namely:— [Cf. 37 & 38 Vic., c. 88, s. 10.]

(*a*) In the case of any person dying in a house

The Births, Deaths and Marriages Registration Bill, 1885.

(Chapter III.—Registration of Births and Deaths.—Sections 19-25.)

after the date on which this Act comes into force, the nearest relatives of the deceased present at the death or in attendance during the last illness of the deceased, or, in default of such relatives, any other relative of the deceased dwelling or being in the local area of the Registrar of Births and Deaths within which the deceased was at the time of his death, or, in default of such relatives, any person present at the death, or the occupier of the house in which to his knowledge the death took place, or, in default of the persons hereinbefore in this section mentioned, any inmate of that house; and

[Cf. 37 & 38 Vic., c. 88, s. 11.]

(*b*) in the case of any person dying in a place which is not a house, or of a dead body being found elsewhere than in a house, after the date on which this Act comes into force, any relative of the deceased person having knowledge of any of the particulars required to be registered concerning the death, or, in default of such relative, any person present at the death, or finding, or taking charge of, the body.

Entry of birth or death to be signed by person giving notice.

19. (*1*) When an entry of a birth or death has been made by the Registrar of Births and Deaths as required by section 16, the person giving notice of the birth or death must sign the entry in the register in the presence of the Registrar.

(*2*) Until the entry has been so signed, the birth or death shall not be deemed to be registered under this Act.

[Cf. 37 & 38 Vic., c. 88, s. 30.]

Grant of certificate of registration of birth or death.

20. The Registrar of Births and Deaths shall, on application made at the time of registering any birth or death by the person giving notice of the birth or death, and on payment by him of the prescribed fee, give to the applicant a certificate in the prescribed form, signed by the Registrar, of having registered the birth or death.

[Cf. 6 & 7 Wm. IV, c. 86, ss. 32 & 34; also Act III of 1877, s. 56.]

Duty of Registrars as to sending certified copies of entries in register books to Registrar General.

21. (*1*) Every Registrar of Births and Deaths in British India shall send to the Registrar General of Births, Deaths and Marriages for the territories within which the local area for which he is appointed is situate, at the prescribed intervals, a true copy, certified by him under his hand, in the prescribed form, of all the entries of births and deaths in the register book kept by him since the last of those intervals:

Provided that, in the case of Registrars of Births and Deaths who are clergymen of the Churches of England, Rome and Scotland, the Registrar may send the certified copies in the first instance to his ecclesiastical superior, who shall send them to the proper Registrar General of Births, Deaths and Marriages.

In this sub-section, "Church of England" and "Church of Scotland" mean the Church of England and the Church of Scotland as by law established respectively; and "Church of Rome" means the Church which regards the Pope of Rome as its spiritual head.

(*2*) The provisions of sub-section (*1*) shall apply to every Registrar of Births and Deaths in the territories of any Prince or State in India in alliance with Her Majesty, with this modification, that the certified copies referred to in that sub-section shall be sent to such one of the Registrars General of Births, Deaths and Marriages as the Governor General in Council, from time to time, by notification in the *Gazette of India*, appoints in this behalf. [Act XV of 1872, s. 56.]

Searches and copies of entries in register books.

22. (*1*) Every Registrar of Births and Deaths shall, on payment of the prescribed fees, at all reasonable times allow searches to be made in the register books kept by him, and give a copy of any entry in the same. [Cf. 6 & 7 Wm. IV, c. 86, s. 35; also Act XV of 1872, s. 79.]

(*2*) Every copy of an entry in a register book given under this section shall be signed by the Registrar of Births and Deaths, and shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates.

D.—Penalties.

Penalty for wilfully giving false information.

23. If any person wilfully makes, or causes to be made, for the purpose of being inserted in any register of births or deaths, any false statement in connection with any notice of a birth or death under this Act, he shall be punished with imprisonment for a term which may extend to three years and with fine. [Cf. 6 & 7 Wm. IV, c. 86, s. 41: 37 & 38 Vic., c. 88, s. 40: Act XV of 1872, s. 66.]

Penalty for omission to enter birth or death in register, or loss of register.

24. If any Registrar of Births and Deaths refuses, or without reasonable cause omits, to make an entry in the proper register of any birth or death which he ought so to enter under this Act, or if any person having the custody of any register book of births or deaths carelessly loses or injures or allows the injury of the book, he shall be punished with fine which may extend to five hundred rupees. [37 & 38 Vic., c. 88, s. 35.]

E.—Correction of Errors.

Correction of entry in register of births and deaths.

25. (*1*) If a Registrar of Births and Deaths discovers any error in the form or substance of any entry of a birth or death in any register kept by him under this Act, he may, in the presence of the persons who gave the notice of the birth or death, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction. [Cf. 6 & 7 Wm. IV, c. 86, s. 44: 37 & 38 Vic. c. 88, s. 36. See also Act XV of 1872, s. 78.]

(*2*) Every entry made under this section must be attested by the witnesses in whose presence it was made.

(*3*) If a certified copy of the entry has already been sent to the Registrar General of Births, Deaths and Marriages, the Registrar of Births and Deaths shall make and send a separate certified copy of the original erroneous entry and of the marginal correction therein made.

The Births, Deaths and Marriages Registration Bill, 1885.

(Chapter IV.—Amendment of Marriage Acts, 1872. Chapter V.—Special Provisions as to certain existing Registers.—Sections 26-31.)

CHAPTER IV.

AMENDMENT OF MARRIAGE ACTS, 1872.

Addition of new section after section 13, Act III of 1872.

26. After section 13 of Act III of 1872 (*to provide a form of marriage in certain cases*), the following section shall be inserted:—

Transmission of certified copies of entries in marriage-certificate book to the Registrar General of Births, Deaths and Marriages.

"13A. The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the territories within which his district is situate, at such intervals as the Governor General in Council, from time to time, directs, a true copy certified by him under his hand, in such form as the Governor General in Council, from time to time, prescribes, of all entries made by him in the said marriage-certificate book since the last of such intervals."

Amendment of the Indian Christian Marriage Act, 1872.

27. In the Indian Christian Marriage Act, 1872, the following amendments shall be made, namely:—

(*a*) at the end of section 3 the words "'Registrar General of Births, Deaths and Marriages' means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1885," shall be added;

(*b*) for the words "Secretary to the Local Government", wherever they occur, and for the words "Secretary to a Local Government" in section 79, the words "Registrar General of Births, Deaths and Marriages" shall be substituted;

(*c*) for the words "at such places as the Local Government directs" in section 62, the words "in the office of the Registrar General of Births, Deaths and Marriages for the territories of the Local Government by which the person who keeps the register-book was licensed" shall be substituted;

(*d*) in section 81, after the words "Registrar General of Births, Deaths and Marriages" the words "in England" shall be added.

CHAPTER V.

SPECIAL PROVISIONS AS TO CERTAIN EXISTING REGISTERS.

Permission to persons having custody of certain records to send them within one year to Registrar General.

28. If any person in British India, or in the dominions of any Prince or State in India in alliance with Her Majesty, has for the time being the custody of any register or record of birth, baptism, naming, dedication, death or burial of any persons of the classes specified in section 10, or of any register or record of marrige of persons of the class of those to whom Act III of 1872 or the Indian Christian Marriage Act, 1872, applies, and, if such register or record has been made by him otherwise than in performance of a duty specially enjoined by the law of the country in which the register or record was kept, he may, within one year from the date on which this Act comes into force, send the register or record to the office of the Registrar General of Births, Deaths and Marriages for the territories within which he resides, or, if he resides within the dominions of any such Prince or State as aforesaid, to such one of the Registrars General as aforesaid as the Governor General in Council, by notification in the *Gazette of India*, from time to time, directs in this behalf. XV of 1872.

Appointment of Commissioners to examine registers.

29. (*1*) The Governor General in Council may appoint so many persons as he thinks fit to be Commissioners for examining the registers or records sent to the Registrar General of Births, Deaths and Marriages under the last foregoing section. [Cf. 3 & 4 Vic., c. 94, s. 2.]

(*2*) The Commissioners so appointed shall hold office for such period as the Governor General in Council, by the order of appointment, or any subsequent order, directs.

Duties of Commissioners.

30. (*1*) The Commissioners appointed under the last foregoing section shall enquire into the state, custody and authenticity of every such register or record as may be sent to the Registrar General of Births, Deaths and Marriages under section 28, [Cf. 3 & 4 Vic., c. 92, ss. 2 and 4.]

and shall, from time to time, deliver to the Registrar General a descriptive list or lists of all such registers or records, or portions of registers or records, as they find to be accurate and faithful.

(*2*) The list or lists shall contain the prescribed particulars and refer to the registers or records, or to the portions of the registers or records, in the prescribed manner.

(*3*) The Commissioners shall also certify in writing, upon some part of every separate book or volume containing any such register or record, or portion of a register or record, as is referred to in any list or lists made by the Commissioners, that it is one of the registers or records, or portions of registers or records, referred to in the said list or lists.

Searches of lists prepared by Commissioners and grant of certified copies of entries.

31. (*1*) Subject to the payment of the prescribed fees, the descriptive list or lists of registers or records, or portions of registers or records, delivered by the Commissioners to the Registrar General of Births, Deaths and Marriages shall be, at all reasonable times, open to inspection by any person applying to inspect them, and copies of entries in [Cf. 3 & 4 Vic., c. 92, s. 5.]

The Births, Deaths and Marriages Registration Bill, 1885.

(Chapter VI.—Rules.—Sections 32-33.)

those registers or records shall be given to all persons applying for them.

(2) A copy of an entry given under this section shall be signed by the Registrar General of Births, Deaths and Marriages, and shall be admissible in evidence for the purpose of proving the birth, baptism, naming, dedication, death, burial or marriage to which the entry relates.

CHAPTER VI.

RULES.

[Cf. 37 & 38 Vic., c. 88, s. 27; also Act XV of 1872, s. 82.]

Power for Governor General in Council to make rules.

32. The Governor General in Council may, from time to time, make rules—

(*a*) to fix the fees payable under this Act;

(*b*) to prescribe the forms required for the purposes of this Act;

(*c*) to prescribe the time within which, and the mode in which, persons authorized under this Act to give notice of a birth or death to a Registrar of Births and Deaths must give the notice;

(*d*) to prescribe the registers to be kept, and the form and manner in which Registrars of Births and Deaths are to register births and deaths under this Act, and the intervals at which they are to send true copies of the entries of births and deaths in the registers kept by them;

(*e*) to prescribe the particulars which the descriptive list or lists to be prepared by the Commissioners appointed under Chapter V are to contain, and the manner in which they are to refer to the records or registers, or portions of records or registers to which they relate; and

(*f*) generally to carry out the purposes of this Act.

Procedure for making and publication of rules.

33. (*1*) The Governor General in Council shall, before making rules under the last foregoing section, publish a draft of the proposed rules in such manner as may, in his opinion, be sufficient for the information of persons likely to be affected thereby.

(*2*) There shall be published with the draft a note specifying a date at or after which the draft will be taken into consideration.

(*3*) The Governor General in Council shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*4*) Every rule made under this section shall be published in the *Gazette of India*, and the publication in the *Gazette of India* of a rule purporting to be made under the last foregoing section shall be conclusive evidence that it has been duly made.

STATEMENT OF OBJECTS AND REASONS.

IT is proposed by this Bill (1) to establish a system of voluntary registration of births and deaths for the benefit of such classes of the community as would be likely to avail themselves of such registration, (2) to establish general registry offices for keeping registers of the births and deaths so registered, and of marriages registered under Act III of 1872 or the Indian Christian Marriage Act, 1872 (XV of 1872), and (3) to provide machinery for giving evidential value to certain existing registers of births, baptisms, deaths, burials and marriages, which have been kept under no law.

2. The subject of the registration of births and deaths among Europeans in India has been long under the consideration of the Government, whose attention has, moreover, been frequently directed to it by memorials from various Christian religious bodies urging very strongly the need for legislation.

3. The Indian Statute-book contains at present no general law for the registration of births and deaths. There are, indeed, enactments which provide for the registration of births and deaths within certain specified areas, principally municipalities and cantonments, but, in the first place, these enactments are strictly local in their nature, leaving the greater portion of the country unprovided for, and, in the next place, their provisions, being directed primarily to statistical purposes, are not of such a nature as to make the registers of births and deaths kept under them of value for purposes of evidence.

4. As to the numerous registers of baptisms and burials which are kept by ministers of religion in all parts of the country, it is doubtful how far they can be relied on for giving accurately the requisite particulars as to births and deaths, and most of them would, moreover, be inadmissible in evidence.

5. This being the state of the law, and considering the importance of the subject generally, and the memorials above referred to, and having regard to the fact that references are frequently made to the Secretary of State for India and to the Government of India for proof of age or of deaths in connection with questions involving large individual interests, such as rights to property, the Government of India is of opinion that it is expedient to enact a permissive law under which full facilities for registering births and deaths should be given to persons valuing unimpeachable evidence of these events.

6. As to the second object of the Bill, it is obvious that no system of registration of births and deaths can be complete or of practical value unless it provides for the establishment, at certain centres, of general offices where the information registered at the various local offices shall be collected and so arranged as to be readily available for public reference.

7. In this connection, the attention of the Government of India has been directed to the unsatisfactory nature of the system of registration of marriages under the Indian Christian Marriage Act, 1872, and Act III of 1872.

Documentary evidence of all marriages under the former Act is, by the provisions of the Act or the orders thereunder, sent to the Secretary to the Local Government, who is also empowered to grant certified copies which are receivable in evidence. It would seem, therefore, at first sight, that nothing further was required. But, as a matter of fact, not only are no arrangements made for maintaining an index to the marriages the records of which are retained in the local Secretariat, but the greater portion of the marriage records which are received in the local Secretariat have, under section 81 of the Act and the orders in force, to be sent on *in original* to the Government of India in the Home Department for transmission to the Secretary of State; so that the greater number of the marriage records which reach the local Secretariat do not remain there for purposes of reference, and such as do remain are, owing to the absence of an index, practically valueless.

As to Act III of 1872, this Act makes no provision for the marriages solemnized under it being reported to any central authority. The marriage-certificate books for which it provides are retained by the Registrar, who is not even required to index them. Their value as records of the marriages to which they refer is accordingly much diminished.

8. The Government of India have, therefore, availed themselves of the opportunity of the proposed legislation for the registration of births and deaths to remove these defects in the marriage-registration law, by providing for general registry offices for keeping registers, not only of the births and deaths which may be registered under the proposed law, but also of marriages which may be registered under Act III of 1872 or the Indian Christian Marriage Act, 1872.

9. The present Bill extends (section 2) to the whole of British India, and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty.

10. As there seems to be no way of utilizing for the special purposes in view the compulsory system of registration of births and deaths which is prescribed by the local laws referred to in paragraph 3 above, or of separating the registration of the limited classes affected by the Bill from that of the general population which is required under those laws, it has been found necessary to save the laws providing for the registration of births and deaths within particular local areas at present in force or which may hereafter be passed; and this is done by section 4. The result of this section will, therefore, be that the persons to whom the provisions of the Bill relating to the registration of births and deaths are applicable will be bound, as heretofore, to satisfy the statistical requirements of such local Acts, and will be at liberty to re-register births and deaths under the Bill for evidential purposes.

11. Chapter II provides (section 5) for the establishment by the Local Governments of general registry offices of births, deaths and marriages, and the appointment of Registrars General of Births, Deaths and Marriages. By section 6 indexes are to be kept at the general registry offices of all the certified copies of registers which may be sent to them under the Bill or under Act III of 1872 or the Indian Christian Marriage Act, 1872. These indexes (section 7) are to be open to public inspection, and copies of the entries in the certified copies of the registers to which they relate are to be given to all persons applying for them; and such copies are (section 8) to be admissible in evidence. By section 9 the Registrar General is given the superintendence of the Registrars of Births and Deaths.

12. Chapter III deals with the subject of registration of births and deaths. Section 10 defines the persons whose births and deaths are registrable as, in British India, the members of every race, sect or tribe to which the Indian Succession Act, 1865, applies and in respect of which an order under section 332 of that Act is not for the time being in force, and all persons professing the Christian religion, and in Native States all like persons who are British subjects. These provisions of the Bill will therefore, generally speaking, apply to East Indians, Jews, Armenians and Pársís as well as to Europeans and Native Christians. These are believed to be the only classes of persons in the country who are likely to avail themselves of the benefits of a law of this nature.

13. The chapter then provides for a registration establishment, empowering (sections 11 and 12) the Local Government in British India and the Governor General in Council in Native States to appoint either by name or by virtue of their office fit persons to be Registrars of Births and Deaths for definite local areas. It is proposed to appoint under the general powers given by these sections persons authorized or licensed to perform marriages under either Act III of 1872 or the Indian Christian Marriage Act, 1872, and, in order to provide for the receipt of notices from persons who may prefer not to resort to the Marriage Registrars, other suitable persons, one of whom it is intended should be appointed for each local area for which a person who is also a Marriage Registrar is appointed. It is to the latter class of Registrars that sections 13 and 14, which lay down certain provisions as to the office of such

Registrars, and for the filling up temporary vacancies in the office of such Registrars, are intended to apply. Section 15 provides for the supply of register books and the preservation of records.

14. The chapter next treats of the mode of registration. It imposes (section 16) a duty on every Registrar of Births and Deaths to make an entry in his register book of all births and deaths of which notice may be given to him within the prescribed time and in the prescribed mode by a person authorized to give him such notice. It then (sections 17 and 18) specifies the persons who shall be authorized to give notice of births and deaths respectively.

Section 19 provides that the entry of the birth or death is to be signed by the person giving notice, and declares that until it is so signed the birth or death shall not be deemed to be registered. By section 20 every Registrar of Births and Deaths is required to give on application made at the time of registering any birth or death by the person giving notice of the same, and on payment by him of the prescribed fee, a certificate of having registered the birth or death.

Section 21 provides for the sending by every Registrar of Births and Deaths at prescribed intervals to the Registrar General of Births, Deaths and Marriages of certified copies of all entries in his register books. In the case of Registrars in British India, the copies are to be sent to the Registrar General within whose jurisdiction the local areas for which the Registrar is appointed is situate, an exception being made in the case of Registrars who are clergymen of the Churches of England, Rome and Scotland, who may send them to their ecclesiastical superiors to be forwarded by them to the Registrar General. In the case of Registrars in Native States, the copies are to be sent to such one of the Registrars General as the Governor General in Council may, by notification in the *Gazette of India*, direct in this behalf. Section 22 provides for searches, and grant of copies of entries in register books which shall be admissible in evidence.

15. Sections 23 and 24 prescribe penalties of imprisonment which may extend to three years and fine for wilfully giving false information to a Registrar of Births and Deaths, and of fine, which may extend to five hundred rupees, for Registrars of Births and Deaths omitting to enter births or deaths in the register or losing or injuring register books.

16. Lastly, section 25 prescribes the procedure by which errors in the form or substance of any entry in a register book of births and deaths may be corrected.

17. Chapter IV (sections 26 and 27) makes the amendments in Act III of 1872 and the Indian Christian Marriage Act, 1872, which are necessary in order to make the provisions of these Acts fit in with the scheme of the Bill, under which certified copies of entries in the registers kept under these Acts are in future to be sent to the Registrar General of Births, Deaths and Marriages.

18. Chapter V deals with the last of the three subjects referred to in the first paragraph of this Statement. As noted above, registers of births or baptisms and deaths or burials are at present kept in all parts of the country by ministers of religion. Registers of marriages were also similarly kept before the marriage-registration law came into force. Most of these registers are, as the law now stands, inadmissible in evidence, and possibly many of them should never be admitted in evidence owing to the irregular manner in which they have been compiled. At the same time, others are probably fit for admission as public registers. Under these circumstances, it seems advisable to follow the analogy of what was done in England (see 3 & 4 Vic., c. 92) and provide a procedure under which such of these registers as are worthy of recognition may be validated and certified copies of entries made in them declared admissible in evidence. This is accordingly done by Chapter V.

19. That chapter first (section 28) declares that any person having custody of any such records may, within one year from the date on which the Bill comes into force, send them to the Registrar General of Births, Deaths and Marriages for the territories within which the person resides, or, if he resides in a Native State, to such one of those Registrars General as the Governor General in Council, by notification, directs. It then (section 29) provides for the appointment by the Governor General in Council of Commissioners to examine the registers so sent to the various Registrars General, and prescribes (section 30) the duties of the Commissioners, which are to inquire into the state, custody and authenticity of every register submitted to them, and to prepare lists of all such registers or portions of registers as they find to be accurate and faithful, and to certify upon some part of every book or volume containing any such register or portion of a register as is referred to in any such list that it is one of the registers referred to in the list. Section 31 permits, on payment of a fee, searches to be made of the lists so prepared, and provides for the grant of certified copies of the entries in the registers which shall be admissible in evidence.

20. Finally, Chapter VI (sections 32 and 33) empowers the Governor General in Council to make rules with regard to certain matters connected with the purposes of the Act, and prescribes the usual procedure for the making and publication of such rules.

C. P. ILBERT.

The 2nd January, 1885.

R. J. CROSTHWAITE,
Offg. 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 16th January 1885:—

No. 2 OF 1885.

A Bill to provide for the temporary appointment from time to time of an Additional Judicial Commissioner for Oudh.

WHEREAS it is expedient to provide for the temporary appointment from time to time of an Additional Judicial Commissioner to assist the Judicial Commissioner of Oudh; It is hereby enacted as follows:—

1. (*1*) This Act may be called the Oudh Additional Judicial Commissioner's Act, 1885; and

Short title and commencement.

(*2*) It shall come into force at once.

2. (*1*) 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, appoint such person as it thinks fit to be an Additional Judicial Commissioner, and to sit as such in the Court of the Judicial Commissioner of Oudh.

Appointment of Additional Judicial Commissioner of Oudh.

(*2*) Every person so appointed shall hold his office during the pleasure of the Local Government.

3. Every Additional Judicial Commissioner shall exercise such jurisdiction and powers of the Judicial Commissioner under the Oudh Civil Courts Act, 1879, as the Local Government may, from time to time, prescribe, but only in such cases as the Judicial Commissioner may direct.

Jurisdiction and powers of Additional Judicial Commissioner.

XIII of 1879.

4. Every enactment for the time being applicable to the Judicial Commissioner shall apply to the Additional Judicial Commissioner when exercising any jurisdiction or powers under the last foregoing section as if he were the Judicial Commissioner.

Law applicable to Additional Judicial Commissioner.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide for the temporary appointment, from time to time, as it may be deemed necessary, of an Additional Judicial Commissioner of Oudh.

The steady increase in the work that falls upon the Judicial Commissioner of Oudh, and the accumulation of arrears, have made it necessary to adopt some plan for assisting him in the discharge of his functions; and the simplest arrangement would seem to be the appointment, as occasion requires, of an Additional Judicial Commissioner.

The Bill (section 2) empowers the Local Government, with the sanction of the Governor General in Council, from time to time, to appoint an Additional Judicial Commissioner, who is to hold office during the pleasure of the Local Government. The Additional Judicial Commissioner so appointed is (section 3) to exercise such jurisdiction and powers of the Judicial Commissioner under the Oudh Civil Courts Act as the Local Government may prescribe, but only in such cases as the Judicial Commissioner directs. The Local Government will thus be able to regulate the jurisdiction and powers of the Additional Judicial Commissioner in such a way as to prevent any conflict between them and those of the Judicial Commissioner, while the latter officer will be able to arrange for the distribution of business as may appear to him to be most convenient. Lastly (section 4), all enactments applicable to the Judicial Commissioner are declared to be applicable to the Additional Judicial Commissioner, so that his legal status generally will be identical with that of the Judicial Commissioner.

J. W. QUINTON.

The 16th January, 1885.

R. J. CROSTHWAITE,
Offg. Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Report of the Select Committee on the Bill to amend the Transfer of Property Act, 1882, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 23rd January, 1885:—

WE, the undersigned Members of the Select Committee to which the Bill to amend the Transfer of Property Act, 1882, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

From Officiating Registrar, High Court, Calcutta, No. 2596, dated 15th September, 1884 [Paper No. 1].
From Secretary to Chief Commissioner, Coorg, No. 813—114, dated 13th September, 1884 [Paper No. 2].
Endorsement by Officiating Under-Secretary to Government of India, Home Department, No. 1252, dated 24th September, 1884, and enclosures [Papers No. 3].
From Officiating Secretary to Chief Commissioner, British Burma, No. 125—16L., dated 9th October, 1884, and enclosures [Papers No. 4].
From Chief Commissioner, Ajmer-Merwára, No. 880, dated 17th October, 1884 [Paper No. 5].
From Secretary for Berar to Resident, Hyderabad, No. 376G., dated 21st October, 1884, and enclosures [Papers No. 6].
From Chief Secretary to Government, Madras, No. 2681, dated 18th October, 1884, and enclosures [Papers No. 7].
From Under-Secretary to Government, Bombay, No. 7599, dated 31st October, 1884, and enclosures [Papers No. 8].
From Officiating Secretary to Government, Panjáb, No. 987, dated 14th November, 1884, and enclosures [Papers No. 9].
From Officiating Assistant Secretary to Chief Commissioner, Central Provinces, No. 5321—245, dated 14th November, 1884, and enclosure [Paper No. 10].
From Secretary to Government, North-Western Provinces and Oudh, No. 1147—VII-279-19, dated 5th November, 1884, and enclosures [Papers No. 11].
From Bábú Charu Chandra Mookerjee, dated 2nd November, 1884 [Paper No. 12].
Extract, paragraph 111, from Proceedings of the Meerut Association, No. 13, dated 16th November, 1884 [Paper No. 13].
From Under-Secretary to Government, North-Western Provinces and Oudh, No. 1326—VII-277-23, dated 13th December, 1884, and enclosure [Papers No. 14].
From Officiating Secretary to Government, Bengal, No. 3001 J., dated 19th December, 1884, and enclosures [Papers No. 15].
From Secretary to Government, North-Western Provinces and Oudh, No. 1375—VII-277-26, dated 23rd December, 1884, and enclosures [Papers No. 16].
Memorandum by Bábú Gridhar Dás, Honorary Magistrate, and Vice-Chairman, Municipal Fund, and Member of the District Board, Zila Etawah, No. 1, dated 20th December, 1884 [Paper No. 17].
From the Hon'ble Mr. Justice S. Mahmúd, Allahabad, dated 13th January, 1885 [Paper No. 18].

2. It is generally admitted that the provisions of section 1 (*a*) of the Bill will amend the Act satisfactorily, but there are differences of opinion as to clause (*b*) of that section. The Government of Bombay, Mr. Justice West and others are strongly in favour of making the exemption from the provisions of section 41 of the Act local and not personal. It has also been urged, especially by Mr. Justice Mahmúd, that power should not be given to exempt from the provisions of section 41. Mr. Mahmúd says, "As I understand the law, the provisions of section 41 of the Transfer of Property Act are nothing more or less than the repetition of the rule of natural equity which belongs to almost every department of law connected with the dealings of one human being with another. The rule of equitable estoppel is so important that, irrespective of section 41 of the Transfer of Property Act, I, speaking for my own part, would, regardless of the nationality of parties, apply it to all transactions which came before me and which furnished circumstances for its application."

3. After considering the matter we are of opinion that, if section 41 of the Act contains, as we believe it does, a rule of equity which our Courts should follow, the section should be in force wherever the Act is in force. If that section were excluded from the Act, the Courts would probably, on general principles of equity, follow the rule which it contains. We think, therefore, that it is unnecessary to give any power to exempt from the provisions of section 41, and have struck out clause (*b*), section 1 of the Bill.

4. With regard to some questions raised as to the effect of section 3 of the Bill, we may mention that the Transfer of Property Act in requiring that certain transfers shall be made

by a registered instrument does not conflict with the Indian Registration Act. That Act requires that certain documents shall be registered in order to render them capable of affecting certain property and admissible in evidence of any transaction affecting such property. The Transfer of Property Act, on the other hand, provides that certain transfers can only be effected by a registered instrument.

5. With reference to section 4 of the Bill, it has been suggested that section 69 of the Act should be restored to the form proposed by the Indian Law Commission. The question whether a power of sale should be valid in all cases where the property secured by the mortgage was of a certain value was fully discussed at the time the Act was passed. It was then decided that the valuation test should not be adopted, and we consider that it is inexpedient to re-open the question now.

6. Objections have been raised relating to the chapter on leases of immoveable property. These are sufficiently met by section 117 of the Act, which exempts leases for agricultural purposes from the provisions of the chapter.

7. We have taken the opportunity of adding to section 6 of the Act a clause (*i*) containing a proviso like that of sub-section (*j*), section 108. If the chapter on leases does not apply to leases for agricultural purposes, then the proviso to sub-section (*j*) will not be in force. It might therefore happen that an untransferable right of occupancy, the farm of an estate in respect of which default had been made in paying revenue or the lease of an estate under the Court of Wards might be held to be transferable by virtue of the general power of transfer conferred by section 6.

8. The publication ordered by the Council has been made as follows :—

In English.

Gazette.	*Date.*
Gazette of India	23rd and 30th August, and 6th September, 1884.
Fort Saint George Gazette ...	9th September, 1884.
Bombay Government Gazette ...	28th August, and 4th and 11th September, 1884.
Calcutta Gazette	3rd, 10th and 17th September, 1884.
North-Western Provinces and Oudh Government Gazette	30th August, and 6th and 13th September, 1884.
Punjab Government Gazette ...	28th August, and 4th and 11th September, 1884.
Central Provinces Gazette ...	30th August, and 6th and 13th September, 1884.
British Burma Gazette	13th, 20th and 27th September, 1884.
Assam Gazette	13th September, 1884.

In the Vernaculars.

Province.	*Language.*	*Date.*
Madras	Hindustani ...	30th September, 1884.
	Telugu ...	7th October, 1884.
	Malayalam ...	7th October, 1884.
	Tamil	28th October, 1884.
	Canarese ...	28th October, 1884.
Panjáb	Urdu	29th September, and 6th and 13th October, 1884.
British Burma ...	Burmese ...	27th September, and 4th and 11th October, 1884.

9. We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

C. P. ILBERT.
J. GIBBS.
PEÁRI MOHAN MUKERJI.
H. ST. A. GOODRICH.
G. H. P. EVANS.

The 21st January, 1885.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Report of the Select Committee on the Bill to amend the Negotiable Instruments Act, 1881, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 23rd January, 1885 :—

WE, the undersigned Members of the Select Committee to which the Bill to amend the Negotiable Instruments Act, 1881, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our report.

From Officiating Secretary to Chief Commissioner, Assam, No. 393, dated 3rd April, 1884, and enclosure [Papers No. 1].
From Secretary for Berar to Resident, Hyderabad, No. 115G., dated 7th April, 1884, and enclosures [Papers No. 2].
From Secretary to Chief Commissioner, Central Provinces, No. 2635—120, dated 3rd June, 1884 [Paper No. 3].
From Secretary to Chief Commissioner, Coorg, No. 288—I. 41, dated 2nd June, 1884 [Paper No. 4].
Office memorandum by Home Department, No. 829, dated 18th June, 1884, and enclosures [Papers No. 5].
From Chief Commissioner, Ajmer-Merwára, No. 486, dated 23rd June, 1884, and enclosures [Papers No. 6].
From Under-Secretary to Government, Bombay, No. 4659, dated 30th June, 1884, and enclosures [Papers No. 7].
From Secretary to Government, North-Western Provinces and Oudh, No. 527—VII-27-10, dated 2nd July, 1884, and enclosure [Papers No. 8].
From Chief Secretary to Government, Madras, No. 1579, dated 26th June, 1884, and enclosure [Papers No. 9].
From Officiating Secretary to Chief Commissioner, British Burma, No. 106—7L., dated 4th July, 1884, and enclosure [Papers No. 10].
From Officiating Secretary to Government, Punjab, No. 661, dated 23rd July, 1884, and enclosures [Papers No. 11].
From Officiating Registrar, High Court, Calcutta, No. 1872, dated 30th July, 1884 [Paper No. 12].
From Officiating Secretary to Government, Bengal, No. 1339T.—R., dated 31st July, 1884 [Paper No. 13].

2. With regard to lost bills it has been pointed out that the Act provides no machinery whereby the owner of a lost bill or note can get a duplicate from the drawer or maker. We think that this omission should be supplied, and have accordingly inserted in the Bill a section (2) taken from section 69 of the English Statute. Actions on lost bills are sufficiently provided for by section 61 of the Code of Civil Procedure.

3. With reference to the remarks forwarded by the Government of Madras, we think that clause (*c*), section 101 of the Act, does seem to imply that to render a protest valid the demand must be made by the notary public in person. If the law be so understood, it will cause inconvenience, and to remove all doubts we consider that the section should be amended so that it may be clear that a demand may be made by a notary public's clerk in person. The Act might also, we think, be still further amended so as to afford greater facilities for presenting bills and demanding acceptance or payment. The English Act [section 41 (1) (*e*) and section 45 (8)] provides that a bill is duly presented for acceptance or payment when presented through the post office in cases where such presentment is authorised by agreement or usage. We think that it is desirable to extend to this country similar facilities for presenting bills, but we consider that when presentment through the post office is allowed it should be made by means of a registered letter. We have accordingly, in section 3 of the Bill, made additions to the Act which will validate a presentment through the post office by means of a registered letter when such a presentment is authorised by agreement or usage. We have also, in section 4 of the Bill, added to section 101 a clause to the effect that the demand mentioned in clause (*c*) may be made by the notary public in person or by his clerk in person or, where authorised by agreement or usage, by a registered letter.

4. It has been pointed out that while section 108 implies that acceptance for honour may take place when a bill has been noted or protested, the definition of "acceptor for honour" (section 7) shows that an acceptance for honour is made after a bill is protested. It might be held therefore that there could be no acceptance for honour until a bill had been

protested as well as noted. To meet this difficulty we have inserted in the Bill a section (6) taken from section 93 of the English Statute, and have slightly amended the definition in section 7 of the Act so as to make it agree with section 108.

5. The Chambers of Commerce of Bombay and Rangoon have suggested an amendment of section 113 of the Act which would have the effect of rendering a declaration before a notary public unnecessary in the case of a payment for honour. We have considered this suggestion and we think that some formality is desirable. We are of opinion that it would not be safe to relax these formalities regarding payments for honour further than they are relaxed by English law.

6. It has also been suggested that power should be taken to make rules for the control of those notaries public who have not been appointed under the Act. We think that it is not desirable to make rules for the control of notaries not appointed by the Government of India.

7. We have been asked to make a provision for cases in which the services of a notary public are not available, by adopting section 94 of the English Act which provides that in such cases a protest may be made by means of a certificate signed by a householder or substantial resident. Having regard to the power given to Government of appointing notaries public, the number of appointments that have been made and the possible abuses that might arise if a householder or substantial resident were substituted for a notary, we think that it would be unwise to adopt this provision of the Statute.

8. It is said that the proposed amendment of section 113 will raise doubts whether the words "acceptor," "acceptor for honour," "payee" and "drawee" are intended to include an agent of an acceptor, payee or drawee. We think that section 27 of the Act, which provides that a person may bind himself by a duly authorized agent, will answer all questions of this nature that may arise.

9. The Chief Commissioner, British Burma, suggests that the Local Government should be authorized to appoint notaries public. This question has already been considered, and we would not re-open it.

10. With regard to the question whether section 45 of the Contract Act unduly limits the negotiation of bills, we are not disposed to think that it does. We are not aware that that section has given rise to any difficulties in this respect, and the saving in the Contract Act of all usages or customs of trade will probably meet such difficulties if they do arise. If any amendment in this respect is necessary, it should take the form of an amendment of section 45 in the Contract Act, as such an amendment would perhaps be required for other cases besides those under the Negotiable Instruments Act.

11. The publication ordered by the Council has been made as follows:—

In English.

Gazette.	*Date.*
Gazette of India	8th, 15th and 22nd March, 1884.
Fort St. George Gazette	18th March, 1884.
Bombay Government Gazette	13th, 20th and 27th March, 1884.
Calcutta Gazette	12th, 19th and 26th March, 1884.
North-Western Provinces and Oudh Government Gazette.	15th, 22nd and 29th March, 1884.
Panjáb Government Gazette	20th and 27th March, and 3rd April, 1884.
Central Provinces Gazette	15th, 22nd and 29th March, 1884.
British Burma Gazette	29th March, and 5th and 12th April, 1884.
Assam Gazette	29th March, and 5th and 12th April, 1884.

In the Vernaculars.

Province.	*Language.*	*Date.*
Bombay	Maráthí ...	17th April, 1884.
	Gujaráthí ...	3rd May, 1884.
Bengal	Bengali ...	1st April, 1884.
	Hindí ...	18th March, 1884.
North-Western Provinces and Oudh	Urdu ...	31st May, and 7th and 14th June, 1884.
Central Provinces	Maráthí ...	26th April, and 3rd and 10th May, 1884.
British Burma	Burmese ...	5th, 12th and 19th April, 1884.

12. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

C. P. ILBERT.
J. GIBBS.
ROBERT MILLER.
G. H. P. EVANS.

The 22nd January, 1885.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Report of the Select Committee on the Bill to amend Act XXII of 1881, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 30th January, 1885:—

WE, the undersigned Members of the Select Committee to which the Bill to amend Act XXII of 1881 was referred, have considered the Bill and papers noted in the margin, and have now the honour to submit this our Report.

From Chief Commissioner, Coorg, No. 53, dated 17th November, 1884 [Paper No. 1].
From Chief Commissioner, Ajmer-Merwára, No. 969, dated 4th December, 1884 [Paper No. 2].
Extract, paragraph VI, from Proceedings of the Meerut Association, No. 15, dated 29th November, 1884 [Paper No. 3].
From Officiating Junior Secretary to Government, Punjab, No. 3148, dated 12th December, 1884, and enclosures [Papers No. 4].
From Officiating Secretary to Chief Commissioner, British Burma, No. 279-41 E., dated 12th December, 1884, and enclosures [Papers No. 5].
From Secretary to Government, North-Western Provinces and Oudh, No. 74—VII-305-18, dated 17th January, 1885, and enclosures [Papers No. 6].
From Assistant Secretary to Chief Commissioner, Central Provinces, No. 143-284, dated 16th January, 1885, and enclosures [Papers No. 7].

2. At the suggestion of the Chief Commissioner of British Burma, we have added to the Bill sections (1 and 2) which will enable a Thugyi, when appointed an Excise-officer, to exercise the powers of arrest, seizure and search conferred by sections 28 and 29 of the Act. The Thugyi, who is a collector of revenue and also assists generally in the administration, does not receive a monthly salary. He cannot, therefore, on a strict construction of those sections, be held to be an officer in receipt of a monthly salary of not less than ten rupees.

3. We have also in section 2 of the Bill made a further slight amendment of section 29 of the Act, by providing that, where the Excise-officer making a search is himself an officer of Police in the receipt of a monthly salary of not less than ten rupees, the presence of another Police-officer is not required.

4. We have at the suggestion of several of the Local Governments amended the original section of the Bill (now section 3). We have given the Local Government power to invest any Police-officer with powers under section 27 of the Act, as we consider that these powers may be safely entrusted to any Police-officer. The more extensive powers conferred on certain Excise-officers by sections 28 and 29 of the Act should not, we think, be exercised by Police-officers unless they are in charge of a station or of or above the grade of head constable or sergeant. We have provided accordingly.

5. The use of the word "complaint" in section 47 of the Act, a section providing certain restrictions on prosecutions, has given rise to doubts, and we have, therefore, at the suggestion of the Government of the North-Western Provinces, altered the wording of that section.

6. The publication ordered by the Council has been made as follows:—

In English.

Gazette.	*Date.*
Gazette of India	25th October, and 1st and 8th November, 1884.
Bombay Government Gazette ...	13th November, 1884.
North-Western Provinces and Oudh Government Gazette.	8th, 15th and 22nd November, 1884.
Punjab Government Gazette ...	6th, 13th and 20th November, 1884.
Central Provinces Gazette ...	8th, 15th and 22nd November, 1884.
British Burma Gazette	22nd and 29th November, and 6th December, 1884.

In the Vernaculars.

Province.	*Language.*	*Date.*
Punjab	Urdú	1st, 8th and 15th December, 1884.
British Burma ...	Burmese	29th November, and 6th and 13th December, 1884.

7. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

J. W. QUINTON.
C. P. ILBERT.
A. COLVIN.

The 30th January, 1885.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Report of the Select Committee on the Bill to amend the Indian Ports Act, 1875, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 30th January, 1885 :—

WE, the undersigned Members of the Select Committee to which the Bill to amend the Indian Ports Act, 1875, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

From Officiating Secretary to Chief Commissioner, British Burma, No. 243-49 P. D., dated 15th November, 1883 [Paper No. 1].
From Chief Secretary to Government, Madras, No. 549, dated 16th November, 1883, and enclosure [Papers No. 2].
From Officiating Secretary to Government, Bengal, No. 2479, dated 26th November, 1883, and enclosures [Papers No. 3].
Endorsement by Officiating Under-Secretary to Government of India, Department of Finance and Commerce, No. 5, dated 4th January, 1884, and enclosures [Papers No. 4].
Office Memorandum by Department of Finance and Commerce, No. 885, dated 10th May, 1884, and enclosures [Papers No. 5].
Endorsement by Acting Secretary to Government, Bombay, No. 270, dated 4th July, 1884, and enclosure [Papers No. 6].
From Secretary to Government, Bengal, No. 35, dated 9th January, 1885, and enclosure [Papers No. 7].
Endorsement by Officiating Under-Secretary to Government, Bengal, No. 111, dated 14th January, 1885, and enclosures [Papers No. 8].

2. At the suggestion of the Government of Madras we have inserted in the Bill a section (1) amending section 42 of the Act. That section directs that the orders of a Local Government made in pursuance of the Act shall be, in addition to other modes of publication, fixed up in the custom-house, if any, of every port subject to this Act. A difficulty is experienced in carrying out this direction, and we consider that it will be sufficient to provide that the order shall be fixed up in some conspicuous place in the office of the Conservator, and at the custom-house, if any, of every port to which the order relates.

3. We have amended section 1 of the Bill (now section 2) so as to provide for cases where the service of a person entitled to pension has been partly at the port and partly elsewhere.

4. At the request of the Bombay Government we have provided in section 3 of the Bill that money may be spent from the Port Fund Account for the support of hospitals for seamen or for providing sanitary superintendence and medical aid for the shipping and seamen belonging to ships in the ports.

5. We have altered the rate of port-dues prescribed in the first schedule of the Act for the Cuttack ports, as the Government of Bengal finds that the present rate does not yield an income sufficient to meet the necessary expenses of the ports.

6. The publication ordered by the Council has been made as follows:—

In English.

Gazette.	*Date.*
Gazette of India	13th, 20th and 27th October, 1883.
Fort St. George Gazette ...	30th October, 1883.
Bombay Government Gazette ...	18th and 25th October, and 1st November, 1883.
Calcutta Gazette	27th and 31st October, and 7th November, 1883.
British Burma Gazette ...	3rd, 10th and 17th November, 1883.

In the Vernaculars.

Province.		*Language.*		*Date.*
Bombay	...	Guzaráthí	...	8th November, 1883.
		Kanarese	...	8th November, 1883.
		Maráthí	...	15th November, 1883.
Bengal	...	Bengalí	...	13th and 20th November, 1883.
		Hindi	...	27th November, 1883.
British Burma	...	Burmese	...	17th and 24th November, 1883.

7. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

C. P. ILBERT.
A. COLVIN.
H. J. REYNOLDS.

The 30th January, 1885.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 7, 1885.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Report of the Select Committee on the Bill to amend the Transfer of Property Act, 1882, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 23rd January, 1885 :—

WE, the undersigned Members of the Select Committee to which the Bill to amend the Transfer of Property Act, 1882, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

From Officiating Registrar, High Court, Calcutta, No. 2596, dated 15th September, 1884 [Paper No. 1].
From Secretary to Chief Commissioner, Coorg, No. 813—114, dated 13th September, 1884 [Paper No. 2].
Endorsement by Officiating Under-Secretary to Government of India, Home Department, No. 1252, dated 24th September, 1884, and enclosures [Papers No. 3].
From Officiating Secretary to Chief Commissioner, British Burma, No. 125—16L., dated 9th October, 1884, and enclosures [Papers No. 4].
From Chief Commissioner, Ajmer-Merwára, No. 880, dated 17th October, 1884 [Paper No. 5].
From Secretary for Berar to Resident, Hyderabad, No. 376G., dated 21st October, 1884, and enclosures [Papers No. 6].
From Chief Secretary to Government, Madras, No. 2681, dated 18th October, 1884, and enclosures [Papers No. 7].
From Under-Secretary to Government, Bombay, No. 7599, dated 31st October, 1884, and enclosures [Papers No. 8].
From Officiating Secretary to Government, Panjáb, No. 987, dated 14th November, 1884, and enclosures [Papers No. 9].
From Officiating Assistant Secretary to Chief Commissioner, Central Provinces, No. 5321—245, dated 14th November, 1884, and enclosure [Paper No. 10].
From Secretary to Government, North-Western Provinces and Oudh, No. 1147—VII-279-19, dated 5th November, 1884, and enclosures [Papers No. 11].
From Bábú Charu Chandra Mookerjee, dated 2nd November, 1884 [Paper No. 12].
Extract, paragraph III, from Proceedings of the Meerut Association, No. 13, dated 16th November, 1884 [Paper No. 13].
From Under-Secretary to Government, North-Western Provinces and Oudh, No 1326—VII-277-23, dated 13th December, 1884, and enclosure [Papers No. 14].
From Officiating Secretary to Government, Bengal, No. 3001 J., dated 19th December, 1884, and enclosures [Papers No. 15].
From Secretary to Government, North-Western Provinces and Oudh, No. 1375—VII-277-26, dated 23rd December, 1884, and enclosures [Papers No. 16].
Memorandum by Bábú Gridhar Dás, Honorary Magistrate, and Vice-Chairman, Municipal Fund, and Member of the District Board, Zila Etawah, No. 1, dated 20th December, 1884 [Paper No. 17].
From the Hon'ble Mr. Justice S. Mahmúd, Allahabad, dated 13th January, 1885 [Paper No. 18].

2. It is generally admitted that the provisions of section 1 (*a*) of the Bill will amend the Act satisfactorily, but there are differences of opinion as to clause (*b*) of that section. The Government of Bombay, Mr. Justice West and others are strongly in favour of making the exemption from the provisions of section 41 of the Act local and not personal. It has also been urged, especially by Mr. Justice Mahmúd, that power should not be given to exempt from the provisions of section 41. Mr. Mahmúd says, "As I understand the law, the provisions of section 41 of the Transfer of Property Act are nothing more or less than the repetition of the rule of natural equity which belongs to almost every department of law connected with the dealings of one human being with another. The rule of equitable estoppel is so important that, irrespective of section 41 of the Transfer of Property Act, I, speaking for my own part, would, regardless of the nationality of parties, apply it to all transactions which came before me and which furnished circumstances for its application."

3. After considering the matter we are of opinion that, if section 41 of the Act contains, as we believe it does, a rule of equity which our Courts should follow, the section should be in

force wherever the Act is in force. If that section were excluded from the Act, the Courts would probably, on general principles of equity, follow the rule which it contains. We think, therefore, that it is unnecessary to give any power to exempt from the provisions of section 41, and have struck out clause (*b*), section 1 of the Bill.

4. With regard to some questions raised as to the effect of section 3 of the Bill, we may mention that the Transfer of Property Act in requiring that certain transfers shall be made by a registered instrument does not conflict with the Indian Registration Act. That Act requires that certain documents shall be registered in order to render them capable of affecting certain property and admissible in evidence of any transaction affecting such property. The Transfer of Property Act, on the other hand, provides that certain transfers can only be effected by a registered instrument.

5. With reference to section 4 of the Bill, it has been suggested that section 69 of the Act should be restored to the form proposed by the Indian Law Commission. The question whether a power of sale should be valid in all cases where the property secured by the mortgage was of a certain value was fully discussed at the time the Act was passed. It was then decided that the valuation test should not be adopted, and we consider that it is inexpedient to re-open the question now.

6. Objections have been raised relating to the chapter on leases of immoveable property. These are sufficiently met by section 117 of the Act, which exempts leases for agricultural purposes from the provisions of the chapter.

7. We have taken the opportunity of adding to section 6 of the Act a clause (*b*) containing a proviso like that of sub-section (*j*), section 108. If the chapter on leases does not apply to leases for agricultural purposes, then the proviso to sub-section (*j*) will not be in force. It might therefore happen that an untransferable right of occupancy, the farm of an estate in respect of which default had been made in paying revenue or the lease of an estate under the Court of Wards might be held to be transferable by virtue of the general power of transfer conferred by section 6.

8. The publication ordered by the Council has been made as follows :—

In English.

Gazette.	*Date.*
Gazette of India	23rd and 30th August, and 6th September, 1884.
Fort Saint George Gazette ...	9th September, 1884.
Bombay Government Gazette ...	28th August, and 4th and 11th September, 1884.
Calcutta Gazette	3rd, 10th and 17th September, 1884.
North-Western Provinces and Oudh Government Gazette	30th August, and 6th and 13th September, 1884.
Punjab Government Gazette ...	28th August, and 4th and 11th September, 1884.
Central Provinces Gazette ...	30th August, and 6th and 13th September, 1884.
British Burma Gazette	13th, 20th and 27th September, 1884.
Assam Gazette	13th September, 1884.

In the Vernaculars.

Province.	*Language.*	*Date.*
Madras	Hindustani ...	30th September, 1884.
	Telugu ...	7th October, 1884.
	Malayalam ...	7th October, 1884.
	Tamil ...	28th October, 1884.
	Canarese ...	28th October, 1884.
Panjáb	Urdu	29th September, and 6th and 13th October, 1884.
British Burma ...	Burmese ...	27th September, and 4th and 11th October, 1884.

9. We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

C. P. ILBERT.
J. GIBBS.
PEÁRI MOHAN MUKERJI.
H. ST. A. GOODRICH.
G. H. P. EVANS.

The 21st January, 1885.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication]

The following Report of the Select Committee on the Bill to amend the Negotiable Instruments Act, 1881, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 23rd January, 1885 :—

WE, the undersigned Members of the Select Committee to which the Bill to amend the Negotiable Instruments Act, 1881, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our report.

From Officiating Secretary to Chief Commissioner, Assam, No. 393, dated 3rd April, 1884, and enclosure [Papers No. 1].
From Secretary for Berar to Resident, Hyderabad, No. 115G., dated 7th April, 1884, and enclosures [Papers No. 2].
From Secretary to Chief Commissioner, Central Provinces, No. 2635—120, dated 3rd June, 1884 [Paper No. 3].
From Secretary to Chief Commissioner, Coorg, No. 288—I. 41, dated 2nd June, 1884 [Paper No. 4].
Office memorandum by Home Department, No. 829, dated 18th June, 1884, and enclosures [Papers No. 5].
From Chief Commissioner, Ajmer-Merwára, No. 486, dated 23rd June, 1884, and enclosures [Papers No. 6].
From Under-Secretary to Government, Bombay, No. 4659, dated 30th June, 1884, and enclosures [Papers No. 7].
From Secretary to Government, North-Western Provinces and Oudh, No. 527—VII-27-10, dated 2nd July, 1884, and enclosure [Papers No. 8].
From Chief Secretary to Government, Madras, No. 1579, dated 26th June, 1884, and enclosure [Papers No. 9].
From Officiating Secretary to Chief Commissioner, British Burma, No. 106—7L., dated 4th July, 1884, and enclosure [Papers No. 10].
From Officiating Secretary to Government, Punjab, No. 661, dated 23rd July, 1884, and enclosures [Papers No. 11].
From Officiating Registrar, High Court, Calcutta, No. 1872, dated 30th July, 1884 [Paper No. 12].
From Officiating Secretary to Government, Bengal, No. 1339T.—R., dated 31st July, 1884 [Paper No. 13].

2. With regard to lost bills it has been pointed out that the Act provides no machinery whereby the owner of a lost bill or note can get a duplicate from the drawer or maker. We think that this omission should be supplied, and have accordingly inserted in the Bill a section (2) taken from section 69 of the English Statute. Actions on lost bills are sufficiently provided for by section 61 of the Code of Civil Procedure.

3. With reference to the remarks forwarded by the Government of Madras, we think that clause (*c*), section 101 of the Act, does seem to imply that to render a protest valid the demand must be made by the notary public in person. If the law be so understood, it will cause inconvenience, and to remove all doubts we consider that the section should be amended so that it may be clear that a demand may be made by a notary public's clerk in person. The Act might also, we think, be still further amended so as to afford greater facilities for presenting bills and demanding acceptance or payment. The English Act [section 41 (1) (*c*) and section 45 (8)] provides that a bill is duly presented for acceptance or payment when presented through the post office in cases where such presentment is authorised by agreement or usage. We think that it is desirable to extend to this country similar facilities for presenting bills, but we consider that when presentment through the post office is allowed it should be made by means of a registered letter. We have accordingly, in section 3 of the Bill, made additions to the Act which will validate a presentment through the post office by means of a registered letter when such a presentment is authorised by agreement or usage. We have also, in section 4 of the Bill, added to section 101 a clause to the effect that the demand mentioned in clause (*c*) may be made by the notary public in person or by his clerk in person or, where authorised by agreement or usage, by a registered letter.

4. It has been pointed out that while section 108 implies that acceptance for honour may take place when a bill has been noted or protested, the definition of "acceptor for honour" (section 7) shows that an acceptance for honour is made after a bill is protested. It might be held therefore that there could be no acceptance for honour until a bill had been

protested as well as noted. To meet this difficulty we have inserted in the Bill a section (6) taken from section 93 of the English Statute, and have slightly amended the definition in section 7 of the Act so as to make it agree with section 108.

5. The Chambers of Commerce of Bombay and Rangoon have suggested an amendment of section 113 of the Act which would have the effect of rendering a declaration before a notary public unnecessary in the case of a payment for honour. We have considered this suggestion and we think that some formality is desirable. We are of opinion that it would not be safe to relax these formalities regarding payments for honour further than they are relaxed by English law.

6. It has also been suggested that power should be taken to make rules for the control of those notaries public who have not been appointed under the Act. We think that it is not desirable to make rules for the control of notaries not appointed by the Government of India.

7. We have been asked to make a provision for cases in which the services of a notary public are not available, by adopting section 94 of the English Act which provides that in such cases a protest may be made by means of a certificate signed by a householder or substantial resident. Having regard to the power given to Government of appointing notaries public, the number of appointments that have been made and the possible abuses that might arise if a householder or substantial resident were substituted for a notary, we think that it would be unwise to adopt this provision of the Statute.

8. It is said that the proposed amendment of section 113 will raise doubts whether the words "acceptor," "acceptor for honour," "payee" and "drawee" are intended to include an agent of an acceptor, payee or drawee. We think that section 27 of the Act, which provides that a person may bind himself by a duly authorized agent, will answer all questions of this nature that may arise.

9. The Chief Commissioner, British Burma, suggests that the Local Government should be authorized to appoint notaries public. This question has already been considered, and we would not re-open it.

10. With regard to the question whether section 45 of the Contract Act unduly limits the negotiation of bills, we are not disposed to think that it does. We are not aware that that section has given rise to any difficulties in this respect, and the saving in the Contract Act of all usages or customs of trade will probably meet such difficulties if they do arise. If any amendment in this respect is necessary, it should take the form of an amendment of section 45 in the Contract Act, as such an amendment would perhaps be required for other cases besides those under the Negotiable Instruments Act.

11. The publication ordered by the Council has been made as follows:—

In English.

Gazette.	*Date.*
Gazette of India	8th, 15th and 22nd March, 1884.
Fort St George Gazette	18th March, 1884.
Bombay Government Gazette	13th, 20th and 27th March, 1884.
Calcutta Gazette	12th, 19th and 26th March, 1884.
North-Western Provinces and Oudh Government Gazette	15th, 22nd and 29th March, 1884.
Panjab Government Gazette	20th and 27th March, and 3rd April, 1884.
Central Provinces Gazette	15th, 22nd and 29th March, 1884.
British Burma Gazette	29th March, and 5th and 12th April, 1884.
Assam Gazette	29th March, and 5th and 12th April, 1884.

In the Vernaculars.

Province.	*Language.*	*Date.*
Bombay	Maráthí	... 17th April, 1884.
	Gujaráthí	... 3rd May, 1884.
Bengal	Bengali	... 1st April, 1884.
	Hindí	... 18th March, 1884.
North-Western Provinces and Oudh	Urdu	... 31st May, and 7th and 14th June, 1884.
Central Provinces	Maráthí	... 26th April, and 3rd and 10th May, 1884.
British Burma	Burmese	... 5th, 12th and 19th April, 1884.

12. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

C. P. ILBERT.
J. GIBBS.
ROBERT MILLER.
G. H. P. EVANS.

The 22nd January, 1885.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Report of the Select Committee on the Bill to amend Act XXII of 1881, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 30th January, 1885:—

WE, the undersigned Members of the Select Committee to which the Bill to amend Act XXII of 1881 was referred, have considered the Bill and papers noted in the margin, and have now the honour to submit this our Report.

From Chief Commissioner, Coorg, No. 53, dated 17th November, 1884 [Paper No. 1].
From Chief Commissioner, Ajmer-Merwára, No. 969, dated 4th December, 1884 [Paper No. 2].
Extract, paragraph VI, from Proceedings of the Meerut Association, No. 15, dated 29th November, 1884 [Paper No. 3].
From Officiating Junior Secretary to Government, Punjab, No. 3148, dated 12th December, 1884, and enclosures [Papers No. 4].
From Officiating Secretary to Chief Commissioner, British Burma, No. 279-41 E., dated 12th December, 1884, and enclosures [Papers No. 5].
From Secretary to Government, North-Western Provinces and Oudh, No. 74—VII-305-13, dated 17th January, 1885, and enclosures [Papers No. 6].
From Assistant Secretary to Chief Commissioner, Central Provinces, No. 143-284, dated 16th January, 1885, and enclosures [Papers No. 7].

2. At the suggestion of the Chief Commissioner of British Burma, we have added to the Bill sections (1 and 2) which will enable a Thugyi, when appointed an Excise-officer, to exercise the powers of arrest, seizure and search conferred by sections 28 and 29 of the Act. The Thugyi, who is a collector of revenue and also assists generally in the administration, does not receive a monthly salary. He cannot, therefore, on a strict construction of those sections, be held to be an officer in receipt of a monthly salary of not less than ten rupees.

3. We have also in section 2 of the Bill made a further slight amendment of section 29 of the Act, by providing that, where the Excise-officer making a search is himself an officer of Police in the receipt of a monthly salary of not less than ten rupees, the presence of another Police-officer is not required.

4. We have at the suggestion of several of the Local Governments amended the original section of the Bill (now section 3). We have given the Local Government power to invest any Police-officer with powers under section 27 of the Act, as we consider that these powers may be safely entrusted to any Police-officer. The more extensive powers conferred on certain Excise-officers by sections 28 and 29 of the Act should not, we think, be exercised by Police-officers unless they are in charge of a station or of or above the grade of head constable or sergeant. We have provided accordingly.

5. The use of the word "complaint" in section 47 of the Act, a section providing certain restrictions on prosecutions, has given rise to doubts, and we have, therefore, at the suggestion of the Government of the North-Western Provinces, altered the wording of that section.

6. The publication ordered by the Council has been made as follows:—

In English.

Gazette.	*Date.*
Gazette of India	25th October, and 1st and 8th November, 1884.
Bombay Government Gazette ...	13th November, 1884.
North-Western Provinces and Oudh Government Gazette.	8th, 15th and 22nd November, 1884.
Punjab Government Gazette ...	6th, 13th and 20th November, 1884.
Central Provinces Gazette ...	8th, 15th and 22nd November, 1884.
British Burma Gazette	22nd and 29th November, and 6th December, 1884.

In the Vernaculars.

Province.	*Language.*	*Date.*
Punjab	Urdú	1st, 8th and 15th December, 1884.
British Burma ...	Burmese	29th November, and 6th and 13th December, 1884.

7. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

J. W. QUINTON.
C. P. ILBERT.
A. COLVIN.

The 30th January, 1885.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Report of the Select Committee on the Bill to amend the Indian Ports Act, 1875, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 30th January, 1885 :—

WE, the undersigned Members of the Select Committee to which the Bill to amend the Indian Ports Act, 1875, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

From Officiating Secretary to Chief Commissioner, British Burma, No. 243-49 P. D., dated 15th November, 1883 [Paper No. 1].
From Chief Secretary to Government, Madras, No. 549, dated 16th November, 1883, and enclosure [Papers No. 2].
From Officiating Secretary to Government, Bengal, No. 2479, dated 26th November, 1883, and enclosures [Papers No. 3].
Endorsement by Officiating Under-Secretary to Government of India, Department of Finance and Commerce, No. 5, dated 4th January, 1884, and enclosures [Papers No. 4].
Office Memorandum by Department of Finance and Commerce, No. 885, dated 10th May, 1884, and enclosures [Papers No. 5].
Endorsement by Acting Secretary to Government, Bombay, No. 270, dated 4th July, 1884, and enclosure [Papers No. 6].
From Secretary to Government, Bengal, No. 35, dated 9th January, 1885, and enclosure [Papers No. 7].
Endorsement by Officiating Under-Secretary to Government, Bengal, No. 111, dated 14th January, 1885, and enclosures [Papers No. 8].

2. At the suggestion of the Government of Madras we have inserted in the Bill a section (1) amending section 42 of the Act. That section directs that the orders of a Local Government made in pursuance of the Act shall be, in addition to other modes of publication, fixed up in the custom-house, if any, of every port subject to this Act. A difficulty is experienced in carrying out this direction, and we consider that it will be sufficient to provide that the order shall be fixed up in some conspicuous place in the office of the Conservator, and at the custom-house, if any, of every port to which the order relates.

3. We have amended section 1 of the Bill (now section 2) so as to provide for cases where the service of a person entitled to pension has been partly at the port and partly elsewhere.

4. At the request of the Bombay Government we have provided in section 3 of the Bill that money may be spent from the Port Fund Account for the support of hospitals for seamen or for providing sanitary superintendence and medical aid for the shipping and seamen belonging to ships in ports.

5. We have altered the rate of port-dues prescribed in the first schedule of the Act for the Cuttack ports, as the Government of Bengal finds that the present rate does not yield an income sufficient to meet the necessary expenses of the ports.

6. The publication ordered by the Council has been made as follows:—

In English.

Gazette.	*Date.*
Gazette of India	13th, 20th and 27th October, 1883.
Fort St. George Gazette ...	30th October, 1883.
Bombay Government Gazette ...	18th and 25th October, and 1st November, 1883.
Calcutta Gazette	27th and 31st October, and 7th November, 1883.
British Burma Gazette ...	3rd, 10th and 17th November, 1883.

In the Vernaculars.

Province.		*Language.*		*Date.*
Bombay	...	Guzaráthí	...	8th November, 1883.
		Kanarese	...	8th November, 1883.
		Maráthí	...	15th November, 1883.
Bengal	...	Bengalí	...	13th and 20th November, 1883.
		Hindi	...	27th November, 1883.
British Burma	...	Burmese	...	17th and 24th November, 1883.

7. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

C. P. ILBERT.
A. COLVIN.
H. J. REYNOLDS.

The 30th January, 1885.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 14, 1885.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[*Third Publication.*]

The following Report of the Select Committee on the Bill to amend the Transfer of Property Act, 1882, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 23rd January, 1885 :—

WE, the undersigned Members of the Select Committee to which the Bill to amend the Transfer of Property Act, 1882, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

From Officiating Registrar, High Court, Calcutta, No. 2596, dated 15th September, 1884 [Paper No. 1].
From Secretary to Chief Commissioner, Coorg, No. 813—114, dated 13th September, 1884 [Paper No. 2].
Endorsement by Officiating Under-Secretary to Government of India, Home Department, No. 1252, dated 24th September, 1884, and enclosures [Papers No. 3].
From Officiating Secretary to Chief Commissioner, British Burma, No. 125—16L., dated 9th October, 1884, and enclosures [Papers No. 4].
From Chief Commissioner, Ajmer-Merwára, No. 880, dated 17th October, 1884 [Paper No. 5].
From Secretary for Berar to Resident, Hyderabad, No. 376G., dated 21st October, 1884, and enclosures [Papers No. 6].
From Chief Secretary to Government, Madras, No. 2681, dated 18th October, 1884, and enclosures [Papers No. 7].
From Under-Secretary to Government, Bombay, No. 7599, dated 31st October, 1884, and enclosures [Papers No. 8].
From Officiating Secretary to Government, Panjáb, No. 987, dated 14th November, 1884, and enclosures [Papers No. 9].
From Officiating Assistant Secretary to Chief Commissioner, Central Provinces, No. 5321—245, dated 14th November, 1884, and enclosure [Paper No. 10].
From Secretary to Government, North-Western Provinces and Oudh, No. 1147—VII-279-19, dated 5th November, 1884, and enclosures [Papers No. 11].
From Bábú Charu Chandra Mookerjee, dated 2nd November, 1884 [Paper No. 12].
Extract, paragraph 111, from Proceedings of the Meerut Association, No. 13, dated 16th November, 1884 [Paper No. 13].
From Under-Secretary to Government, North-Western Provinces and Oudh, No 1326—VII-277-23, dated 13th December, 1884, and enclosure [Papers No. 14].
From Officiating Secretary to Government, Bengal, No. 3001 J., dated 19th December, 1884, and enclosures [Papers No. 15].
From Secretary to Government, North-Western Provinces and Oudh, No. 1375—VII-277-26, dated 23rd December, 1884, and enclosures [Papers No. 16].
Memorandum by Bábú Gridhar Dás, Honorary Magistrate, and Vice-Chairman, Municipal Fund, and Member of the District Board, Zila Etawah, No. 1, dated 20th December, 1884 [Paper No. 17].
From the Hon'ble Mr. Justice S. Mahmúd, Allahabad, dated 13th January, 1885 [Paper No. 18].

2. It is generally admitted that the provisions of *section* 1 (*a*) of the Bill will amend the Act satisfactorily, but there are differences of opinion as to clause (*b*) of *that section*. The Government of Bombay, Mr. Justice West and others are strongly in favour of making the exemption from the provisions of section 41 of the Act local and not personal. It has also been urged, especially by Mr. Justice Mahmúd, that power should not be given to exempt from the provisions of section 41. Mr. Mahmúd says, "As I understand the law, the provisions of section 41 of the Transfer of Property Act are nothing more or less than the repetition of the rule of natural equity which belongs to almost every department of law connected with the dealings of one human being with another. The rule of equitable *estoppel* is so important that, irrespective of section 41 of the Transfer of Property Act, I, speaking for my own part, would, regardless of the nationality of parties, apply it to all transactions which came before me and which furnished circumstances for its application."

3. After considering the matter we are of opinion that, if section 41 of the Act contains, as we believe it does, a rule of equity which our Courts should follow, the section should be in

force wherever the Act is in force. If that section were excluded from the Act, the Courts would probably, on general principles of equity, follow the rule which it contains. We think, therefore, that it is unnecessary to give any power to exempt from the provisions of section 41, and have struck out clause (*b*), section 1 of the Bill.

4. With regard to some questions raised as to the effect of section 3 of the Bill, we may mention that the Transfer of Property Act in requiring that certain transfers shall be made by a registered instrument does not conflict with the Indian Registration Act. That Act requires that certain documents shall be registered in order to render them capable of affecting certain property and admissible in evidence of any transaction affecting such property. The Transfer of Property Act, on the other hand, provides that certain transfers can only be effected by a registered instrument.

5. With reference to section 4 of the Bill, it has been suggested that section 69 of the Act should be restored to the form proposed by the Indian Law Commission. The question whether a power of sale should be valid in all cases where the property secured by the mortgage was of a certain value was fully discussed at the time the Act was passed. It was then decided that the valuation test should not be adopted, and we consider that it is inexpedient to re-open the question now.

6. Objections have been raised relating to the chapter on leases of immoveable property. These are sufficiently met by section 117 of the Act, which exempts leases for agricultural purposes from the provisions of the chapter.

7. We have taken the opportunity of adding to section 6 of the Act a clause (*i*) containing a proviso like that of sub-section (*j*), section 108. If the chapter on leases does not apply to leases for agricultural purposes, then the proviso to sub-section (*j*) will not be in force. It might therefore happen that an untransferable right of occupancy, the farm of an estate in respect of which default had been made in paying revenue or the lease of an estate under the Court of Wards might be held to be transferable by virtue of the general power of transfer conferred by section 6.

8. The publication ordered by the Council has been made as follows :—

In English.

Gazette.	*Date.*
Gazette of India	23rd and 30th August, and 6th September, 1884.
Fort Saint George Gazette ...	9th September, 1884.
Bombay Government Gazette ...	28th August, and 4th and 11th September, 1884.
Calcutta Gazette	3rd, 10th and 17th September, 1884.
North-Western Provinces and Oudh Government Gazette	30th August, and 6th and 13th September, 1884.
Punjab Government Gazette ...	28th August, and 4th and 11th September, 1884.
Central Provinces Gazette ...	30th August, and 6th and 13th September, 1884.
British Burma Gazette	13th, 20th and 27th September, 1884.
Assam Gazette	13th September, 1884.

In the Vernaculars.

Province.	*Language.*	*Date.*
Madras	Hindustani ...	30th September, 1884.
	Telugu ...	7th October, 1884.
	Malayalam ...	7th October, 1884.
	Tamil ...	28th October, 1884.
	Canarese ...	28th October, 1884.
Panjáb	Urdu	29th September, and 6th and 13th October, 1884.
British Burma ...	Burmese ...	27th September, and 4th and 11th October, 1884.

9. We do not think that the measure has been so altered as to require republication, and we recommend that it be passed as now amended.

C. P. ILBERT.
J. GIBBS.
PEÁRI MOHAN MUKERJI.
H. ST. A. GOODRICH.
G. H. P. EVANS.

The 21st January, 1885.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Report of the Select Committee on the Bill to amend the Negotiable Instruments Act, 1881, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 23rd January, 1885 :—

WE, the undersigned Members of the Select Committee to which the Bill to amend the Negotiable Instruments Act, 1881, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our report.

From Officiating Secretary to Chief Commissioner, Assam, No. 393, dated 3rd April, 1884, and enclosure [Papers No. 1].
From Secretary for Berar to Resident, Hyderabad, No. 115G., dated 7th April, 1884, and enclosures [Papers No. 2].
From Secretary to Chief Commissioner, Central Provinces, No. 2635—120, dated 3rd June, 1884 [Paper No. 3].
From Secretary to Chief Commissioner, Coorg, No. 288—I. 41, dated 2nd June, 1884 [Paper No. 4].
Office memorandum by Home Department, No. 829, dated 18th June, 1884, and enclosures [Papers No. 5].
From Chief Commissioner, Ajmer-Merwára, No. 486, dated 23rd June, 1884, and enclosures [Papers No. 6].
From Under-Secretary to Government, Bombay, No. 4659, dated 30th June, 1884, and enclosures [Papers No. 7].
From Secretary to Government, North-Western Provinces and Oudh, No. 527—VII-27-10, dated 2nd July, 1884, and enclosure [Papers No. 8].
From Chief Secretary to Government, Madras, No. 1579, dated 26th June, 1884, and enclosure [Papers No. 9].
From Officiating Secretary to Chief Commissioner, British Burma, No. 106—7L., dated 4th July, 1884, and enclosure [Papers No. 10].
From Officiating Secretary to Government, Punjab, No. 661, dated 23rd July, 1884, and enclosures [Papers No. 11].
From Officiating Registrar, High Court, Calcutta, No. 1872, dated 30th July, 1884 [Paper No. 12].
From Officiating Secretary to Government, Bengal, No. 1339T.—R., dated 31st July, 1884 [Paper No. 13].

2. With regard to lost bills it has been pointed out that the Act provides no machinery whereby the owner of a lost bill or note can get a duplicate from the drawer or maker. We think that this omission should be supplied, and have accordingly inserted in the Bill a section (2) taken from section 69 of the English Statute. Actions on lost bills are sufficiently provided for by section 61 of the Code of Civil Procedure.

3. With reference to the remarks forwarded by the Government of Madras, we think that clause (*c*), section 101 of the Act, does seem to imply that to render a protest valid the demand must be made by the notary public in person. If the law be so understood, it will cause inconvenience, and to remove all doubts we consider that the section should be amended so that it may be clear that a demand may be made by a notary public's clerk in person. The Act might also, we think, be still further amended so as to afford greater facilities for presenting bills and demanding acceptance or payment. The English Act [section 41 (1) (*e*) and section 45 (8)] provides that a bill is duly presented for acceptance or payment when presented through the post office in cases where such presentment is authorised by agreement or usage. We think that it is desirable to extend to this country similar facilities for presenting bills, but we consider that when presentment through the post office is allowed it should be made by means of a registered letter. We have accordingly, in section 3 of the Bill, made additions to the Act which will validate a presentment through the post office by means of a registered letter when such a presentment is authorised by agreement or usage. We have also, in section 4 of the Bill, added to section 101 a clause to the effect that the demand mentioned in clause (*c*) may be made by the notary public in person or by his clerk in person or, where authorised by agreement or usage, by a registered letter.

4. It has been pointed out that while section 108 implies that acceptance for honour may take place when a bill has been noted or protested, the definition of "acceptor for honour" (section 7) shows that an acceptance for honour is made after a bill is protested. It might be held therefore that there could be no acceptance for honour until a bill had been

protested as well as noted. To meet this difficulty we have inserted in the Bill a section (6) taken from section 93 of the English Statute, and have slightly amended the definition in section 7 of the Act so as to make it agree with section 108.

5. The Chambers of Commerce of Bombay and Rangoon have suggested an amendment of section 113 of the Act which would have the effect of rendering a declaration before a notary public unnecessary in the case of a payment for honour. We have considered this suggestion and we think that some formality is desirable. We are of opinion that it would not be safe to relax these formalities regarding payments for honour further than they are relaxed by English law.

6. It has also been suggested that power should be taken to make rules for the control of those notaries public who have not been appointed under the Act. We think that it is not desirable to make rules for the control of notaries not appointed by the Government of India.

7. We have been asked to make a provision for cases in which the services of a notary public are not available, by adopting section 94 of the English Act which provides that in such cases a protest may be made by means of a certificate signed by a householder or substantial resident. Having regard to the power given to Government of appointing notaries public, the number of appointments that have been made and the possible abuses that might arise if a householder or substantial resident were substituted for a notary, we think that it would be unwise to adopt this provision of the Statute.

8. It is said that the proposed amendment of section 113 will raise doubts whether the words "acceptor," "acceptor for honour," "payee" and "drawee" are intended to include an agent of an acceptor, payee or drawee. We think that section 27 of the Act, which provides that a person may bind himself by a duly authorized agent, will answer all questions of this nature that may arise.

9. The Chief Commissioner, British Burma, suggests that the Local Government should be authorized to appoint notaries public. This question has already been considered, and we would not re-open it.

10. With regard to the question whether section 45 of the Contract Act unduly limits the negotiation of bills, we are not disposed to think that it does. We are not aware that that section has given rise to any difficulties in this respect, and the saving in the Contract Act of all usages or customs of trade will probably meet such difficulties if they do arise. If any amendment in this respect is necessary, it should take the form of an amendment of section 45 in the Contract Act, as such an amendment would perhaps be required for other cases besides those under the Negotiable Instruments Act.

11. The publication ordered by the Council has been made as follows :—

In English.

Gazette.	*Date.*
Gazette of India	8th, 15th and 22nd March, 1884.
Fort St. George Gazette	18th March, 1884.
Bombay Government Gazette	13th, 20th and 27th March, 1884.
Calcutta Gazette	12th, 19th and 26th March, 1884.
North-Western Provinces and Oudh Government Gazette.	15th, 22nd and 29th March, 1884.
Panjáb Government Gazette	20th and 27th March, and 3rd April, 1884.
Central Provinces Gazette	15th, 22nd and 29th March, 1884.
British Burma Gazette	29th March, and 5th and 12th April, 1884.
Assam Gazette	29th March, and 5th and 12th April, 1884.

In the Vernaculars.

Province.	*Language.*	*Date.*
Bombay	Maráthí ...	17th April, 1884.
	Gujaráthí ...	3rd May, 1884.
Bengal	Bengali ...	1st April, 1884.
	Hindí ...	18th March, 1884.
North-Western Provinces and Oudh	Urdu ...	31st May, and 7th and 14th June, 1884.
Central Provinces	Maráthí ...	26th April, and 3rd and 10th May, 1884.
British Burma	Burmese ...	5th, 12th and 19th April, 1884.

12. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

C. P. ILBERT.
J. GIBBS.
ROBERT MILLER.
G. H. P. EVANS.

The 22nd January, 1885.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Report of the Select Committee on the Bill to amend Act XXII of 1881, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 30th January, 1885 :—

WE, the undersigned Members of the Select Committee to which the Bill to amend Act XXII of 1881 was referred, have considered the Bill and papers noted in the margin, and have now the honour to submit this our Report.

From Chief Commissioner, Coorg, No. 53, dated 17th November, 1884 [Paper No. 1].
From Chief Commissioner, Ajmer-Merwára, No. 969, dated 4th December, 1884 [Paper No. 2].
Extract, paragraph VI, from Proceedings of the Meerut Association, No. 15, dated 29th November, 1884 [Paper No. 3].
From Officiating Junior Secretary to Government, Punjab, No. 3148, dated 12th December, 1884, and enclosures [Papers No. 4].
From Officiating Secretary to Chief Commissioner, British Burma, No. 279-41 E., dated 12th December, 1884, and enclosures [Papers No. 5].
From Secretary to Government, North-Western Provinces and Oudh, No. 74—VII-305-13, dated 17th January, 1885, and enclosures [Papers No. 6].
From Assistant Secretary to Chief Commissioner, Central Provinces, No. 143-284, dated 16th January, 1885, and enclosures [Papers No. 7].

2. At the suggestion of the Chief Commissioner of British Burma, we have added to the Bill sections (1 and 2) which will enable a Thugyi, when appointed an Excise-officer, to exercise the powers of arrest, seizure and search conferred by sections 28 and 29 of the Act. The Thugyi, who is a collector of revenue and also assists generally in the administration, does not receive a monthly salary. He cannot, therefore, on a strict construction of those sections, be held to be an officer in receipt of a monthly salary of not less than ten rupees.

3. We have also in section 2 of the Bill made a further slight amendment of section 29 of the Act, by providing that, where the Excise-officer making a search is himself an officer of Police in the receipt of a monthly salary of not less than ten rupees, the presence of another Police-officer is not required.

4. We have at the suggestion of several of the Local Governments amended the original section of the Bill (now section 3). We have given the Local Government power to invest any Police-officer with powers under section 27 of the Act, as we consider that these powers may be safely entrusted to any Police-officer. The more extensive powers conferred on certain Excise-officers by sections 28 and 29 of the Act should not, we think, be exercised by Police-officers unless they are in charge of a station or of or above the grade of head constable or sergeant. We have provided accordingly.

5. The use of the word "complaint" in section 47 of the Act, a section providing certain restrictions on prosecutions, has given rise to doubts, and we have, therefore, at the suggestion of the Government of the North-Western Provinces, altered the wording of that section.

6. The publication ordered by the Council has been made as follows :—

In English.

Gazette.	*Date.*
Gazette of India	25th October, and 1st and 8th November, 1884.
Bombay Government Gazette ...	13th November, 1884.
North-Western Provinces and Oudh Government Gazette.	8th, 15th and 22nd November, 1884.
Punjab Government Gazette ...	6th, 13th and 20th November, 1884.
Central Provinces Gazette ...	8th, 15th and 22nd November, 1884.
British Burma Gazette	22nd and 29th November, and 6th December, 1884.

In the Vernaculars.

Province.	*Language.*	*Date.*
Punjab	Urdú	1st, 8th and 15th December, 1884.
British Burma ...	Burmese	29th November, and 6th and 13th December, 1884.

7. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

J. W. QUINTON.
C. P. ILBERT.
A. COLVIN.

The 30th January, 1885.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Report of the Select Committee on the Bill to amend the Indian Ports Act, 1875, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 30th January, 1885 :—

WE, the undersigned Members of the Select Committee to which the Bill to amend the Indian Ports Act, 1875, was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report.

From Officiating Secretary to Chief Commissioner, British Burma, No. 243-49 P. D., dated 15th November, 1883 [Paper No. 1].
From Chief Secretary to Government, Madras, No. 549, dated 16th November, 1883, and enclosure [Papers No. 2].
From Officiating Secretary to Government, Bengal, No. 2479, dated 26th November, 1883, and enclosures [Papers No. 3].
Endorsement by Officiating Under-Secretary to Government of India, Department of Finance and Commerce, No. 5, dated 4th January, 1884, and enclosures [Papers No. 4].
Office Memorandum by Department of Finance and Commerce, No. 885, dated 10th May, 1884, and enclosures [Papers No. 5].
Endorsement by Acting Secretary to Government, Bombay, No. 270, dated 4th July, 1884, and enclosure [Papers No. 6].
From Secretary to Government, Bengal, No. 35, dated 9th January, 1885, and enclosure [Papers No. 7].
Endorsement by Officiating Under-Secretary to Government, Bengal, No. 111, dated 14th January, 1885, and enclosures [Papers No. 8].

2. At the suggestion of the Government of Madras we have inserted in the Bill a section (1) amending section 42 of the Act. That section directs that the orders of a Local Government made in pursuance of the Act shall be, in addition to other modes of publication, fixed up in the custom-house, if any, of every port subject to this Act. A difficulty is experienced in carrying out this direction, and we consider that it will be sufficient to provide that the order shall be fixed up in some conspicuous place in the office of the Conservator, and at the custom-house, if any, of every port to which the order relates.

3. We have amended section 1 of the Bill (now section 2) so as to provide for cases where the service of a person entitled to pension has been partly at the port and partly elsewhere.

4. At the request of the Bombay Government we have provided in section 3 of the Bill that money may be spent from the Port Fund Account for the support of hospitals for seamen or for providing sanitary superintendence and medical aid for the shipping and seamen belonging to ships in ports.

5. We have altered the rate of port-dues prescribed in the first schedule of the Act for the Cuttack ports, as the Government of Bengal finds that the present rate does not yield an income sufficient to meet the necessary expenses of the ports.

6. The publication ordered by the Council has been made as follows :—

In English.

Gazette.	*Date.*
Gazette of India	13th, 20th and 27th October, 1883.
Fort St. George Gazette ...	30th October, 1883.
Bombay Government Gazette ...	18th and 25th October, and 1st November, 1883.
Calcutta Gazette	27th and 31st October, and 7th November, 1883.
British Burma Gazette ...	3rd, 10th and 17th November, 1883.

In the Vernaculars.

Province.		*Language.*		*Date.*
Bombay	...	Guzaráthí	...	8th November, 1883.
		Kanarese	...	8th November, 1883.
		Maráthí	...	15th November, 1883.
Bengal	...	Bengalí	...	13th and 20th November, 1883.
		Hindi	...	27th November, 1883.
British Burma	...	Burmese	...	17th and 24th November, 1883.

7. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

C. P. ILBERT.
A. COLVIN.
H. J. REYNOLDS.

The 30th January, 1885.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 21, 1885.

☞ 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.

BENGAL TENANCY BILL, 1885, No. III.

The following Further Report of the Select Committee on the Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 13th February, 1885 :—

WE, the undersigned Members of the Select Committee to which the Bill to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal was referred, have considered the Bill and the papers noted in the schedule annexed, and have now the honour to submit this our further Report.

It must be understood that in referring to the decisions of the Committee we state the view of the majority where there has been any difference of opinion.

CHAPTER I.

PRELIMINARY.

2. We have made some slight amendments in, and additions to, this chapter, but few of them call for notice here.

The definition of "estate" and that of "proprietor", which is dependent on it, have given rise to the erroneous supposition that it was intended to exclude Government tenants from the operation of the Bill. We have now so amended the definitions as to remove any misapprehension on this point.

3. As it seems reasonable that the provisions of the Bill contained in sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII and Schedule III should apply to money recoverable under any enactment as if it was rent, we have added to the definition of "rent" a clause providing that "rent" shall in those portions of the Bill include such money.

CHAPTER II.

CLASSES OF TENANTS.

4. The only amendments calling for notice in this chapter are—

1st—that we have omitted all reference to the raiyat converted into a tenure-holder under section 37 of the Bill No. II, as it has been determined to omit section 37 (see *infra*, paragraph 17); and

2nd—that we have altered section 5 (5) so as to provide that a tenant holding more than 100 bíghás shall be presumed, until the contrary is shown, to be a tenure-holder, without raising an issue as to his having sub-let any part of his holding.

CHAPTER III.

TENURE-HOLDERS.

5. We have in section 7 of this chapter included, among the matters to which a Court must have regard in enhancing the rent of a tenure-holder, the questions "whether the tenure was originally granted at a specially low rent for the purpose of reclamation" and "whether any fine or premium was paid on the creation of the tenure."

6. We have omitted section 8 of the Bill No. II, which provided that a Court should not enhance the rent of a tenure to more than double the previous rent.

7. We have in section 9 made the interval which must elapse between successive enhancements of the rent of a tenure the same as in the case of an occupancy-holding, namely, fifteen years.

8. We have omitted the provisions of this chapter specially applicable to patní tenures, and Chapter XVI, relating to summary sale of patní and other tenures for arrears, as we are, on further consideration, reluctant to interfere at present with the existing law regarding patní tenures, and are of opinion that any extension of the patní sale law to other tenures should be reserved for consideration in connection with the Bengal Registration Bill, to which we shall presently have to refer.

9. We have in sections 12 to 16 of the Bill so far altered the system of the registration of transfers of, and successions to, permanent tenures as to provide merely for enabling the landlord to register such transfers instead of compelling him to do so.

The Bill in its previous stages provided for a compulsory system of registration by the landlord. This, it was objected, would not work satisfactorily, especially as the landlords of many tenure-holders are poor and ignorant persons, having no regular office and no means of establishing one or maintaining a suitable register. At the same time it was pointed out that the establishment of an official registry would confer a great benefit on all concerned, and especially on the landlords, who might, if such a registry were established, be allowed to realize their rents by the process of summary sale which is now available only in the case of a limited class of tenures.

A Bill for the establishment of an official registry is at this moment before the Bengal Legislative Council, and the object we have set before ourselves in re-casting the portion of our Bill now under consideration has been to frame its provisions in such a manner as to secure to the Collector, who will be the officer entrusted with the preparation and maintenance of the official register, early and accurate information of all transfers and successions which may from time to time take place.

We have not overlooked the fact that the substitution of official registration for registration in the landlord's sherista would deprive the landlords of the fees which it was proposed to allow them under the Bill as originally framed, and which, it is believed, they commonly realize at present, though in most cases without any warrant of law. We think that the fees prescribed by the Bill in its earlier stages may well be paid to the landlord, even though he is to be relieved of the duty of registration.

10. The provisions we have inserted in the Bill in order to give effect to these views are as follows:—

First, as regards voluntary transfers (section 12), the simplest plan has appeared to us to be to require that every such transfer shall be registered under the ordinary law relating to the registration of documents. It is understood that the Local Government will make all arrangements requisite for facilitating the registration of such transfers. The parties applying for registration will be required to pay to the registering officer "the landlord's fee" and a process-fee for the service of notice on the landlord. When the registration has been completed, the registering officer will forward to the Collector the landlord's fee and a notice of the transfer containing all necessary particulars, and the Collector will thereupon cause the landlord's fee to be paid to the landlord and the notice to be served upon him, at the same time taking any such steps as may be prescribed by the measure now pending before the Bengal Legislative Council for the entry of the transfer in his official register.

When a transfer takes place by sale in execution of a decree (sections 13 and 14), the procedure will be substantially similar, the notice and the fee being sent to the Collector by the Court, except that, following the lines of the Bill in its earlier stages, we have not provided for the payment of a fee to the landlord when the sale takes place in execution of a decree for arrears.

In the only remaining case of transfer, namely, that of transfer by summary sale, the Collector will have in his own office all the information requisite for the purpose of registration.

11. When a succession to a permanent tenure takes place, the party succeeding will be bound (section 15) to give notice to the Collector and pay to him the landlord's fee and the process-fee above referred to, and the Collector will then proceed as above described.

12. In order to compel the person succeeding to comply with the provisions of this section, we have retained, for the case of successions, the provision of section 18 of the Bill No. II, under which a person succeeding will be debarred from recovering his rent by suit, distraint or otherwise, until he has given the notice and paid the fees prescribed.

CHAPTER V.

OCCUPANCY-RAIYATS.

13. The first alteration in this chapter which appears to call for notice has reference to the area over which the status of settled raiyat is to hold good.

In the 11th paragraph of our first Report we referred to the inconvenience which might arise in certain exceptionally large estates from the status holding good over the whole estate, and this has given rise to considerable discussion. The Bengal Government, in the 22nd paragraph of its report of the 15th September, 1884, stated that "the majority of the officers consulted disapproved of the definition of 'settled raiyat' as given in the Bill," and that "the proposal which found favour was the elimination of the word 'estate' from the definition".

That Government, nevertheless, was of opinion that it was necessary to retain the word "estate" in order to meet the danger of the acquisition of the occupancy-right being prevented by shifting raiyats from one village to another within the estate.

It seemed to us that this danger was not so great as to justify the extension, over all portions of an estate of the status of "settled raiyat" acquired in one portion of it, since estates are frequently divided among numerous tenure-holders, who would have no opportunity of examining each other's books, or knowing anything about each other's raiyats. The danger in either direction is not serious, for in the vast majority of cases the raiyat is practically tied to his own village; and we felt, moreover, that by confining the status to the village we should be proceeding in closer conformity to the original conception of a khúdkásht raiyat, which, as explained in the Statement of Objects and Reasons of the Bill, it has been always intended to keep in view.

14. We have in section 22 re-cast sections 28 and 29 of the Bill No. II so as to carry out more precisely the intention with which they were framed, and we have inserted a sub-section (2) providing that if the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder it shall cease to exist.

15. Sections 23 to 26 of the amended Bill take the place of sections 31 to 36 of the Bill No. II; but, except a saving of custom as regards the descent of the occupancy-right in section 26, the only important change they involve is the omission of all provisions regarding the transfer of the occupancy-right, which, apart from the matter of sale in execution of a decree for rent (dealt with in Chapter XIV), we now propose to leave to custom as under the existing law.

16. The reasons for and against the proposal to make the occupancy-right everywhere transferable by an express legislative enactment have been so fully discussed within the last three years, and are so well known to all interested in such matters, that we shall not lengthen this Report by attempting to recapitulate them. It is enough to say that the Government of Bengal, in their letter of the 15th of September last, proposed to leave the law relating to the transferability of the right for the present untouched in Behar, and that on a further consideration of the question we are of opinion that the most prudent course will be to omit the provisions relating to voluntary transfer altogether from the present Bill. This decision has enabled us to omit all reference to the question of pre-emption.

17. The 37th section of the Bill No. II, which provided that raiyats sub-letting their land should in certain cases be deemed to be converted into tenure-holders, has met with much adverse criticism, and we now propose to omit it.

The remaining provisions as to sub-letting we have relegated to Chapter IX, where they will be found with certain modifications and additions.

18. In regard to the enhancement of rent in the case of occupancy-rights the Government of Bengal made certain proposals in their letter of 15th September, 1884, which are summarised in the 84th paragraph of that letter as shown on the margin.*

In regard to VI and VII we said in paragraph 34 of our Report last year that in applying the proportion rule in the case of prices the question of making some deduction to cover the effect of increased prices on the cost of cultivation would receive further consideration. The Government of Bengal recommended a deduction of one-half on this account.

* VI.—To recognize the principle that, in the absence of reason to the contrary, the Courts shall regard a rise in the price of staple food-grain as entitling the landlord to an enhancement of rent.

VII.—To fix the percentage by which the enhanced rent shall exceed the former rent at a definite proportion (one-half is suggested for consideration) of the percentage by which the enhanced prices exceed the former prices, the other portion going as an allowance for increased cost of production.

VIII.—To assign to enhancements on the ground of landlords' improvements a maximum limit of double the former rent.

IX.—To abandon the provision for enhancement on the ground of a "prevailing rate," experience having shown that no such rate exists, and that the position assigned to it in the present law has led to the construction of collusive and fictitious rates for the purpose of forcing up rents.

X.—To abandon fluvial action as a ground of enhancement of rent, but to recognize freedom of contract between landlord and raiyat in regard to new alluvium.

XI.—To withdraw the arbitrary limitations on enhancements by suit on account of a rise in prices, and to allow contracts for enhancement of rent out of Court up to a maximum limit of two annas in the rupee (12½ per cent) of the former rent, and for a minimum period of 15 years

XII.—To withdraw all restrictions on freedom of contract in respect of the *initial* rent of all land which may lapse to the landlord from whatever cause.

XIII.—To re-introduce the provision that the rent of the occupancy or non-occupancy raiyat shall not exceed one-fifth of the value of the gross produce calculated in staple food-grains.

We recognised the difficulty of making the Courts ascertain the actual cost of production, and as it was necessary to fix an arbitrary limit we have fixed the deduction at one-third as a general rule.

19. With reference to VIII we did not think we could justify any arbitrary limit in terms of a fractional proportion of the old rent being placed on enhancement when made on the ground of landlords' improvements.

20. We were unable to accept the proposal (IX) to abolish the prevailing rate as a ground of enhancement, inasmuch as this has, in one shape or another, been a ground of enhancement ever since the Permanent Settlement, and as it is the only means by which a landlord can remedy the effects of fraud or favouritism on the part of his agent or predecessors. In view, however, of the dangers which are said by competent authorities to arise from the artificial manufacture of rates, and from the very wide interpretation given to the term "places adjacent," we have somewhat modified the terms of the section, have limited enhancement to the rate ascertained to be the prevailing rate *in the village*, and have required that this rate should be determined with reference to the rates actually paid during a period of not less than three years before the institution of the suit.

21. We were not able to accept the proposal (X) to abandon fluvial action as a ground of enhancement.

22. On the other hand, we have accepted the proposal (XI) to limit enhancements by registered contract (except on the ground of improvement made by the landlord) to two annas in the Rupee (12½ per cent.) carrying with it in all cases a right to hold at the enhanced rent for 15 years, and we have at the same time struck out all the fractional limits placed on enhancement in Court by sections 44 (*a*), 45 (*b*) and 47 (*b*) of the Bill No. II.

23. The restrictions which it was proposed by section 42 to impose in certain cases on the initial rents payable by settled raiyats have, we think, been shown to be impracticable, and we have therefore, as proposed by the Government of Bengal (XI), omitted the section.

24. We were not able to accept the recommendation numbered XIII.

25. The only other amendments in the chapter which appear to call for special notice are as follows:—

(*a*) we have required Courts, in dealing with claims to enhancement on the ground of a rise in prices, to take decennial periods instead of quinquennial periods for the purposes of comparison, except when owing to the absence of price-lists or any other cause they find it impracticable to take such periods, in which case they may take any shorter periods;

(*b*) we have amended section 39 so that the price-lists prepared under it shall be merely presumptive evidence instead of being conclusive, as provided in the corresponding provision of the Bill No. II. The Bengal Government are of opinion that their arrangements are not at present so perfect as to justify these lists being made conclusive evidence;

(*c*) we have in section 40 included among the matters to be taken into consideration by an officer commuting rent the charges incurred by the landlord in respect of irrigation under the system of rent in kind and the arrangements made on commutation for continuing those charges.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

26. We have omitted from the section (50) which enacts the well-known presumption arising from holding at a rent unchanged for 20 years the sub-section which made the presumption applicable to produce-rents, as opinions generally were opposed to it.

27. We have, in section 58, providing for the alteration of rent on the ground of an alteration in the area of the holding, assimilated the provisions of the two clauses (*a*) and (*b*), which provide respectively for increase and reduction; and we have inserted the following new sub-section to guide the Courts in cases where there may be a dispute as to the area for which the tenant has been paying rent:—

"In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

"(*a*) the origin and conditions of the tenancy; for instance, whether the rent was a consolidated rent for the entire holding;

"(*b*) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;

"(*c*) the length of time during which the tenancy has lasted without dispute as to rent or area; and

"(*d*) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit."

We have also brought the section under the general rule that the Court shall not fix a rent which would be unfair or inequitable.

28. We have substituted for the section of the Bill No. II regulating the instalments in which rent is to be payable the following simpler provision, namely:—

"53. Subject to agreement or established usage a money-rent payable by a tenure-holder or raiyat shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year";

and to prevent raiyats being harassed by successive suits for arrears, when by agreement or custom a larger number of instalments than four may be established, we have inserted in Chapter XIII a section (147) enacting in effect that such suits shall not be instituted against a raiyat oftener than once in three months.

29. We have made certain amendments in the division of the chapter relating to receipts and accounts, but the only one calling for special notice is the insertion of a new section (59) requiring the Local Government to provide and keep on sale forms of receipts and accounts. It will be for the landlords to choose whether they will use those forms, but we believe they will be found convenient.

30. In pursuance of the policy of the Bengal Act for the registration of proprietors, we have inserted the following section:—

"60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate or of his agent authorized in that behalf shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

Effect of receipt by registered proprietor.

"But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee."

31. We have likewise modified in some particulars the provisions relating to the deposit of rent, but need only mention the provision that the deposit shall be made in the Court having jurisdiction to entertain a suit for the rent, and the limitation of the second ground on which an application to deposit rent may be made to cases where the tenant has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the landlord will not be willing to receive the rent or grant a receipt.

32. We have omitted the second sub-section of section 77 of the Bill No. II, which enacted that, when the right, title and interest of a tenant is brought to sale in execution of a decree obtained by a person other than the landlord, the landlord shall be entitled to have his rent paid first out of the sale-proceeds, and we have so re-cast the section as to make it clear that in the case of a tenure-holder, raiyat at fixed rates or occupancy-raiyat the landlord's remedy for arrears will be sale and not ejectment, and that the arrears will be a first charge on the tenure or holding.

33. We have substituted for section 79 of the Bill No. II a section (67) providing that an arrear of rent shall bear simple interest at the rate of 12 per cent. per annum from the expiration of that quarter of the agricultural year in which the instalment falls due.

34. To meet those cases in which transfer without the landlord's consent is a valid custom, we have provided in section 73 that, until notice of such a transfer is duly served on the landlord, the transferor and transferee shall be jointly and severally liable for arrears of rent accruing after the transfer.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

35. We have in section 79 provided that a non-occupancy raiyat shall be entitled to construct a well for the irrigation of his holding. A well constructed under this provision will be an

improvement within the meaning of the Act, and the raiyat will on being ejected be entitled to receive compensation for it. The high importance of facilitating and encouraging the construction of all works of irrigation in this country with a view to the prevention of famine points to the necessity of this.

36. We have inserted a new section (84) giving power to landlords to acquire by compulsory sale, through the Civil Court and at a price to be fixed by the Court, any land in their estate required for building purposes or for religious, charitable or educational objects. The necessity of some such power, especially with a view to provide building sites either for new tenants or in cases of diluvion, has been strongly urged upon us. We have guarded the section against abuse by requiring the certificate of a Collector as to the sufficiency of the reason before action can be taken under it.

37. We have inserted a section (85) providing that if a raiyat sub-lets otherwise than by a registered instrument the sub-lease shall not be valid against his landlord unless made with his landlord's consent, that a sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years (seven years was the longest term for which an occupancy raiyat could sub-let under section 38 of the Bill No. II) and that where a raiyat has without his landlord's consent granted a sub-lease by an instrument registered before the commencement of the Act the sub-lease shall not be valid for more than nine years from the commencement of the Act.

38. In dealing with surrender and abandonment the only changes made by us which need here be noticed are the provisions which we have inserted to check collusive surrender or abandonment in fraud of the rights of third parties. The necessity for this was brought to notice in paragraph 69 of the Bengal Government's letter of 15th September, where it is shown that raiyats not unfrequently sub-let the whole or a portion of their holdings in consideration of a large bonus for a term of years. To leave the interests of sub-lessees in such cases entirely at the mercy of the sub-lessor in collusion with his landlord would do serious practical harm. We have therefore provided (section 86 (*b*)) that the surrender of a holding which is subject to a registered incumbrance shall not be valid without the consent of the incumbrancer and the landlord, and in case of abandonment we have provided (section 87 (*4*)) that the sub-lease shall only be avoided after the sub-lessee has had the opportunity of taking over for the unexpired period of his sub-lease the full rights and liabilities of his lessor in regard to the rent of his entire holding. These provisions appear to us to present the only method by which protection can be given to the sub-lessee without injury to the landlord or without risking the conversion of these sub-leases into permanent transfers. In the case of sale in execution of a decree for rent, the sub-lessee has the same protection as other incumbrancers under Chapter XIV.

39. We have in section 88 provided that a division of rent shall not be valid as against the landlord without his consent in writing. This we understand to be the existing law.

40. We have amended section 90 so as to make it clear that a landlord is not entitled to enter on and measure land exempt from the payment of revenue.

41. We have in section 92 substituted the acre for the standard bighá as the official standard of measurement, and have empowered a Court or Revenue-officer to direct, where such a course may seem more convenient, that a measurement shall be made by any other specified standard.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

42. In the Bill No. II the two processes known as the record-of-rights and the settlement of rents were dealt with separately, but it seemed to us more convenient that they should be amalgamated, and we have accordingly given to the Revenue-officer who is appointed to settle disputes during the operation of recording rights a similar power to settle disputes regarding rents.

We have, however, provided for two distinct kinds of settlement. Under the ordinary settlement, the officer will only have the power to settle rents when a settlement of land-revenue is being made or a question between the landlord and tenant arises, and such rents as he settles will generally be fixed for a term of years; in other cases his recorded entries will only have a presumptive value; he can, moreover, only reduce rents on the grounds under which reduction is demandable in the Civil Courts. Under the special settlement, which will only be undertaken with the previous sanction of the Government of India, and which is meant to be applied only in circumstances in which the operation of the ordinary law is likely to prove insufficient, the Settlement-officer will have power to settle all rents, and will, moreover, have

power to reduce rents on other grounds than those ordinarily applicable. We think that in the exceptional cases in which it may be necessary to have recourse to this procedure the Government should have power to go to the root of the matter, and to put its settlement on a thoroughly stable footing.

TABLES OF RATES.

43. We have decided, in deference to the opinion of many experienced officers and with the consent of the Government of Bengal, to omit the chapter (XI of Bill No. II) providing for the preparation of tables of rates. It was evident that the procedure would only be made use of in rare and exceptional cases, and a more effectual method of treating these cases is provided in the Settlement chapter.

CHAPTER XI.

RECORD OF PROPRIETORS' PRIVATE LANDS.

44. The only amendment calling for notice in this chapter is the insertion of a provision in section 116, that nothing in the chapter (VI) relating to non-occupancy-raiyats shall apply to a proprietor's private lands. This merely expresses what was always intended, though by an oversight it was not previously provided for.

CHAPTER XII.

DISTRAINT.

45. We have inserted two sections of some importance at the end of this chapter.

The first (141) provides that when the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application to the Court under this chapter, it may by order authorize the landlord to distrain by himself or his agent; but that a landlord so distraining shall forthwith give notice to the Court, and that the Court shall thereupon depute an officer to take charge of the produce distrained, and proceed thereafter as if he had distrained under the ordinary procedure. The other section (142) added to this chapter empowers the High Court to make rules regulating the procedure under it.

CHAPTER XIII.

JUDICIAL PROCEDURE.

46. Section 147 has already been noticed (*supra* paragraph 28).

47. We have in section 148 added to the sections of the Civil Procedure Code, which are not to apply to rent-suits, section 326, empowering the Court to authorize the Collector to stay an execution sale of land in certain cases.

48. We have in section 153 excepted from the rules restricting appeals in rent-suits cases in which a question of the amount of rent annually payable by the tenant has been determined.

49. We have omitted section 172 of the Bill No. II, which required all mutual claims between the landlord and tenant as such to be inquired into and determined in every suit and proceeding for ejectment.

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

50. We have added to the "protected interests" in section 160—

"(*e*) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court or under Chapter X by a Revenue-officer."

The section as it stood would probably have been construed to cover such cases, but we think it well to leave no room for doubt on the point.

51. We have, in order to shorten proceedings, inserted in section (163) a clause enacting that in cases under this chapter the order of attachment and the proclamation of sale required by section 287 of the Civil Procedure Code shall be issued simultaneously.

52. We have, at the suggestion of our honourable colleague Bábú Peári Mohan Mukerji, inserted a new section (174) allowing a judgment-debtor to apply to set aside a sale of his tenure or holding, on depositing in Court within thirty days from the date of sale for payment to the decree-holder the amount recoverable under the decree with costs, and for payment to the purchaser a sum equal to 5 per cent. of the purchase-money. Applications under section 311 of the Code of Civil Procedure to set aside sales cause expense and annoyance to the decree-holder and auction-purchaser. It is believed that they are often instituted merely with a view to recovering the tenure or holding which has been sold, and it is anticipated that, if a judgment-debtor is allowed to recover his property by depositing after the sale the amount decreed against him, the number of these applications will be considerably diminished.

CHAPTER XV.

CONTRACT AND CUSTOM.

53. A question having been raised as to how far section 210 of the Bill No. II, which was intended to have retrospective effect, should be allowed such effect, we have carefully considered each provision of that section, and have come to the conclusion that some of those provisions ought, with reference to this point, to be treated differently from others. The way in which we propose to treat the matter will be best seen from the new section we now propose, which runs as follows:—

Restrictions on exclusion of Act by agreement.

"178. (*1*) Nothing in any contract between a landlord and tenant made before or after the passing of this Act—

"(*a*) shall bar in perpetuity the acquisition of an occupancy-right in land, or

"(*b*) shall take away an occupancy-right in existence at the date of the contract, or

"(*c*) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

"(*d*) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

"(*2*) Nothing in any contract made between a landlord and tenant since the 15th day of July, 1880,* and before the passing of this Act shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land.

"(*3*) Nothing in any contract made between a landlord and tenant after the passing of this Act shall—

"(*a*) prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land;

"(*b*) take away or limit the right of an occupancy-raiyat to use land as provided by section 23;

"(*c*) take away the right of a raiyat to surrender his holding in accordance with section 86;

"(*d*) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage;

"(*e*) take away the right of a raiyat to sub-let subject to, and in accordance with, the provisions of this Act;

"(*f*) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52;

"(*g*) take away the right of a landlord or tenant to apply for a commutation of rent under section 40; or

"(*h*) affect the provisions of section 67 relating to interest payable on arrears of rent."

54. To meet the important case of a lease for the reclamation of waste land to which these provisions are not suitable, we have added the following provisos—

"Provided as follows:—

"(i) Nothing in this section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would, under Chapter V, be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right."

* This was the date of the publication by the Government of Bengal of the Rent Commission's Report and Draft Bill.

55. We have further provided that the section shall not affect those contracts which are occasionally entered into for the temporary cultivation of orchard land with agricultural crops.

56. We have in section 180 put útbandi lands on the footing on which chur lands were placed by section 213 of the Bill No. II, that is to say, no occupancy-right will be acquirable in them until they have been held for twelve years, and meantime the tenant will be bound to pay whatever rent may be agreed on between him and his landlord. We have further provided that Chapter VI of the Bill shall not apply to such lands.

57. We agree with the Government of Bengal in thinking that it is not desirable to make any special provision regarding the lands known as "hál-hasili," and we have accordingly omitted all references to them in this chapter.

58. We have considered the proposals of the Government of Bengal regarding homestead lands, and find that they practically resolve themselves into this, that the tenure of such lands should, as provided by section 216 of the Bill No. II, be regulated by local custom, with this addition, however, that, subject to local custom, they should be regulated by the provisions of the Bill applicable to land held by a raiyat. We have amended the section (182) on these line.

CHAPTER XVII.

SUPPLEMENTAL.

59. We have in section 189 added to the powers which may be conferred on officers by the rules to be made by the Local Government—"any power exerciseable by any officer under the Bengal Survey Act, 1875."

60. We have also inserted the following new section, which speaks for itself:—

"194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition."

Tenant not enabled by Act to violate conditions binding on landlord.

61. Lastly, we have added a section (196) providing that "this Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council." In the absence of some such provision as this, the Bengal Legislative Council would, owing to the wide extent of ground covered by this measure of the Supreme legislature, find itself practically debarred for all time to come from dealing with almost every question affecting the relations of agricultural landlords and tenants.

62. In the 99th paragraph of our former Report we mentioned certain points on which we desired further information, and on which we solicited the opinions of the Local Government or High Court or both, and to these it is necessary briefly to allude in so far as they have not been disposed of by the foregoing remarks.

63. The first of these points, which was referred to the Local Government, was "whether, with reference especially to landlord's improvements, it is desirable to empower Revenue-officers to arrange for the cutting of irrigation-channels, the distribution of water and the payment of compensation, and, if so, what form such provisions should take."

We are fully sensible of the great importance of this question, but on full consideration we agree with the Government of Bengal in thinking that a discussion of it would be out of place in connection with the present Bill, and that it will be most appropriately treated in connection with the irrigation law, which will probably soon come under revision in Bengal.

64. The only other points specially referred to the Local Government, and to which we have not already adverted, were certain proposals to extend the patní sale procedure. Those proposals did not commend themselves to the Local Government, and now that the patní procedure is to be excluded from the present Bill, they would more properly be reserved for future consideration.

65. The remaining points to which we think it necessary to advert had reference to the question as to the possibility of devising some simplification of the procedure in rent-suits. In paragraph 83 of our former Report we said—"For ourselves we must confess that, after the most anxious consideration of the various schemes which have been propounded for shortening and simplifying the procedure in rent-suits, we are unable to suggest anything of importance in this direction, which would not involve a serious risk of failure of justice." We, however,

proposed that certain suggestions which had been made should be referred for the opinion of the High Court. The reply of the Honourable Judges is among the papers before us, and we regret to find that, as we apprehended, they too are unable to strike out any royal road to the result desired. They disapprove of the specific suggestions made, and they state it as their opinion that the true remedy for the evils complained of is to be found in executive rather than in legislative action, that is to say, in an increase in the judicial staff and a reduction of the court-fees.

Since the reply of the Honourable Judges has been received, further proposals have been submitted to us, and in particular a scheme put forward by Bábú Mohiny Mohun Roy, on which the opinions of certain officers have been taken, but we regret to say we have not found among them anything which would materially abridge the procedure without entailing a risk of serious failure of justice. The executive measures referred to by the High Court will, doubtless, receive careful consideration at the hands of the Government.

66. The publication ordered by the Council has been made as follows:—

In English.

Gazette.	*Date.*
Gazette of India	29th March, and 5th and 12th April, 1884.
Calcutta Gazette	2nd, 9th and 16th April, 1884.

In the Vernaculars.

Province.	*Language.*	*Date.*
Bengal	Bengali ...	... 29th April, 1884.
	Hindi ...	... 6th May, 1884.
	Uriya ...	... 8th May, 1884.

67. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

S. C. BAYLEY.
RIVERS THOMPSON.*
C. P. ILBERT.
LAKSHMESHWAR SINGH OF DARBHANGA.*(*a*)
J. W. QUINTON.
T. M. GIBBON.*
AMÍR ALÍ.*(*b*)
W. W. HUNTER.*
H. J. REYNOLDS.*
PEARI MOHAN MUKERJI.* (*c*)
G. H. P. EVANS.*

The 12th February, 1885.

* Signed subject to dissent on certain points.

(*a*) I sign this Report as it represents the views of the majority, but I reserve to myself the right of recording separate dissent.

(*b*) I object to some of the main provisions of the Bill and have recorded a separate dissent.

(*c*) This Report represents the views of the majority. I object to the main principles of the Bill and record separate dissent.

SCHEDULE.

Endorsement by Officiating Under-Secretary to Government of India, Revenue and Agricultural Department, No. 197—1-63, dated 13th March, 1884, and enclosures [Papers No. 42].

From Bábú Pronob Náth Ghosál, Náib, Roy Luchmiput Sing Bahadur's Zamíndárí, Kutabpur, District Rungpur, dated 24th April, 1884 [Paper No. 43].

Endorsement by Under-Secretary to Government of India, Revenue and Agricultural Department, No. 491—9-24R., dated 23rd July, 1884, and enclosures [Papers No. 44].

Office Memorandum by Revenue and Agricultural Department, No. 499R., dated 25th July, 1884 [Papers No. 45].

From Officiating Registrar, High Court, Calcutta, No. 1986, dated 8th August, 1884 [Paper No. 46].

Extract from *The Bengálí* of 30th August, 1884 [Paper No. 47].

From Officiating Registrar, High Court, Calcutta, No. 2611, dated 15th September, 1884, and enclosure [Papers No. 48].

„ Bábú Kishori Lál Sarkár, dated 21st September, 1884 [Paper No. 49].

„ Secretary, British Indian Association, No. 87, dated 23rd September, 1884, and enclosure [Papers No. 50].

Endorsement by Under-Secretary to Government of India, Revenue and Agricultural Department, No. 648—926, dated 23rd September, 1884, and enclosures [Papers No. 51].

Note by Bábú Kishori Lál Sarkár [Paper No. 52].

From Secretary to Government, Bengal, No. 1906T.R., dated 15th September, 1884, and enclosures [Papers No. 53].

„ Officiating Under-Secretary to Government, Bengal, No. 2071T.R., dated 29th September, 1884, and enclosures [Papers No. 54].

Memorial of Committee of Orissa People's Association, dated 21st October, 1884 [Paper No. 55].

Memorial of Middle Tenure-holders of the Sub-division of Jhenidah, District Jessore [Paper No. 56].

Endorsement by Under-Secretary to Government of India, Revenue and Agricultural Department, No. 749—9-35R., dated 31st October, 1884, and enclosures [Papers No. 57].

From Officiating Registrar, High Court, Calcutta, No. 2759, dated 3rd November, 1884, and enclosure [Papers No. 58].

From Officiating Registrar, High Court, Calcutta, No. 2943, dated 20th November, 1884, and enclosure [Papers No. 59].

From Honorary Secretary, Behar Landholders Association, dated 27th October, 1884 [Paper No. 60].

From Officiating Under-Secretary to Government, Bengal, No. 2201T.R., dated 9th October, 1884, and enclosure [Papers No. 61].

From Bábú Rajkissore Mookerjea, Cultivator-raiyat, Utterpára, dated 24th November, 1884, and enclosure [Papers No. 62].

Notes by the Hon'ble T. M. Gibbon [Papers No. 63].

From Officiating Under-Secretary to Government, Bengal, No. 1926—1009L.R., dated 28th November, 1884, and enclosure [Papers No. 64].

From Bábú Umesh Chundra Ghosh, Senior Pleader, Jessore, dated 24th November, 1884, and enclosure [Papers No. 65].

From Bábú Rajkissore Mookerjee, Utterpára, dated 5th December, 1884, and enclosure [Papers No. 66].

From Secretary to Government, Bengal, No. 2002—1038 L. R., dated 4th December, 1884, and enclosures [Papers No. 67].

From Officiating Under-Secretary to Government, Bengal, No. 2013—1041 L. R., dated 4th December, 1884, and enclosures [Papers No. 68].

From Officiating Under-Secretary to Government, Bengal, No. 1980—1024 L. R., dated 3rd December, 1884, and enclosures [Papers No. 69].

From Secretary, Bhagulpore Landholders Association, No. 52, dated 3rd December, 1884, and enclosures [Papers No. 70].

From Officiating Under-Secretary to Government, Bengal, No. 2085—1075 L. R., dated 10th December, 1884, and enclosures [Papers No. 71].

From Bábú Bepin Behari Sircar, dated 1st December, 1884, and enclosure [Papers No. 72].

From Officiating Under-Secretary to Government, Bengal, No. 2091—1077 L. R., dated 10th December, 1884, and enclosures [Papers No. 73].

A Review of the Procedure sections of the Bill (No. II), and a few suggestions for the simplification of Procedure, by Bábú Mohiny Mohun Roy [Paper No. 74].

From Secretary, Behar Landholders Association, dated 13th December, 1884, and enclosures [Papers No. 75].

From Secretary, Central Committee of Landholders of Bengal and Behar, No. 123, dated 29th December, 1884, and enclosure [Papers No. 76].

Memorial of Khás Mahál Raiyats of Government Estate Jalamuta, Villages Paikbhera, Harmasah, &c., District Midnapur [Papers No. 77].

From Bábú Sarat Chunder Mukhopadhya, to Private Secretary to His Excellency the Viceroy, dated 27th December, 1884, and enclosure [Papers No. 78].

From Bábú Rajkissore Mukerjea, Utterpára, dated 8th January, 1885, and enclosure [Papers No. 79].

From the Maháráját of Burdwan, No. L.9—301, dated 7th January, 1885, and enclosure [Papers No. 80].

From Officiating Registrar, High Court, Calcutta, No. 126, dated 14th January, 1885, and enclosure [Papers No. 81].

Office Memorandum by Private Secretary to His Excellency the Viceroy, No. 111, dated 19th January, 1885, and enclosures [Papers No. 82].

Office Memorandum by Private Secretary to His Excellency the Viceroy, No. 113, dated 17th January, 1885, and enclosures [Papers No. 83].

From Bábú Ketaki Bilas Rai, Kirtipur, Jessore, dated 26th January, 1885, and enclosure [Papers No. 84].

Endorsement by Officiating Under-Secretary to Government, Bengal, No. 327-128 L.R., dated 31st January, 1885, and enclosures [Papers No. 85].

Memorandum of dissent from the decisions of the Select Committee on the Bengal Tenancy Bill.

IN signing the Report of the Select Committee on this Bill I wish to place on record my opinion that, having regard to all that has been elicited by the commissions and enquiries of the last six or seven years, the Bill inadequately meets the necessities of the case which called for legislation. It is unsatisfactory, in so far as it gives insufficient protection to all raiyats against excessive enhancements of rent, and no real protection in other directions to the non-occupancy-raiyat.

I note, *firstly*, that the change under which the limit of the "village" has been substituted for the "village or estate" in section 20 of the Bill may seriously affect the fixity of the "settled raiyat's" tenure. As originally drawn, "estate" formed part of this section, and its adoption as part of the definition had the sanction of the Secretary of State. In that form the definition met with considerable opposition in Committee, but I was prepared to meet objections by accepting an arrangement whereby a permanent cultivator, when willing to pay a fair rent, should carry his *status* as a settled raiyat to any land in that portion of his landlord's estate which might be situated in the pargana or fiscal circle in which the raiyat resided.

Secondly, I have opposed the "prevailing rate" as a ground of enhancement. There is ample evidence in the recorded literature on the subject to shew that such a thing as a "prevailing rate" of rent does not exist in any part of the country. Under the law as it stands it is admitted that the zamíndárs have been unable to establish a "prevailing rate" in their suits for enhancement on this ground; and the consequence was that, failing proof, the endeavour was made to create it fictitiously. The result has been demoralizing and very injurious to the raiyats, and I am afraid that the Select Committee, though animated by the very best intentions, have not provided any positive safeguard against the mischievous tendencies to which I have referred. On the contrary, their proposals on the subject will probably facilitate enhancements up to the *average* of rates prevailing in the village, and will thus place a much stronger power in the hands of the zamíndárs than even the present law permitted or ever contemplated.

Thirdly, the Bill as it leaves the Committee almost entirely abandons the non-occupancy and the under raiyat. They are practically unprotected; and such a result appears to me to be contrary to the intention with which the legislation on the Rent question was undertaken, and contrary to the conclusions of authoritative opinion that, in the case of all tenants of this class, the growth of the right of occupancy, as tending to establish a substantial peasantry should be encouraged and advanced.

Lastly, the loss of the limitation of the maximum rent to one-fifth of the gross produce is a serious loss, specially as it affects the non-occupancy and under raiyats. The proposal to limit rents to a fraction of the gross produce in staple food-crops did not originate with me, though I accepted it and suggested the particular fraction of one-fifth. Indeed, had my views been supported in regard to the abolition of the "prevailing rate" as a general ground of enhancement, and in regard to the protection of the non-occupancy-raiyat, I should not have placed the stress I now do on the gross-produce limit. But as the majority of the Select Committee have rejected, one by one, every effectual check on rack-renting adopted in the original Bill,—as they have also rejected the equivalents for those checks advocated by me without themselves proposing any substitutes,—it seemed to me that the only hope of escape from the danger of a Bill for the unlimited enhancements of rent lay in a recurrence to the proposal made by the Government of India in their first Bill to limit rents to a share of the gross produce. I am, of course, conscious of the objections to which such a limitation is open as a matter of theory; but theory and practice do not always coincide, and practically a gross produce limit on rents is indigenous in the country, has been asked for by the landlords, and recommended by the ablest among my predecessors. My views on the subject are not shared by a majority of the Committee, and the proposal falls to the ground. I have always admitted that in some Bengal districts the tenantry can well afford to pay higher rents, and I have endeavoured to provide landlords with reasonable facilities for enhancement. But there are many parts of Bengal in which rents are already excessive; and, taking Bengal and Behar together, I cannot contemplate without anxiety a legislative measure whose tendency is to promote, without an ultimate check, a further increase of those rents.

I had hoped that the legislation now in hand, which has been the subject of discussion and consideration by no less than four Lieutenant-Governors of Bengal, would have carried with it some measure of finality. I gladly recognise in the Bill some advance on the present law as regards security of tenure in the case of raiyats with a right of occupancy. I recognise too potentialities for good in the chapter which provides for a survey and a record-of-rights. But fixity of tenure for one class of raiyats loses much of its value as against the power of unlimited enhancements of rent; and in its present outcome there is scarcely the assurance, which had been expected, of a final settlement of many important principles connected with a Tenancy Bill in the Lower Provinces of Bengal.

RIVERS THOMPSON.

The 13th February, 1885.

Memorandum of dissent from the decisions of the Select Committee on the Tenancy Bill.

ALTHOUGH I think the Bill as it now leaves the hands of the Select Committee an improvement on the Bill submitted to it for amendment, it still contains certain provisions with reference to which I differ with the majority in opinion, and on these points I would beg to record my dissent.

1. I object to the omission of the words "and the whole or part of it is sub-let" from section "5", sub-section "5". The word should be again inserted or the whole of the sub-section omitted.

Under the Bill a tenure-holder is a tenant "who has acquired a right to hold land for the purposes of collecting rents or bringing it under cultivation by establishing raiyats on it." A raiyat, is a person "who has acquired land for the purpose of cultivating it himself or by hired labour."

I cannot understand on what grounds the majority of the Committee deemed it necessary to over-ride the essential difference in the nature of the two tenancies, and to declare that all persons holding more than 33 standard acres of land shall be presumed to be tenure-holders until the contrary is proved.

To me it appears that the first and only enquiry to be made is whether the tenant cultivates it himself or sub-lets the whole or a portion of it. If he cultivates it himself it should be presumed that he is a raiyat until the contrary is proved. If he sub-lets a portion of it, it should be presumed that he is a tenure-holder, until he proves that he originally acquired the land for cultivating purposes, and that the tenants who hold under him are sub-tenants.

Our efforts in this instance should be confined to strengthening the position of the actual cultivators of the soil.

2. I dissent from the decision of the majority of the Select Committee to omit transferability from among the incidents attached to an occupancy-holding.

I have already exhausted every argument I can think of to induce the Government and the Committee to legalize and control transfer and failed to gain their support, it is unnecessary to recapitulate them here, I will therefore only record my dissent.

3. *Section 18, Chapter 3.*—The provisions of this chapter should be confined to mocurraree holdings, holdings admitted by the landlord to be held at fixed rents, and holdings the rents of which have been declared fixed in perpetuity under decrees of competent Courts. If this is not allowed, sections 15 to 22 of Bill No. 2 should be again inserted in the Bill in place of sections 12 (*3*) and 13.

All raiyati holdings acquired for the purposes of cultivation whether held at a fixed rent or at a rent subject to enhancement, should only be used for the purpose for which they were acquired, *viz.*, for the purposes of cultivation, and for the growth of crops. There can be no sufficient reason for allowing an ordinary cultivator to be ejected from his holding if he uses it in a manner to render it unfit for the purposes of the tenancy and at the same time to allow raiyats at fixed rates of rent to do, as they think right with the land even to destroying it whatever the rate of rent may be, whether subject to periodical enhancement or not, the purpose for which the land was originally acquired was the same in both instances and should remain so.

If the provisions of the chapter were confined to admitted rights, the injury to the landlord would be lessened, as they stand in the Bill, in every instance that a landlord sues under section 25 (*a*), the provisions of this chapter will be pleaded to debar suit.

If the above suggestions were adopted, it would not inflict any hardship on the tenant; if the tenant claiming to hold at fixed rates, but whose rights had not been admitted wished to avail himself of the privileges allowed him under this chapter, all he need do is to apply under section 157, to have the nature of his tenancy declared previous to availing himself of them.

If the operation of this chapter is not confined to mocurraree holdings, and holdings the rents of which have been declared fixed by a competent Court, sections 15 to 22 of Bill No. 2 should be again inserted in the Bill, or the landlord will be compelled to bring a suit to set aside every conveyance in which the holding is incorrectly described as a holding at fixed rates, when he receives notice of transfer.

4. The restrictions placed on voluntary enhancement under section 29, will have the effect of compelling the landlord to exact every pice of rent the law will permit him to demand, it prohibits all enhancement out of court, or it will induce the parties concerned to resort to deception and fraud to evade the payment of the heavy costs entailed upon them in a heavy law suit for enhancement of rents, they will fight it out to the bitter end or lie.

5. Section 35 I consider superfluous we have throughout the Bill directed the Courts to decree only fair and equitable rents, therefore to tell the Courts that they shall not decree unfair and inequitable rents is unnecessary. With an experienced judge it will have no weight but an inexperienced judge may attach undue importance to it and in doing so do substantial injustice to one of the parties concerned.

6. Under sections 48 and 49 we have effected too little for the protection of the sub-tenant, the actual cultivator of the soil.

The sub-tenant holding under a registered lease is, I think, amply protected short of allowing him to acquire occupancy-rights in the land, the Committee have gone as far as it is possible to go without encroaching on the rights of others, but the sub-tenant who holds under a verbal agreement or an agreement which cannot be accepted as evidence under the law is not sufficiently protected. I would wish to see the sub-tenant receive the same protection against hasty eviction, rack-renting, &c., as is afforded the non-occupancy-raiyat under the Bill.

7. Section 50 is an improvement on section 64 of Bill No. 2, but it does not go far enough. I am of opinion that the suggestions made in the Bengal Government letter of September, 1884, that the presumption should run from 20 years previous to the introduction of the suit, should be adopted, my reasons for wishing it so I stated in my dissent on the Bill No. 2, therefore need not repeat them here.

8. The penal clauses 59, 74 and 185 require modification as they stand, they will be harsh in their operation and may be used solely for the purpose of giving the landlord annoyance.

9. Section 89—2 prohibiting the landlords measuring lands oftener than once in ten years will have the effect of encouraging encroachments. As the landlords are prohibited from bringing suits for enhancement oftener than once in 15 years there is no necessity for this prohibition and the right to do so will, in all instances, be useful to them to test encroachments.

10. Section 138 limits the area of the landlords zeraut or home cultivation to all land held by him as such for 12 years continuously "previous" to the introduction of the Act, thereby preventing him from acquiring any more land as zeraut after the passing of the Bill.

It does not prevent his cultivating more land as home cultivation, but if he once lets it out of his possession, lets it to another person for one season, he will lose his rights in it for ever.

I think the period he is required to hold it for, in order so acquire zeraut rights in the land should run for a period of 12 years before or after the Act is introduced.

11. Section 173 contains a new provision in law, it permits a judgment-debtor to recover possession of his holding 30 days after it has been sold by decree of Court by paying in the amount of the decree.

I object to it as I think it will have an effect contrary to what is intended.

It will deter would-be purchasers from bidding, thereby allowing holdings to be sold for one quarter their value.

It will encourage hangers on about the Courts to make speculative purchases.

And last not least it will induce the judgment-debtors to be careless in the due payment of their debts.

T. M. GIBBON.

12th February, 1885.

Dissent.

I REGRET I cannot concur with many of the decisions arrived at by the majority of the Select Committee. It seems to me that we have failed to achieve some of the principal objects of the Bill, and that the modifications which the measure has undergone, whilst securing to the landlords substantial advantages, have left the raiyats as defenceless as before.

The Bill was introduced in Council with certain well-defined objects which were of a two-fold character, namely (1) to give reasonable security to the peasant in the occupation and enjoyment of his land; (2) to give reasonable facilities to the landlord for the settlement and recovery of his rent. In order to attain the first object, it was proposed to make the following changes in the existing system:—

(1) to extend to permanent cultivators, holding land in a particular village or estate, the right to hold that land on payment of a fair rent;

(2) to make occupancy-rights transferable;

(3) to introduce a fixed maximum limit for the enhancement of rents; and

(4) to provide some efficient guarantee to non-occupancy-raiyats against *arbitrary* eviction and *arbitrary* enhancement of rents. As regards the first object, the proposal, no doubt, has been maintained with some modification. But this has certainly not been the case with the others, and I must confess to a feeling of disappointment at the withdrawal of most of those provisions which were from time to time introduced to secure these objects.

The free transfer of occupancy-holdings was, if I may so call it, the keystone of the measure. The custom had grown up in various parts of Bengal and was gradually extending itself to the entire province. Excepting those places where the presence of a foreign element predominated and caused some degree of friction between landlords and raiyats, the tenants who enjoyed the right of free transfer were admittedly more prosperous and better able to withstand the periodical shocks of scarcities and famines. It was admitted that, during the years immediately preceding the introduction of the measure in Council, the evidence in favour of the extension of the right of transferability had accumulated considerably. It was accordingly proposed to give a statutory sanction to that right. With reference to Behar, however, a doubt was entertained by the Government of Bengal, and my own knowledge of the circumstances of that province induced me last session to bring forward a proposal to withdraw Behar from the operation of the provision. That proposal, however, was not approved of, and it was resolved to give the right to all occupancy-raiyats throughout Bengal and Behar. During the present session, the provision has been dropped entirely from the Bill. Whilst agreeing to the advisability of leaving to custom the right of free transfer in Behar, I consider that as regards Bengal it would have a mischievous tendency. In every place, even where the right has been freely exercised, such as the Presidency, Rajshahye, Dacca, and Chittagong Divisions, the custom will be disputed, with the result that a large portion of the consideration money will pass either into the hands of the landlords or their servants. It would have been far better to recognize transferability throughout Bengal Proper, subject, if necessary, to the payment by the raiyat of a graduated scale of fees upon the consideration money, than to have left it to custom, which I fear will henceforth be disputed in every instance, to the serious prejudice of the tenant in the exercise of his right. With the safeguards which the Bengal Government proposed to attach to the recognition of the right in Bengal Proper, no injury to the landholding interests need have been feared. I think the mode in which the question has been discussed and decided is likely to produce mischief. Had the question not been raised, this mischief might have been avoided.

2. From the very inception of the Bill, it was considered necessary to introduce a maximum limit on rents. In many parts of the province it was proved by the stern testimony of facts that the enhancement of rent beyond a certain limit implied starvation to the cultivators of the soil, and that any endeavour to exact rent beyond that limit ended in failure to the landlord or distress to the tenant. In the interests of the landholding classes themselves it was proposed to provide a check to the system of rack-renting which many of them were disposed to adopt. The East Landholders Association and the late Bábú Kristodás Pál both proposed a gross produce-limit—the former one-fifth as the highest limit of enhancement which the zamíndárs thought proper to demand, the latter one-fourth. The important question to determine was what proportion should the raiyat be left in enjoyment of after payment of his rent? If experience and the collective evidence of competent observers are of any account, it is clear that the raiyats in Bengal can hardly pay for rent more than one-fifth of the gross produce without trenching upon the bare means of subsistence. If in some places the *jamábandis* shew a higher rent, the question remains is the raiyat ever able to discharge his liability? Among other evidence, that recently supplied by the Board of Revenue as the result of its experience of wards' estates furnishes a negative answer to this question. It certainly cannot be the interest of anybody to leave the raiyat a bare subsistence. Whatever the proportion it may have been considered desirable to adopt, a gross produce-limit appeared to me the most satisfactory and most feasible of all the proposals brought forward to prevent rack-renting. The adoption of this limit would have also enabled the legislature to give some degree of protection to the large body of non-occupancy and under-raiyats who are now practically left without any protection. The withdrawal of the fractional limit upon enhancements in Court is in my opinion likely to prove injurious to the raiyats.

3. I consider the ground of enhancement on the basis of "prevailing rates" as open to serious objection. It introduces, in the form it has now assumed in this Bill, an entirely novel principle into the law of Bengal. The law has hitherto not recognized enhancements up to the *average* of rates payable, and it seems to me that the recognition of such a principle is not only dangerous, but, without any correlative ground of reduction, unjust. It will end in screwing up rents to the factitious average of a large number of rates, over the correctness or reality of which no individual raiyat has any control, and that average will furnish the basis for a fresh increase until the highest possible rate is reached.

4. Enhancement on the ground of increase in the price of staple food-crops is to my mind economically indefensible. When the price of food-crops increases, the price of other necessary articles also increases. Is it fair or reasonable to constitute a rise in the price of staple food-crops as a ground of enhancement when a hundred other circumstances, like the increasing cost of production, increasing cost of the bare necessities of life, &c., tend to show that the raiyat of to-day in the majority of instances is not a whit better off than the raiyat of twenty years ago? Let us take for example an instance (which is not uncommon in Bengal), of a raiyat whose holding is fit for growing, say cotton, and whose cultivation, owing to a fall in the cotton-market, has diminished in value. As the Bill stands such a raiyat would, notwithstanding his contracted ability to pay enhanced rent, be still liable to enhancement should the price of food-grains have risen. In other words, although he gets less for his crop and has to pay more for his food, he is still liable to have his rents increased. I cannot help thinking that the Select Committee have failed to realize the full effects of this ground of enhancement, and I would strongly urge that the old ground of enhancement on the basis of net values should be reverted to.

5. The Bill provides no efficient safeguard against the ejectment of a non-occupancy raiyat to prevent the possibility of his acquiring an occupancy-right.

6. I am not able to understand the object of the factitious difference which has been created between under-raiyats holding under registered sub-leases, and under-raiyats holding verbally or under an unregistered lease. The system of sub-letting is interwoven with the agricultural economy of the country, and the Committee at a very early stage recognized the inexpediency of introducing any provision in the Bill interfering with it. Considerable protection has been given to planters and capitalists taking lands for purposes of indigo cultivation from the raiyats under registered sub-leases. No protection, however, is given to the mass of under-raiyats. It is said that these may secure to themselves the same rights by simply taking registered leases; but it must be remembered that the majority of the under-raiyats are poor to the verge of starvation, and that they are not in a position to demand registered leases.

7. I demur, also, to the provision embodied in the Bill regarding *útbandi* tenures. This provision seems to me to be in direct contradiction to the views of the Secretary of State and the Government of India, that "shifting" should be put an end to. The *útbandi* provisions recognize and legalize the eviction of a raiyat at the mere caprice of the landlord. I had no objection to the proposals of the Bengal Government, to allow land held on the *útbandi* system to be a matter for contract; but I have strong objections to the *útbandi* raiyat being left, as this Bill leaves him, without any practical protection whatsoever.

These are the main and essential points on which I differ from my colleagues; but there are various minor details with reference to which, also, I cannot agree with them.

8. On the whole I regret to think that a measure from which so much was expected should prove so inadequate in its general result. The guarantees to which the raiyats had laid claim, as well on constitutional grounds as on those of equity and expediency, have been either withheld or only partially conceded. Between contending claims the Bill does not in my opinion strike a just balance, and it seems to me that unless some further modifications are made in the direction which I have indicated, it will not answer the purpose of definitely setting at rest the disputes between landlord and tenant in Bengal.

AMIR ALI.

MINUTE.

I signed the preliminary Report of the Select Committee last year, on the understanding that I postponed the expression of my opinion on certain questions until the submission of the final Report to Council. Some of the sections to which I then objected have, during the subsequent revision, been removed from the Bill, others have been modified, and I now confine my remarks to four principal points. I desire, however, at the same time to record in general terms my hesitation in regard to several other provisions in the Bill. For the Select Committee has been asked to deal with the entire relation of landlord and tenant in Bengal, without being furnished with any body of cross-examined evidence to guide its deliberations. Opinions and statements, often conflicting and sometimes contradictory, have been furnished to it in large numbers. But it has not had the means of ascertaining which of these opinions and statements would have borne the test of cross-examination, or how far their discrepancies might have been reconciled. Absence of such data is the more to be regretted in a measure affecting land-right in Bengal; for in Bengal almost alone among the Provinces of India, there is no central department of statistics, and until quite recently there was no agricultural bureau, which might in some measure have compensated for the evidence of witnesses heard in the Districts. But, while I regret the defective method of enquiry originally adopted, I acknowledge that, at the stage which the measure had reached when the Bill came before the Select Committee, the time for an effective local enquiry had gone past. The Committee heard the views of several gentlemen in Calcutta on two minor points, but no body of evidence has been collected in the Districts and subjected to cross-examination. The result has been to leave in my mind an extreme uncertainty in regard to several important classes of rights with which the Bill deals.

Coming to specific grounds I object, in the first place, to the application of one set of minute provisions for the regulation of rent, to two Provinces in which the relation of landlord and tenant is so widely dissimilar as in Bengal and Behar. [Section 1 (3).] The statements before the Committee show that in Behar, owing to over-population and to the consequent competition for land, the difficulty is to secure a sufficient share of the crop to the cultivator; while throughout large areas in Bengal the difficulty is for the landlord to realise his rent. Yet the fundamental differences between Bengal and Behar find no recognition in the Bill. The effect of this has been, in my opinion, to increase the difficulty of making effective provision for either Province. Thus in regard to perhaps the most important question dealt with in the Bill, namely, the restrictions to be placed on enhancement of rents, the Bengal Government declared that to limit rents to one-fifth of the gross-produce was a necessity for Behar, while the imposition of that limit was found indefensible for Bengal. The one-fifth limit has accordingly been dropped, and minor restrictions have been introduced. It seems doubtful to me whether some of these minor restrictions do not go further than is warranted by the facts in Bengal; and it is more than doubtful, considering the statements made on behalf of the Bengal Government, whether these restrictions will meet the necessities of Behar.

I object, in the second place, to the discouragement which the Bill places on the reclamation of waste lands by proprietors at their own expense. Important provisions in the Bill rest on considerations arising out of the pressure of the population on the soil, and on the necessity of protecting the cultivator against the monopoly in land which is thus conferred on the landlord. The most direct remedy for this state of things is to increase the area available for cultivation. Yet the Bill not only gives no new inducement to landholders to reclaim wastes, but places discouragements, which did not exist under the previous law, upon their doing so. As regards lands brought under cultivation by means of reclamation leases, the landlord will be in a rather worse position than before; for the occupancy-right will now commence to accrue to the tenants during the currency of such leases, and it may be enforced immediately on their expiry. As regards lands brought under cultivation by the landlord himself, by means of hired labour, he is in a much worse position than before. Henceforth the landlord who cuts down heavy jungle, or digs tanks, or drains swamps at a large outlay, by means of his own servants, will, under the provisions of the Bill, begin to lose the occupancy-right in the reclaimed land as soon as he lets it out to tenants. If the landlord lets the reclaimed fields to a settled raiyat of the village, the tenant acquires the occupancy-right the moment he enters on the land: if the landlord lets the reclaimed fields to any other raiyat, the title to occupancy-rights immediately begins to accrue. In no case will the landlord be permitted, by special contract in his lease, to bar the growth of occupancy-rights in land which he has reclaimed by his own servants at his own expense. Considering the pressure of the people on the cultivated soil, and the existence of large un-reclaimed tracts within a few days' walk of centres of congested population, I think it impolitic to place any new discouragements on efforts to add to the cultivated land. Considering that the Bill, in order to deal with the evils of over-population, restricts the former rights of the landholders, I think that such discouragements are not only impolitic but unjust. I purpose, therefore, to move amendments in Council, which will have the effect of protecting a landlord who reclaims at his own expense *bonâ fide* waste lands, against the growth of occupancy-rights in those lands during a reasonable period to recoup his outlay, say for thirty years.

In the third place, I object to certain of the provisions for the enhancement and reduction of rents on the ground of a rise in prices [section 39]. The Bill substitutes for an old and a scarcely workable ground of enhancement, namely, a rise in the value of the produce, a much more simple ground, namely, a rise in the prices of staple food-crops. The latter contention would in any case be more easily susceptible of proof. But the Bill further simplifies the burden of proof, by directing that the Courts shall be guided by certain lists of prices to be published in the official Gazette. These lists are to be of two kinds; one set of lists are to record current prices in the future, the other set refer to prices in the past. A new and sharp weapon of enhancement is thus placed in the hands of the landlord; but, subject to conditions on its application imposed by the Bill in favour of the tenants, I believe it to be a fair ground of enhancement. The weapon is two-edged; it cuts against the tenant as a means of enhancement if prices have gone up, and against the landlord as a ground for the reduction of rent if prices have gone down. It is obvious, however, that as the Bill entrusts the Local Government with the duty of supplying the evidence, it should take reasonable guarantees that the evidence thus supplied shall be good evidence. The draft Bill of last year provided that all the price lists officially published, should be conclusive evidence. The Bill as now finally settled directs that the Courts shall presume that the facts stated in the lists are correct unless and until it is proved that they are incorrect; thus giving the value of presumptive evidence to both the sets of lists.

I believe that the lists to be prepared for current prices in the future, under the safeguards provided by the Bill, will merit this degree of credibility: but that the lists, purporting to record prices in the past, do not. This latter class of lists will have to be compiled, *ex post facto*, for a period running back ten or fifteen years, from certain price-lists which were collected at a time when adequate safeguards were not taken to secure their accuracy, and when the effective safeguards now provided by the Bill for future price-lists were not thought of. At the period of their collection, moreover, it was never contemplated to give to them the value of conclusive or presumptive evidence in the Courts. I have examined some of the old lists. I do not think that they afford a safe basis for a recompilation which should be accepted by the Courts either as conclusive or presumptive evidence of prices in the past. They are valuable concurrent evidence, taken together with the evidence to be derived from the business books of grain-merchants, zamíndárs, and dealers in export produce. I do not think that lists to be mainly compiled from them should now have a greater weight than the original lists would have had under the Evidence Act. I propose, therefore, to move an amendment which will have the effect of leaving the value of presumptive evidence to the lists prepared for current prices in future, but withdrawing that value from the lists to be compiled for prices in the past.

In the fourth place, while not dissenting from the powers granted by section 112 to the Local Government, in certain exceptional circumstances, to reduce rents, I wish to place on record the hesitation with which I have agreed to that provision. The exceptional circumstances contemplated are when the Government has to intervene between landlord and tenant, "in the interests of public order or of the local welfare." On the one hand, the experience of the past, and the statements which have been made in regard to the future, seem to render it expedient that this power should, under due safeguards, be accorded to the Local Government. The Bill, in requiring that the previous sanction of the Governor General in Council must be obtained, provides due safeguards. On the other hand, I do not think that a general disruption of contracts between landlord and tenant, such as is involved by a reduction of rents on a large scale, should be effected by any authority of a less deliberative character than the Legislature itself. If, therefore, it ever becomes necessary to apply this clause to a considerable area, I hope that the process will be conducted under, or receive effect from, an express Act. It is in this hope that I have agreed to the provision in the present Bill.

I have thought it my duty to place on record objections to specific provisions of the Bill, and to mention in general terms my uncertainty in regard to several important classes of rights with which it deals. I ought, therefore, to state clearly that I believe the Bill, taken as a whole, makes substantial improvements on the existing law, and that, where it alters that law, the changes are, with certain exceptions, expedient and just.

W. W. HUNTER.

Dissent.

I DISSENT from this Report, because I am not satisfied that the Bill, as amended by the Select Committee, affords that effectual protection to the raiyat which the measure, as introduced into the Council, was intended to give. What the nature of that protection was, and on what grounds it was thought necessary, can readily be learnt from the Statement of Objects and Reasons, and from the speech delivered in Council on the 2nd March, 1883, by the Hon'ble Member who introduced the Bill. It was the intention of the Bill to secure to the occupancy-raiyat fixity of tenure, fair rent and free sale. The Bill accordingly declared, *first*, that every settled raiyat should have a right of occupancy throughout the village or estate in which he held land at the date of the introduction of the Bill; *secondly*, that his rent should never exceed one-fifth of the value of the gross produce of the land in staple crops; *thirdly*, that he might transfer his holding at his pleasure, subject to a right of pre-emption on the part of the landlord, and that the landlord's purchase of the holding should not extinguish the occupancy-right, but that the right should revive as soon as the land was let to another tenant. The interests of the non-occupancy-raiyat were not less carefully guarded. "Tenants of this class", said the Hon'ble Member who introduced the Bill, "should not be exposed to arbitrary rack-renting and eviction at the hands of their landlords, and the acquisition by them of the status of settled raiyats should be facilitated in every possible way." The Hon'ble Member quoted with approval a remark made by Sir Ashley Eden, that "no raiyat should be evicted from his fields on any ground save persistent failure to pay a fair and reasonable rent". In accordance with these principles, the Bill prescribed a maximum limit of rent for the non-occupancy-raiyat; it did not allow him to be ejected on the ground that the term of his lease had expired; and it provided that, if he were ejected for refusing to agree to an enhancement demanded by the landlord, he should be entitled to receive compensation for disturbance.

Such was the Bill which was introduced into the Council, and which was referred to the Select Committee. It was drawn with a full recognition of the character and the gravity of the evils which it was designed to remedy. "What we hope for" (said the Hon'ble Member who introduced the Bill) "is, first, that a stop may be put to the vigorous efforts which are at present being made by landlords in some parts of the country to withdraw land from the operation of the occupancy-right by preventing the natural growth of a fresh occupancy-right in the place of an old right which has determined; and secondly, that where occupancy-rights do, as a matter of fact, exist, the proof of their existence may be a matter of less difficulty than it is at present to the ignorant and helpless raiyat". In speaking of the necessity for legislation, and of the kind of legislation required, the Hon'ble Member re-produced a striking passage from the Report of the Famine Commission. "We have received" (the Famine Commissioners wrote) "a large amount of evidence, remarkable in its weight and unanimity, to the effect that in the Bengal Province the relations of landlord and tenant are in a specially unsatisfactory condition. We feel no doubt that the condition of the rent-law and the way in which it is administered in Bengal are a very grave hindrance to its agricultural prosperity, and that large portions of the agricultural population remain, owing mainly to this cause, at all times dangerously near to actual destitution, and unable to resist the additional strain of famine. We can feel no doubt that in all the provinces of Northern India, and particularly in Bengal, it is the duty of the Government to make the provisions of the law more effectual for the protection of the cultivators' rights. * * * * It is only under such tenures as convey permanency of holding, protection from arbitrary enhancement of rent and security for improvements, that we can expect to see property accumulated, credit grow up, and improvements effected in the system of cultivation. There could be no greater misfortune to the country than that the numbers of the occupancy-class should decrease, and that such tenants should be merged in the crowd of rack-rented tenants-at-will, who, owning no permanent connection with the land, have no incentive to thrift or to improvement. It is desirable for all parties that measures should be framed to secure the consolidation of occupancy-rights, the enlargement of the numbers of those who hold under secure tenures, and the widening the limits of that security, together with the protection of the tenant-at-will in his just rights, and the strengthening of his position by any measure that may seem wise and equitable."

These, I repeat, were the principles upon which the Bill was based, and these objects would have been effectually secured by the Bill as originally introduced into Council. In the amended Bill, fixity of tenure is weakened by the limitation of the definition of a settled raiyat to the village alone; fair rent is deprived of the safeguard (the only ultimate safeguard) of a maximum limit beyond which rent can never be enhanced; and free sale has disappeared altogether from the Bill, or survives only in a section which saves customary rights. The non-occupancy-raiyat has fared even worse, at the hands of the Select Committee, than his occupancy brother. The gross produce limit of his rent is struck out; he is declared liable

to ejectment on the ground that the term of his lease has expired; if he refuses to agree to any enhancement demanded of him, he cannot claim a judicial rent for a longer period than five years; and he may be ejected at any time before he has acquired a right of occupancy without obtaining any compensation for disturbance.

It will possibly be said that these alterations, sweeping as they may seem to be, are counterbalanced by other changes which have been made in the Bill, and that, when the account on both sides is fairly summed up, it will be seen that the objects of the original measure have substantially been attained. Let us consider how far this is the case as regards each of the two great classes of raiyats, and, first, as regards the occupancy-raiyat.

It must be admitted that transferability, or the right of free sale, is not an essential provision of the Bill. I believe that (in Bengal at any rate) it might usefully and safely have been conceded; but there were arguments in favour of a different conclusion, and it was open to the Select Committee to decide that transferability would not have the effect of either strengthening or extending the occupancy-right. I do not therefore desire to lay any stress on the abandonment of this provision.

With regard to fixity of tenure, the elimination of "the estate" from the definition of the settled raiyat is, I think, much to be regretted. If no middle course could be found, the Committee had to decide between a definition which might, in a few exceptional cases, entail a slight hardship on the landlord, and a definition which could easily be worked so as to produce, in a multitude of cases, a grievous wrong to the tenant. On this point the decision of the Committee was, in my opinion, a lamentable mistake. At the same time I admit that, as regards fixity of tenure, the position of the occupancy-raiyat is somewhat stronger under the amended Bill than under the present law, and that this object of the Bill has been partially, though still imperfectly, attained.

Fixity of tenure, however, without fair rent is worse than useless, and in the matter of fair rent the Bill signally fails to afford the occupancy-raiyat reasonable protection. He is protected, under the existing law, by the fact that the enhancement provisions of the Act now in force have proved to be unworkable. Such a condition of things is a public scandal, and the Select Committee rightly resolved that just claims to enhancement should no longer be baffled by the uncertain wording or the complicated conditions of the law. But the Committee seem to have overlooked the danger of enlarging the facilities for the use of the enhancement sections without also taking precautions to guard against the abuse of them. The Bill puts enormous powers of enhancement into the hands of the landlords. The sections relating to enhancement on the ground of the prevailing rate have been re-cast in a form which will practically allow the landlord to raise the rent of every raiyat in the village to the highest rate which he can persuade or compel any one to pay. In suing for enhancement on the ground of a rise in prices, the landlord will find the evidence, which it has hitherto been impossible for him to adduce, provided by Government ready to his hands. He will have nothing to do but to lay before the Court the official price-lists, and a decree in his favour will follow as a matter of course.

The feeble palliatives which the Bill provides are impotent to restrain the evils which the working of the enhancement sections is calculated to produce. It is declared that no enhancement shall be decreed in excess of what is fair and equitable; that the rent of a raiyat shall not be enhanced at intervals of less than 15 years; and that, in extreme cases, the Government of India may interpose, and may depute an officer, not, as usual, to enhance rents, but to reduce them. The first of these provisions may occasionally be of use in tempering the rigour of the law, but it is of too vague and indeterminate a character to afford any adequate protection. The second will make the pauperizing process more gradual, but not less certain or complete. And what shall we say of the third? Where is the wisdom of enacting a law the natural operation of which may produce a state of things which will require the law to be not merely suspended, but reversed? But in truth what is most to be feared is not such outrageous oppression as would call for the interposition of Government under this special provision of the Bill. What is most to be feared is that the gradual and steady operation of the enhancement sections will be a permanent bar to all improvement in the condition of the occupancy-raiyats. They will have no inducement to raise larger crops or to cultivate more valuable products, for they would be toiling for the benefit, not of themselves, but of their landlords. The machinery of this Bill they can neither resist nor evade.

These evil consequences would have been avoided, if the Select Committee had accepted two of the recommendations of the Government of Bengal. That Government desired, first, to restrict enhancement on the ground of the prevailing rate to those individual cases which it was originally intended to meet, and secondly, to prescribe an absolute limit beyond which no claims to enhancement should be allowed. The Government of Bengal saw that, if the landlord's demand were restricted to one-fifth of the gross produce in staple crops, rack-renting would be effectually stopped, the cultivation of the more valuable crops would be encouraged, and the agricultural advance of the country would be ensured. Unhappily, these views were not accepted by the majority of the Select Committee, and the amended Bill leaves the occupancy-raiyat without any adequate security in the matter of fair rent.

With respect to the non-occupancy-raiyat, the original Bill was designed to protect him against unreasonable exactions, and to facilitate his acquisition of the right of occupancy. I have shown what stress was laid on these objects, and especially on the second of these objects, by the Famine Commissioners and by the Hon'ble Member who introduced the Bill. It is therefore somewhat remarkable that the amended Bill leaves the non-occupancy-raiyat entirely at the mercy of his landlord as regards his rent. When first admitted to occupation he must pay such rent as may be agreed upon between himself and his landlord. It is true that, if he is afterwards called upon to agree to an enhancement, he may demand a judicial rent for a term of five years. But this provision will be inoperative, for the raiyat will be aware that, unless he comes to terms with his landlord in the matter of rent, the landlord will not formally demand an enhancement, but will sue to have him ejected. Those who know the peasantry of Bengal know that a raiyat will agree to pay any rent rather than face the alternative of ejectment from his holding. The provisions of Chapter VI of the Bill will therefore enable the landlord to exact from the non-occupancy-raiyat the highest rent which the land can possibly bear, a rent which will leave the tenant nothing more than a bare subsistence: and the demand of enhancement may be repeated year after year.

It is remarkable, as I have observed, that the amended Bill affords the non-occupancy-raiyat no protection as regards his rent. But it is still more remarkable that it does nothing to facilitate his acquisition of the right of occupancy. It provides, it is true, that he shall not contract himself out of the power to acquire the right. But this stipulation is useless so long as the Bill affords a simple and effectual means of ensuring that the right shall never accrue. The right can be acquired only by 12 years' continuous occupation of village-land. The Bill leaves it in the power of the landlord to rack-rent the non-occupancy-raiyat during eleven years, to eviet him in the twelfth, and then to re-admit him and begin the process again. In the populous parts of the country, the raiyat, who cannot live without the land, will have no resource but to submit.

Can it be alleged that such provisions as these redeem the pledges made when the Bill was introduced, or place the non-occupancy-raiyat in the position which he may equitably claim to hold? What was his status under the Regulations of 1793—the contract to which the landlords and their advocates so continually appeal? He was entitled (as Mr. Justice O'Kinealy has shown) to hold at the customary rate, and was not liable to eviction, except for non-payment of rent. What is his status under this Bill? He is a mere tenant-at-will, with absolutely no rights beyond those which his landlord may be pleased to allow him. It may not be possible to revert at the present day to the conditions of 1793, but at least it is reasonable to ask that the legislation of 1885 shall not place the non occupancy-raiyat in a worse position than he held in 1859.

I cannot admit that there is any force in the plea that the landlords, as a body, are not likely to strain to the utmost the powers given them by the Bill. The legislature is not justified in putting one class of men at the mercy of another class, on the chance that the latter will use their irresponsible power with moderation. And I must add that I feel no assurance that, as regards the accrual of the occupancy-right, these powers will be moderately used. I have already quoted the words in which the Hon'ble Member who introduced the Bill referred to "the vigorous efforts now being made by landlords to prevent the natural growth of occupancy-rights". There is overwhelming evidence before the Council to show that this feeling among the landlord class is widely spread and deeply seated. I apprehend that landlords will not fail to use largely the opportunities which this Bill will give them. They will not merely prevent the growth of the right over lands now held by non-occupancy-raiyats, but, as occupancy-holdings from time to time fall into their hands by death, abandonment or surrender, they will treat the new tenants of these holdings in the same manner. "There could be no greater misfortune to the country", said the Famine Commissioners, in a passage which I have already quoted, "than that the numbers of the occupancy-class should decrease". The provisions of the amended Bill seem to me to threaten the country with this misfortune.

For these reasons I am unable to assent to the Report, or to regard the Bill, in the form which it has now assumed, as an adequate and final settlement of the questions raised in this great controversy. If the Bill is to be accepted, it must, I think, be accepted only as an instalment of the legislation necessary to place the relations of landlord and tenant in these Provinces on a secure and satisfactory basis.

H. J. REYNOLDS.

Minute of Dissent.

The present rent law has been in operation for the last 25 years. One would have thought that legislation which aimed at an amendment of that law would be directed to such defects and objectionable provisions in it as judicial administration during this long period had brought to prominent notice. But this is far from the actual state of things. Upon one point, indeed, there was a consensus of opinion. The Government and the zamíndárs alike were agreed that the present procedure for the recovery of rent was lamentably defective. So acutely did the Government feel the difficulty that they caused special enactments to be passed by the Local Council for securing for themselves a summary procedure for the recovery and settlement of rent in their own estates, while the zamíndárs were left to follow the procedure which Government in their own case were compelled to abandon. When, again, the obligation of collecting the road and public works cesses was imposed upon the landholders, distinct promises were made to them that they should obtain statutory facilities for the recovery of rent by suit in Court. And when two Bills were introduced for the purpose in the Local Council (and neither of them was carried through) it was observed by the President from his place in the Local Council that "only the procedure sections (those for the more effective realisation of rents) should be proceeded with." So far, therefore, the very facts, which point to legislative action clearly show that there was no necessity for a substantive amendment of the Rent Law. There was besides the unwarrantable Proclamation issued by Sir George Campbell in 1872, setting forth that "it is perfectly lawful to unite in a peaceable manner to resist any excessive demands of the zamíndárs; but it is not lawful to unite to use violence and intimidation." For, the Pubna disturbances which occurred about this time, and the significant declaration of the raiyats that they had become the direct tenants of Her Majesty showed not that they were rising in arms against a Government which they meant to condemn as unmindful of their requirements, but that they considered themselves powerful for the assistance they had secured and that they were possessed of the upper hand over their landlords to whom they were liable for arrears of rent. In fact, before the Report and draft Bill of the Rent Commission were published in July 1880, no complaint was made on behalf of the raiyats about the harsh operation of any of the sections of the law and no suggestion for a revision of its fundamental principles emanated from any judicial officer. On the contrary, Sir Barnes Peacock had expressed as his decided opinion that the occupancy section was operating unjustly against the legitimate interests of the landholders and that it should be abolished. And it would be extraordinary to treat Sir Barnes Peacock's recommendation or the Government promise of a summary procedure for the recovery of rent as evidence of necessity or justification of a Bill like the one before Council which, in our opinion, makes serious inroads upon the ancient rights and privileges of the landholders. The draft Bill of the Rent Commission was based almost wholly upon theory and speculation, and its many innovations have only been shown up but never proved justifiable in the different stages through which it has since passed. In the meetings of the Select Committee, on which we had the honor to sit, the authority of the Rent Commission was invoked in support of several of the provisions of the revised Bill; in some cases the opinions of the Bengal Government contained in their letter of the 15th of September last was appealed to; in some the opinions submitted by public officers on the requisition of the Bengal Government were pressed into service; and in others again, it was advanced that it would be unwise to disturb the resolutions passed by the Committee last year. Authority ranging under one or other of these heads was no doubt forthcoming in support of the different sections of the revised Bill, but we do not see how this could be convincing to the Legislature in the absence of evidence duly tested by cross-examination by the members of the Select Committee. The advantages of cross-examination are sufficiently well-known and it would certainly be no disrespect to the most talented person or the best qualified expert if a man of inferior ability sought from his place in the Supreme Legislative Council of the country to satisfy himself by such orderly enquiries as happened to suggest themselves to him. And until such opportunity is offered to the most junior member of the Council, its deliberations must remain very unsatisfactory to itself and to the outside public. The private opinions of even judicial officers, when not confined to experiences of the actual operation of particular sections of the law, do not possess much value, and it would be dangerous to introduce new provisions in a difficult branch of the law on the basis of untested opinions of subordinate officers. When a learned judge of the High Court reads the Regulations to mean that "no lease was valid till it had been submitted to, and approved by, the Revenue Authorities;" and when another learned Judge of the High Court adduces the passage in Regulation II of 1793, *viz.*, "the property in the soil was never before formally declared to be vested in the landholders" as "conclusive on the point that the soil was not the property of the zamíndárs," we believe no apology is needed for our not placing implicit faith in the extra-judicial opinions of distinguished officers of Government. As regards the condition of the people and the necessity of radical changes in the law, in other words, the policy of the measure, if high officers of State, judicial and executive, may speak with any authority, it is no small accession of strength to those who are opposed to the main principles of the Bill to be able to say that a majority of Divisional Commissioners and not a few District Judges, share in their views.

Justice Cunningham's Minute, paragraph 16.

Justice O'Kinealy's Minute, paragraph 4.

But these opinions and the opinions of experienced Subordinate Judges on the operation of the different provisions of the present law have in many cases been undervalued by the majority of the Select Committee and consideration shown for the opinions of much less experienced officers upon a perfectly unsupportable estimate of personal weight. We shall have occasion further on to refer to some of these opinions. As regards the general features of the Bill it appears to us that vested rights of landholders have been interfered with without the sanction either of juridical principles or the formally declared authority of the Executive Council; that rights have been created in favor of one class of subjects and at the uncompensated cost of another class which, to say the least, are of dubious benefit to the country at large, and looking to the large question of growth of population and famine difficulties the changes are simply calculated to augment, rather than relieve, the pressure on Government. The charges proposed to be introduced by the Bill will have the further effect of making, in opposition to well-established principles of Government the judicial administration subordinate to the Executive authorities in many respects. And lastly, the changes alluded to are sure to bring about such an extent of litigation and uncertainty in dealings out of Court, that we shudder to think of the subject barely as inhabitants of the country and apart from our interests as landholders and from our feelings as the representatives of the landholders of Bengal and Behar. By a consensus of opinion, official and non-official, the result of the operation of the present law has been to place the whole body of raiyats in a condition of prosperity superior to what they previously enjoyed, and to what is enjoyed by the corresponding classes of people in any the smallest corner of this immense continent of British India. There would be no objection to that condition being made still better if it could be done without interfering with the welfare of the other classes. But we strongly believe that far from benefiting the tenantry the measure, in its present shape, if put in operation, will effect their ruin as a class, or in any case of the honester and poorer portion of them, by endless and harassing litigation. The very discussion of the measure upon the lines disclosed in the Bill is fraught with dangerous consequences upon the rural economy of the country and the firm social relations between class and class of the subject community, and between all classes and the Government at the head. We shall now proceed to examine some of the objectionable provisions of the Bill in detail.

Section 5 (5)—The rule that whenever the area of a holding exceeds one hundred bíghás, the raiyat shall be presumed to be a tenure-holder, is arbitrary and opposed to fact. There are many districts in which holdings, each exceeding a hundred bíghás, are not uncommon, but the tenants thereof are raiyats all the same. As no written engagements are usually exchanged, landholders will find great difficulty in rebutting the presumption which this clause will raise, while on the other hand the divisions and sub-divisions created by Hindu and Muhammadan rules of succession will ere long present the spectacle of tenures comprising of only 20 or 30 bíghás of land cultivated by the holders thereof.

Sections 8 and 56.—The power given to the Court to direct in the case both of tenure-holders and raiyats, that the enhancement of rent shall be gradual, is novel. As the enhanced rent represents what the landlord is entitled to get, and what the Court considers to be fair and equitable under the circumstances of the case, the provision in question is wholly indefensible. Lord Bramwell truly observed with reference to this provision.—"Now what consideration would influence the Court; I do not know whether if the tenant had got half a dozen children it would be a hardship upon him to have his rent suddenly enhanced I do not know. We do not see how that can be taken into account, indeed, what could be taken into account really under such a clause as that.

Sections 9 and 37.—The change of the minimum period from 10 to 15 years for which an enhanced rent should obtain currency, is equally arbitrary. Both in the draft Bill of the Rent Commission and the Bill introduced into the Council, the period was 10 years. Although landholders are lawfully entitled to claim enhancement whenever there is a rise in the value of produce and consequent depreciation of the exchange value of money, the limitation of 10 years would be an effectual check to oppressive repetitions of claims for enhancement, but considering the strides the country is daily making in material progress the extension of the period is wholly unwarrantable.

Section 18.—The provision to extend to a raiyat holding at a rent or rate of rent fixed in perpetuity the same rights of transfer and succession that belong to a tenure-holder is wrong in principle. The same considerations which have induced the committee to expunge the sections regarding free sale of occupancy-rights hold good in the case of these raiyats as forcibly as in the case of other occupancy-raiyats. The landholder's objections to a free sale no less than economic considerations in the interests of the raiyats do not lose a particle of their force, whether the raiyat is protected from enhancement or he is liable to pay a fair and equitable rent. The practical operation of the section would, moreover, be productive of the greatest confusion. Every raiyat will claim to hold at a rent or rate of rent fixed in perpetuity, as by so doing he would not only secure to himself a right of free sale, but also protect himself from the conclusion that his rent is liable to enhancement. It would be suicidal on his part to behave himself otherwise than as a raiyat contemplated by this section and thus without any struggle with his landlord to confess himself a raiyat whose rent is liable to enhancement. But what is the Registering Officer, the Court and the Collector to do when a raiyat applies under Chapter III for the registration of a transfer of his holding? Is the Registering Officer or the Collector to enquire and decide in every such case whether the holding is protected from enhancement, or is he to exercise an arbitrary discretion in the matter? Again, is the section to apply to a

raiyat who holds at a rent or rate of rent fixed in perpetuity, but whose rent has nevertheless been enhanced by reason of improvements made by his landlord or by reason of his having been found in possession of more land than what he pays rent for? The difficulty would, to a certain extent, be remedied if it were provided, that the provisions of Chapter III should be made applicable only to those raiyats whose rents are protected from enhancement by a registered lease or judicially declared title.

Section 20 (5).—This sub-section provides that for one year after a man has ceased to hold any land as a raiyat in a village he shall continue to be a settled raiyat in that village. This is wholly anomalous. A man cannot have ceased to be a raiyat and still continue to be a raiyat at one and the same time. The provision contained in Section 87 in respect of apparent and not actual abandonment would be a sufficient protection to the raiyat in cases contemplated by this sub-section which involves a contradiction in terms.

Section 20, Sub-section 7.—The rule of presumption created by this sub-section is a downright perversion of the law of evidence. Nothing is more easy for a raiyat who has held land for 12 years than to prove his possession by the production of his rent-receipts. It is not altogether an easy matter for the landholder to prove the negative. Even supposing that there has been no change of hands in the proprietary title, a landholder would be unable to prove his papers if within 12 years there have been changes, as there frequently are, by deaths, dismissal and otherwise, in his collecting agency. The difficulty would be unsurmountable in the case of auction-purchasers who would have no means whatever at their disposal for rebutting the presumption.

Section 21.—The provision contained in sub-section 1, to the effect that a settled raiyat shall have a right of occupancy in all land for the time being held by him cannot be supported on any considerations which justify the accrual of a right of occupancy. It is no reason that because a man has a right of occupancy in a certain plot of land that the right should extend by possession for a single day to every plot of land that might be let to him. This is directly opposed to the Despatch of the Secretary of State. It is, moreover, a provision which will act injuriously on the settled raiyats themselves. They will hardly get new lands for cultivation which landholders will take care to let to non-occupancy raiyats and strangers with a view to prevent the accrual of a right of occupancy.

Section 21 (2).—The effect of the operation of sub-section (2) would be to give a raiyat a right of occupancy in land which he has held "at any time between the 2nd day of March, 1883, and the commencement of this Act," although such land might have passed to the possession of the landholder or another raiyat by abandonment, surrender or transfer at some time within that period. Nothing could be a more fruitful source of litigation.

Section 22, Sub-section 1.—This sub-section introduces the doctrine of merger in a matter relating to landlord and tenant not for the purpose of preventing in the spirit of the Ruling reported in 10 Indian Law Reports, Calcutta 45, the acquisition of a right within a superior right, but for the purpose of merging an existing right in the superior right. For reasons explained by Sir Barnes Peacock in a case reported in 10 W. R. 15, this is quite opposed to the system of land-tenures and the condition of the country. The provision is the more objectionable as it saves the right of third parties in the land. The landholder would, therefore, get the land which comes to his possession by purchase, ejectment, abandonment or surrender subject to all the encumbrances created by the out-going tenant. Provisions have been made, it is true, in subsequent sections for defining what would be deemed to be valid encumbrances in different cases, but the language of this sub-section is absolute.

Section 25.—As the provision for a free sale of occupancy-holdings has been abandoned, this section should provide for ejectment for non-payment of rent. A sale of the holding at the instance of the landholder in execution of a decree for rent would, in every case, heap upon the raiyat additional costs which the sale proceeds might not cover and would thus entail loss both upon the landholder and the raiyat. Ejectment would be a simple and effective remedy to the landholder, while the raiyat would always be able to prevent it whenever his holding is worth more than the amount of the decree.

Section 29 (1).—It might well be taken as an established fact that the price of produce has quadrupled since 1793, and at least doubled within the last 30 years. The productiveness of land has also increased immensely. The restriction which this section imposes upon enhancement by contract to 2 annas in the rupee is therefore most arbitrary. The rule involves a serious infringement of the rights of landholders. The right which the Government of India, when introducing the Bill, assumed it possessed of determining the rates of rent payable by raiyats to their landlord has, I venture to think, been found to be non-existent. A close examination of it will show it to be wholly unfounded. The question, it is well known, engaged the attention of a Select Committee of the House of Commons in 1832, and the conclusion to which they came after a searching enquiry can hardly be ignored at the present moment. They observed—"unless the Government should either, by public or private purchase acquire the zamíndáry tenure, it would under the existing Regulations be deemed a breach of faith, without the consent of the zamíndárs to interfere directly between the zamíndár and the raiyat for the purpose of fixing the amount of land tax demandable from the latter under the settlemet of 1792-93." The proposed restriction is, however, altogether uncalled for by the circumstances of the country. No evidence whatever has been adduced to show that the raiyats in any parts of these Provinces are rackrented; all the evidence on the contrary goes to show that landholders have been extremely moderate and forbearing in the matter of settlement of rent with their raiyats. The ratio which rent bore to the value of annual produce at the

time of the Permanent Settlement varied according to Sir Jhon Shore from $\frac{1}{2}$ to $\frac{3}{4}$ths, and although the landholders were clearly entitled to get from time to time such enhanced rents as represented the changed value of money according to that ratio, it is an undisputed fact that the ratio which rent bears to the annual value of produce at the present day ranges in different parts of these Provinces from $\frac{1}{20}$ to $\frac{2}{5}$ths. Apart therefore from the question of *legal rights the restriction in question is a great injustice to the landholders.* The effect of the rule on the economic condition of the country would be an unmixed evil. The experience of every country has confirmed Arthur Young's observation that low rents always act as a damper upon industry and ultimately tells seriously upon the condition of agriculture and the prosperity of the cultivating class. The restriction in question will no doubt be felt by the raiyats as a benefit for a few years but ere long the profits of the holdings will give rise to a large class of under-raiyats, increase sub-infeudation to an alarming extent, and thus make a definite area of land feed two, perhaps, three families of raiyats in the place of the one that it is now feeding. In these Provinces where, according to the figures given in Dr. Hunter's Statistical Accounts, more than one-fourth of the average cultivable area is still uncultivated, not one of the least deplorable consequences of such a state of things would be to check the extension of cultivation and the progress of emigration. The question presents another aspect. Would this legislative embargo effectively control the law of demand and supply? Can the legislature force the principles of political economy to bow to its dicta? If a raiyat and his landlord agree between themselves as to the extent to which the rent should be enhanced, ways and means would not be wanting to give their agreement the form of a binding contract. After the terms have been agreed upon the landholder may sue the raiyat for enhancement at a certain figure and the raiyat may confess judgment in Court, or the raiyat may give the zamíndár's as *salami* the capitalized value of the increase in excess of the enhancement allowed by law. The parties may have recourse to other shifts and devices to defeat the law. But perhaps the history of the provision is its strongest condemnation. The draft Bill (section 71) of the Rent Commission provided that there should be no limit to enhancement by contract. That provision was maintained in the draft Bill (section 63) of the Bengal Government, and also in the draft Bill (section 63) which was sent up to the Secretary of State in Council. It was the Bill which was sent up to the Secretary of State in Council. It was the Bill which was introduced in Council in March 1883, which for the first time provided (section 59 (2) that the increased rent should not exceed 6 annas in the rupee. The Select Committee in the course of deliberations last year reduced the limit to 4 annas in the rupee (section 41). At a meeting of the Select Committee, held on the 8th ultimo, a motion was made on the part of the Bengal Government to reduce the maximum limit to 2 annas in the rupee, but it was not supported by a single member, and it was therefore not carried. The motion was renewed on a subsequent date in connection with the question of a maximum limit to enhancement by suit in Court and carried by a majority. It should be further observed that the extension of the minimum time from 10 to 15 years during which the enhanced rent should obtain currency, was for the first time made by the Select Committee last year; the draft Bill of the Rent Commission, the draft Bill of the Bengal Government, the draft Bill of the Government of India, and also the Bill which was introduced in Council in 1883, all fixed the minimum period at 10 years. The objections to this limit which we have mentioned with reference to tenures apply with double force in the case of raiyati holdings.

Section 29 (2).—This sub-section contemplates an exercise of powers by the registering officer which is likely to do the raiyat more harm than good. Registering officers are not expected to exercise judicial powers, and yet in the face of his opinion under this sub-section, it would be difficult for a raiyat to prove in the Civil Court that he was not at the time in a sound state of mind, or that he was not competent by reason of his minority or other disability to enter into the contract.

Section 50 (*b*).—The alterations made by this section in the grounds on which a suit for enhancement of rent may be instituted would deprive landholders of enhancement which is justly due and at the same time introduce unnecessary complications in the law to the injury both of the landholder and of the raiyat. There will be no enhancement on the ground of a rise in price unless the rise is in respect of the price of the staple food-crops. By section 39 (7) the local Government has to determine what shall be deemed to be staple food-crops in these provinces, and it appears from a letter written by the Revenue Secretary to the Government of Bengal to the Secretary of the British Indian Association, dated the 23rd February 1884, that "the Lieutenant-Governor would probably declare to be staples the two *food-grain crops* (apparently rice and wheat) which appear * * to be most largely produced in each district." The effect of this alteration would be very harmful. The landholder would get no enhancement for a large rise in the price of jute, sugarcane, or potato, if there has been no rise in the price of rice; while on the other hand a raiyat cultivating simply jute, sugarcane, potatoes or pulses would have to pay not only enhanced rent to his landlord but also to spend *more money* for his living if the price of rice has risen although the price of these other crops has fallen or remained stationary. It is easy to see that in some cases the operation of this section would be disastrous to the raiyats.

Section 50 (*c & d*).—The alteration made in the ground of enhancement relating to increase of the productive powers of the land is equally objectionable. These clauses provide for enhancement when the increase is due either to improvements effected by the landlord, or by fluvial action; but there are other causes of improvement for which the landlord is undoubtedly entitled to get enhancement of rent. Where, for instance, a change in the course of a river, a new railway, a *new public road* or a new Government embankment frees land from periodical inundations or from frequent trespasses by cattle or wild animals, any rule which deprives the landlord of his share of the benefit of the improvement militates against the very principle on which enhancement on the ground of improvement of the land is based. The alteration in this ground of enhancement has necessitated the introduction of a number of sections about landlords' improvements, and enquiries into the same and registration thereof which might well have been omitted.

Section 31 (*a*).—There is no justification for the rule contained in this clause to the effect that a landholder, claiming enhancement on the ground that the rent paid by a raiyat is below the prevailing rate should prove the rates of rent paid during a period of not less than 3 years. If the majority of the raiyats of a village have agreed to pay a certain rate of rent and paid that rent by reason of a rise in the price of produce or improvement of the land, why should the landholder have to wait for 3 years before he could sue the remaining dozen or score of raiyats for enhancement of rent at that rate? If these raiyats have any grounds entitling them to continue to hold at a lower rate of rent they may prove such ground as well at the time as 3 years after.

Section 32 (*a*).—Enhancement of rent on the ground of a rise in price of produce would be more visionary than real if, in addition to the other limitations, the restrictions contained in this section are allowed to stand. The Court is required to ascertain the price by comparing the average prices during the 10 years' immediately preceding the date of suit. An average of such a long period will necessarily reduce the rate of enhanced rent and deprive the landholder of his proper dues. It would be enough, for the purpose of determining whether a rise in price is merely casual or steady if the average of 3 years is taken. In connection with this matter it is noticeable that section 38, which provides for reduction of rent on the ground of a fall in the price of produce does not contain the rule to which I object. In all fairness, the rule of procedure should be the same in both cases, but from the way in which section 38 is worded there is nothing to prevent the Court from decreeing reduction of rent on the basis of an average of 2 or 3 years

Section 32 (*b*).—The restriction to enhancement contained in this clause is based on a wrong assumption of facts and on false reasoning. The clause provides that, for the purpose of determining the enhanced rent according to the rule of proportion, the average price should be reduced by $\frac{1}{3}$rd of the excess, that fraction representing the increased cost of cultivation. The portion of the Report of the Bengal Government (segment 44), on the basis of which the rule has been introduced, proceeds on wholly erroneous data from beginning to end. Enhancement by the rule of proportion as contained in the first part of this clause involves three different contingencies as regards the costs of cultivation. The costs of cultivation (1) might have increased in the same ratio as the price of produce; (2) they might have increased in a less ratio; (3) they might have increased in a greater ratio. If these costs be taken into consideration the result, by the rule of proportion, would be wholly unaffected in the first case; the landholder would be entitled to get more in the second case in the shape of enhanced rent than he would otherwise get, and it is only in the third case that the raiyat would be entitled to a reduction in the enhanced rent. But where is the evidence to show that the costs of collection have increased in a greater ratio than the price of produce? The statement made by some of the officers to the effect that the costs have increased goes for nothing, as they may have increased in the same or in a less ratio than the price of produce. To illustrate our meaning we shall take a hypothetical case. Let the value of the annual produce of a bígáh of land be Rs. 8, of which Rs. 3 represents the costs of cultivation Rs. 3 the rent and Rs. 2 the profit of the raiyat, and let the rise, as assumed by the Bengal Government for purposes of illustration, be 25 per cent. in prices, so that the value of the annual produce has become Rs. 10. Then, under the simple rule of proportion, the enhanced rent would be Rs. 3-12, the profit of the raiyat under the rule of proportion would be Rs. 2-8, and the balance Rs. 3-12 would represent the costs of cultivation. The rule of proportion, therefore, assumes that the costs of cultivation have risen in the same proportion as the price of produce—an assumption which in a majority of cases is far more favorable to the raiyat than to the landholder. It is this which induced the learned Judges in Thakurany Dasi's case to hold that the cost of cultivation should not be taken into calculation in working the rule of proportion. The report of the Bengal Government states: "Thus if prices rise 25 per cent. they would increase the rent 12½ per cent., and allow the other 12½ per cent. to go as an allowance for increase in costs of production." It is easy to see that this is both arithmetically and logically erroneous. If 12½ per cent. be allowed for costs of cultivation out of the landholder's share, the actual allowance for such costs would be 37½ per cent.

Section 33 (*a*).—The necessity of registering landlord's improvements created by this section would involve an amount of expensive enquiry which few landholders will care to invite, and the result will, therefore, be to deprive them of *enhanced rents to which they are fairly* entitled.

Section 34 (*b*).—Where land is washed away or covered with sand, it is the landlord who suffers. A portion of the land on which lay the security for his revenue is gone. The raiyats who held the land would be welcome to cultivate other plots of lands, but the loss to the landholder is irretrievable. As some compensation for such cases, might not they reasonably ask that they should be allowed the whole benefit of improvements in land caused by natural causes?

Section 38 (b).—The same rule of procedure as regards the determination of average prices should hold good both in cases of enhancement and reduction of rent. If it be an average of 10 years in the one case let it be the same also in the other.

Section 40.—Few provisions in the Bill will do more harm to the Behar landholders than the provision contained in this section for the commutation of produce rent into money rent on the application of the raiyat. The institution of payment in kind is one eminently deserving of every encouragement at the hands of the legislature. A Government settlement-officer has rightly observed: "It gives the landlord a fair profit in any improvement he may make; the rents are self-adjusting; the tenant is not driven into debt to meet a fixed demand; if he borrows, he borrows from his landlord, a less exacting creditor than the village banker; a feeling of mutual interdependence and self-interest is created between landlord and tenant; the former is more than a mere rent collector, his own prosperity depends on that of the cultivator." If commutation is allowed at the instance of the raiyat it would entail all the trouble, expense and litigation inseparable from settlements of money rent, involve raiyats in debt, and seriously affect the cause of agriculture. Lands for which produce rents are paid usually require the co-operation of the landholder for their cultivation. In most places, as in the districts of Patna and Gya, such co-operation is indispensible. The utter uselessness of attempts on the part of individual raiyats to cultivate such lands without the help of the landholder is nowhere better explained than in the very valuable letter written on the subject by Bábú Bhupsen Sing, Government Pleader of Gya. He writes: "Because, in the first place, his holding being scattered in small plots and patches all over the village area, many at considerable distances from the *ahars* and *pynes*, he will not think it worth his while to spend any money upon the construction and repairs of the common reservoirs and water-courses; secondly, because he has not the means, nor has he any credit with money-lenders, to raise the required sum by loan; thirdly, because, in the present state of the country, the habits of the people, their ancient and inherited mode of thinking, and their want of confidence in each other, so natural in monetary transactions among the ignorant and illiterate mass to which the majority of the cultivators belong, would make combination and raising up of subscriptions among themselves, creation of a joint common fund and the appointment of trustees for the proper management of such a fund, anything but practicable within the bounds of possibility; fourthly, because, assuming, even for the sake of argument, the possibility of the creation of such a fund and the appointment of such trustees as aforesaid, the mob would be without a lead, and each raiyat having paid for the common reservoirs and water-channels would claim the priority of irrigating his fields, and try to assert his rights or supposed rights, by means, fair or foul, which would often lead to serious affrays, resulting in the "breaking of bones and shedding of blood, and sometimes terminating in murders and man-slaughters."

Chapter VI.—The rights given by the Bill to a non-occupancy-raiyat will, to all intents and purposes, convert him into an occupancy-raiyat. He may (section 85) sub-let his holding so as to make the sub-lease binding for 9 years, although his own tenure might be for a much shorter time. The landlord will have no power to eject him for refusal to pay enhanced rent. He must serve upon him a notice of enhancement, sue him in Court, and it is only when the raiyat refuses to pay rent at the rates paid by occupancy-raiyats that the landlord may get a decree for ejectment. A non-occupancy-raiyat may (section 79), as a matter of right, dig a well, and erect a dwelling-house and out-offices on his land and make any other improvement after having first served a notice on his landlord requiring him to do so. When a decree for ejectment is passed the Court may extend the time beyond 15 days, the raiyat will be entitled to get from his landlord the price of the crops, if any, on the land or the cost of the preparation of the land and also (section 82) compensation for improvements made by him. If the landlord applies for a record and settlement of rights, or if the process is forced upon him by the Local Government, the rent of the non-occupancy-raiyat, whether enhanced or reduced, will hold good for 5 years. All these provisions are violent inroads upon well-recognized rights of landholders. It appears to us, however, that the effect of their operation would be to place non-occupancy-raiyats in a much worse position than at present. Having an absolute right of ejecting such a raiyat on the expiry of the term of his lease, the landholder will in every case grant short term leases with a view to protect his interests and thus reduce non-occupancy-raiyats to mere tenants-at-will. For the purpose of providing for the comparatively small number of cases in which landholders have not or may not protect themselves by contract, a number of sections have been introduced in different parts of the Bill which might well be omitted. They simply add to the radical aspect of the measure without doing any corresponding good.

Chapter VII.—I shall discuss the provisions of this chapter along with section 85 which might well have formed a part of this chapter.

Section 50 (2).—The operation of the rule of 20 years' presumption has been most injurious to the landholders. Instead of merely giving the raiyat a facility for proving that he and his ancestors before him have been in possession by payment of rent at a uniform rate since 1793 in cases where he has been actually in such possession, it has, like a rule of prescription or of limitation, created rights where none existed before. By the very circumstances of their position the landholders have been unable in most cases to rebut the presumption. Those landholders whose families have been in possession of estates since 1793 form a very insignificant number, the vast majority having acquired their estates by purchase since that time, and as it is notorious that the records of landholders are badly kept, and the climate of the country is inimical to the preservation of old records, it is easy to see that excepting a very few cases landholders have been wholly unable to discharge the burden laid upon them by law. The injustice of this rule of presumption has been exposed by none so well as by the Hon'ble Mr. Reynolds in the report which accompanied his draft Bill. He is supported in this respect by a large number of experienced Revenue Officers, District and Subordinate Judges, who were consulted by the Bengal Government on the subject. Mr. H. L. Dampier, Mr. E. E. Lowis, Mr. G. N. Barlow, Mr. Kean, Mr. D. W. Doyly, Mr. R. Porch, Mr. A. Weekes, Mr. C. B. Garrett, Mr. J. Tweedie, Babu Srinath Rai, Babu Bhagaban Chandra Chakerbutty, Babu Naffar Chandra Bhutta, Syed Moazim Hossein and others have recommended either the abolition of this rule of presumption or a material modification of it. Considering that the rule is opposed to the recognised principles of evidence, that it is opposed to the fact that from ⅛ to ⅜rds of the area of these provinces was waste at the time of the Permanent Settlement, that it has been in operation for the last twenty-five years during which all who really required it and many more have had their titles judicially declared, that it places in the way of auction-purchasers, seeking to get their just dues, obstacles which are practically insurmountable, and that it would operate in future with double hardship upon the landholder, it is but fair to him that the rule should be expunged from the Bill. The justice and necessity of its abolition cannot be better supported than by referring to section 190 of the Bill. When Government with all the means and appliances which a well kept and organised system of accounts placed at their disposal, find it necessary to protect their own interests by freeing those khas mehals which have never been permanently settled (and these form the majority) from the operation of this rule of presumption, how much more imperative must be the necessity for an amendment of the law in the interests of private landholders?

Section 50 (3).—The question as to in what cases the rule of 20 years' presumption, notwithstanding that land has been added to or taken from a holding should apply should be left to the decision of the Courts, according to the merits of each case. A hard-and-fast rule, that the presumption shall appy to all cases of consolidation or reduction of holdings may be fraught with great mischief. The remarks of Sir R. Couch in this connection contained in a ruling reported in 21 W. R. 267 are well worth considering.

Section 56 (4).—Considering that section 58 gives the tenant full remedy for refusal or neglect on the part of his landlord to give him a receipt in proper form, this sub-section is wholly unnecessary. It is likely to prove a fruitful source of litigation by holding out to the tenant a prospect of discharge from all liability, if he can shew that his landlord has not put in some one particular in his receipt although it might have been from ignorance or oversight.

Section 58.—A demand of the receipt by a letter under a registered cover should precede the institution of a suit for recovery of penalty. The section, as it is, would offer a great temptation to the tenant to refuse to take the receipt and sue his landlord for recovery of double the amount paid by him.

Section 61.—Clauses (*c*) and (*d*) of this section are objectionable. A landholder's agent might have once refused to take rent from a raiyat on the ground of his not being a recorded tenant, or on the ground of some dispute as to the amount of rent, but that is no reason why it should be assumed that he would refuse to take rent at all future time, notwithstanding that the matters in dispute have been settled. There should be a tender of payment in every case before deposit is allowed. Nor should the raiyat be allowed to constitute himself a judge of his landlord's title, and to deposit his rent in Court on the plea that by reason of a suit instituted by a third party, against his landlord, he feels a *bonâ fide* doubt as to his title to receive it.

Section 64 (1).—If this sub-section were made applicable only to rents deposited under clause (*d*) of section 61, we should have nothing to say; but we strongly object to it as it clearly refers to all classes of deposit of rent. The Court should certainly have no power to pay money to B, when the raiyat has deposited to the credit of A.

Sections 74 and 75.—Exception should have been made in these sections in regard to such impositions "in addition to actual rent" which are allowed by law. Take for instance the case of zamíndárí dawk charge, which is by law (Act VIII of 1862, B.C.) payable by the zamíndár, but which he may (section 9) stipulate with his raiyats for payment by them. Take again, the case of the road cess. It is payable by law both by the raiyat and his landlord in certain proportions, but there is nothing to prevent the latter to bind the former by contract for the payment of the whole amount by him. Sec. 4, Indian Law Reports, Calcutta, 576. The Salamy which the landholder is clearly entitled to get for parting with a portion of his rights, *e. g.*, allowing the tenant to take earth for brick-making, should also be expressly excepted. This is the more necessary, as the penalty provided in section 74 is very heavy.

Sections 76—85.—These sections, about improvements and compensation for improvements have been strongly objected to by landholders. If they are allowed to stand, landholders should be given the prior right to make an improvement, where both they and their raiyat wish to make it; the right of non-occupancy raiyats to make improvements should be taken away, and the difference in this connection between an occupancy-raiyat holding at a fixed rent or fixed rate of rent, and other occupancy-raiyats should be abolished. Section 77 furnishes another instance of the great confusion which will arise, if this distinction is maintained. It is provided in clause (3) that if there is a dispute between the raiyat and his landlord "as to the right to make an improvement," the Collector should "decide the question and his decision shall be final." The Collector must therefore determine finally and conclusively, although quite in an incidental way, whether a raiyat holds at a fixed or enhancible rent.

Section 85.—The effect of the various provisions of the Bill regarding sub-letting and under-raiyats would be to give a great impetus to the progress of the institution, although both the Secretary of State in Council and the Government of India have expressed a desire that the institution should be discouraged. A registered sub-lease will be ordinarily binding for nine years, the sub-lessee's rent may not be enhanced beyond a certain percentage over the lessors' rent, in certain cases of sale of the lessors' title the sub-lease cannot be avoided, and even in cases of abandonment by the lessor he will have the right to hold on if he agrees to pay the rent payable by his lessor. These provisions would be more harmful to landholders and their raiyats than a provision of free sale of occupancy holdings with the restrictions which the revised Bill imposed upon it.

Section 86 (2).—The Bill provides for a notice of six months to be given to the raiyat in a case of ejectment. It is fair to the landholder that he should receive a notice of an equal period in a case of surrender.

Section 86 (3).—This clause is objectionable. The notice may fairly be presumed if the landholder lets the surrendered land to another raiyat in the beginning of the year, but to presume it in any other case would be doing him wrong. To presume the service of the notice from the fact that the raiyat has taken a new holding in the name of a relative or friend would be contrary to all rules of evidence, and to raise the presumption from the fact that the raiyat has ceased for three months to live in the village, would be to expect the landholder to act in a way quite opposed to the provisions of section 87. When the question is one of continued liability of the raiyat to pay rent, he will be presumed to have surrendered his holding simply from the fact of his having ceased to live in the village for three months, but when the question is one of the landholder's right to re-let land which has been abandoned, no abandonment will be presumed till the expiry of the year, in which the raiyat so abandons, and not even then till the Collector on the application of the landlord has published a notice in the locality. It is provisions like these which have given the Bill such an one-sided character.

Section 87.—The attempt made in this section to formulate the nature of evidence required to prove an abandonment, has singularly failed. A raiyat must (1) abandon his residence; (2) omit to make any arrangement for the payment of rent, and (3) cease to cultivate the land, before he can be said under the section to have abandoned his holding. In the case therefore of a pykust or non-resident raiyat, there can be possibly no abandonment of a holding, unless the raiyat abandons his native village belonging to a different landholder. The landholder will have no right to let the lands abandoned by a pykust raiyat to another raiyat until the pykust raiyat "abandons his residence," a contingency which may never happen. Again, there is no reason why a landholder should have to wait for one year, and lose his year's rent, if he is satisfied that the raiyat has really abandoned his holding. The provision for the publication of notice contained in clause (2) and for the recovery of possession by the raiyat contained in clause (3) would be a sufficient check against any *malâ fides* of the landholder.

It should be also observed that clause (3) extends the time within which a raiyat may sue to recover possession from one year to two years. This extension of time is under the circumstances of the case, altogether unnecessary, and it will complicate matters, and give rise to litigation. If the land be let in the meantime to a settled raiyat of the village, and if he lets it to another under-raiyat under a registered sub-lease, what an amount of confusion would be caused?

Section 90.—This section takes away important rights of landholders as regards measurement. If the raiyat refuses to attend the measurement and point out his land, clause (2) will place him in no worse position than a raiyat who has attended and pointed out his land. In both cases, the measurement will be presumed to be correct unless the contrary is shewn. The most noticeable defect in the section is however, the absence of any provision for cases in which a landholder, usually an auction-purchaser, is unable to ascertain the raiyats who are in possession of the lands of his estate. A landholder may under such circumstances, it is true, make an application under the Record-of-Rights Chapter, but it would throw upon him not only a deal of expense and trouble but would place him at the mercy of the Revenue-officer.

Sections 93-100.—The strong support which the Bengal Government gave in their Report to the provision for the appointment of managers in joint estates was based on an erroneous assumption that it was the existing law. That law was, however, repealed in 1874 when other obsolete enactments were repealed. Since then no necessity has been made out for a provision like this which will place in the hands of a small fractional shareholder of an estate the power of seriously annoying and injuring his co sharers. Considering that the holders of small estates collect their own rents from the raiyats, the appointment of a manager by Court will eat up all their profits. The facilities which the law and the rulings of the Courts have given for the partition of joint estates have rendered such a provision as this wholly unnecessary.

Sections 101-114.—Both among landholders and raiyats this is one of the most unpopular portions of the Bill. These sections give to the Executive Government a power to convulse rural society to an extent far exceeding anything which any differences arising out of the ordinary relations of landlord and tenant can create. Even under circumstances of agrarian disturbances neither of the contending parties would avail themselves of these provisions. The Agrarian Disturbance Act of 1879 remained a dead-letter so long as it was in the Statute Book. The Select Committee have made these provisions much more objectionable than before by introducing a section (section 111) which gives the Revenue-officers power to reduce existing rents either on the grounds allowed by law or on any other ground, and we think that in justice to the landholders and in the interests of the raiyats themselves, these sections should be omitted.

Section 116.—A record of proprietor's private lands should be made only on his application, as it would otherwise put the landholder and his raiyats to great expense and trouble at a time when there is perhaps perfect peace and harmony between the parties and when neither of them is prepared for the enquiry. The provision empowering the Local Government to order such an enquiry at any time they please, and without any application on the part of the raiyats or their landlord, is, therefore, highly objectionable. Section 120 involves an anomaly. If a landholder after having cultivated by his own servants a piece of land for 12 years before the passing of the Act, turns it into raiyatti land, he will still be enabled after a lapse of 15 or 20 years, when the record will be made, to claim it as his private land and to get it so recorded.

CHAPTER XII.—The provisions relating to distraint amount virtually to an abolition of the institution. They will give the landholders no greater powers than what the Code of Civil Procedure gives to every plaintiff who may wish to get an attachment before judgment. The landholder looks upon the crops as the security for the recovery of his rent. The sale of the houses and the goods and chattels of raiyats is often times quite inadequate to meet the landholder's claim. In the case of non-resident raiyats the crops raised by them are the landlord's only security for his rent. If they remove the crops before paying the rent the landholder generally loses his rent for the year. The procedure contained in this chapter would therefore result in this, that while the landlord is engaged in making application to the Court and satisfying it of the *bona fides* thereof, the raiyat will quietly remove his crops and the former will not only lose his rent but also the costs of the application. It is a misnomer to call that a distraint which is nothing more or less than a process of Court. The present law on the subject does not give the landholder any power which might be possibly abused. He can only attach the crops, but he cannot interfere with the raiyat's doing what he likes with the crops without the assistance of the Court. It is the fear of the consequences if the raiyat removes the distrained crops that constitute the landholder's whole security for the rent. There have been no complaints on the part of judicial officers of any abuse of the power which the present law allows with impunity. On no point, on the contrary, have public officers expressed themselves more forcibly than in condemnation of the procedure contained in the Bill and in support of the existing law. The Presidency Conference, the Patna Conference, the Rajshahi Conference, the Burdwan Conference, the Orissa Conference and a number of individual officers have recommended the retention of the existing law.

Section 153 (b).—The rule allowing an appeal in all cases should not be interfered with. Rent suits should not be judged by the amount of the claim. Very often they possess an importance to which the value of the suit is no index. All those whom we have consulted are of opinion that it is much better that they should have the constitutional right of an appeal than that their suits should be finally decided by special officers selected by the local Government.

Section 154.—The time within which a suit for enhancement may be instituted should be extended to the first 9 months in order to enable the landholder to judge from the condition of the crops whether he should institute the suit in a particular year. No one would like to institute a suit for enhancement when the prospect of the crops is gloomy or distress is impending over the country.

Section 155 (1).—Provision should be made for service by Court of the notice of ejectment. If it were left to the landholders, as this sub-section does, the service would be denied in most cases and the enquiry would entail unnecessary expense and delay.

Section 156.—A decree for ejectment severs the relation between landlord and tenant. If there be crops on the land they go with the land to the landholders, as ruled in a case reported in 5 Indian Law Report, Calcutta, 135. This section lays down a principle and provides for an elaborate enquiry quite in opposition to the judge-made law on the subject. A raiyat may be ejected only at the close of the year when the crops have been reaped. There is, therefore, no necessity for this section. Moreover, when a raiyat's interest may be sold outright four times in the year, a provision regarding crops in cases of ejectment only would give the raiyat an illusory protection.

Section 160.—This section introduces serious changes in the present law regarding what are called the protected interests. There could be no objection to a lease for building or manufacturing purposes granted at a fair rent being protected from avoidance on the sale of the superior tenure as provided in the present law, but this section goes much farther. A lease of land whereon manufactories have been erected, perhaps without the consent of the landholder, and reserving a nominal rent is declared a protected interest by this section; as also judicial leases granted to non-occupancy raiyats and permanent leases granted by the out-going tenure-holder. The effect of these provisions will be that it would be in the power of a tenure-holder to creates leases in the names of his servants and relations which would absorb the entire profits of the tenure and then put it up to sale by making default in the payment of rent. Most tenures would be rendered quite valueless in no time if these provisions are retained.

Sections 161—168.—These Sections introduce alterations in the existing law which will prove a fruitful source of litigation. No necessity whatever was felt for provisions like these. If the sale be made in the first instance subject to the registered encumbrances, and then, after the sale proceeds have been found to be inadequate, a second sale be made with power to avoid such encumbrances, it would saddle the judgment-debtor with unnecessary costs, reduce the market value of the tenure and delay the realisation of money due to the landholder: These

evils would be greatly enhanced if the proceedure be extended by the Local Government to sales of occupancy holdings under Section 168.

Section 177.—The preamble of Regulation V of 1812 shows that although the Legislature of 1793 enjoined the exchange of written engagements between landholder and tenant, the raiyats of these Provinces in a body deliberately refused to enter into written engagements which would make it obligatory on them to pay as rent, cesses, and abwábs which they had been paying as benevolences, and that that Regulation was passed, among other objects to provide for such refusal. Since that time there has been vast progress in the material prosperity of the country, in the spread of education and in the condition of the raiyats. They might well therefore be left to the resources of their own judgment in matters relating to their own interests. They will be perfectly free to contract away their liberties and become emigrants in a strange country, to borrow money at usurious rates of interest involving their ultimate ruin, and to mortgage their holdings or sell them in some cases, and yet this section imposes restrictions upon freedom of contract in a variety of matters in which they are the best judges of their own interests. It is very doubtful how far these would be effective in practice and how far they would prevent parties from having recourse to shifts and devices for the purpose of evading the law. These provisions, it should be observed, offer a striking contrast to the provision contained in section 192. In the case of private landholders, free contract is restricted in the interest of raiyats; in the case of Government no contract entered into by a landholder with his raiyats before the property came into the hands of Government would be respected if it interfered with the right of Government to assess fair and equitable rent upon the land.

Section 182.—This Bill should have nothing to do with homestead lands in towns and trading places. Where homestead lands do not form part of a raiyatti holding its incidents should be left to custom and contract.

Section 184.—The schedule to which this section refers has extended from one year to two years the time within which a raiyat dispossessed by his landlord may sue to recover possession. We see no reason why this alteration in the existing law should be made.

Section 186.—A provision which converts into a criminal offence acts, otherwise not criminal, which relate to the daily transactions of life is most objectionable. The provisions of the section are, moreover, very one-sided. In the case of the landholder, for instance, an "attempt to distrain" would be a criminal offence, but in the case of the raiyat not only is an attempt to resist distraint or remove distrained crops not criminal, but he may remove crops stored for division or appraisement under the Danabundy system without subjecting himself to any penalty, civil or criminal.

Sections 191 & 192.—For reasons stated in different parts of this Dissent, these two sections should be omitted and Government should be placed in exactly the same position regarding landholding rights as private landholders.

Section 196.—We do not see either the necessity or the value of this section. If the Acts of the Local Legislature in any way conflict with the provisions of this Bill such Acts would be rendered inoperative by the Indian Councils Act, 1861. If those Acts provide for matters not embraced by this Bill they would have the force of law without any provision like this.

Schedule I.—We strongly object to the sections of Regulation VIII of 1793 mentioned in this schedule being omitted. They contain the most important provisions on which the Permanent Settlement was based, next in importance only to the provisions fixing the revenue in perpetuity.

We desire to say, in conclusion, that the Bill does not provide for any summary procedure for the recovery of rent. By making an express provision for decrees directing recovery of rent by instalments, by extending the time before a sale can take place from 20 to 30 days from the date of the proclamation, and by giving the Courts discretion to extend beyond 15 days the time within which a raiyat might protect himself from ejectment by payment of the decreed amount, the Bill has, on the contrary, thrown additional obstacles in the way of recovery of rent.

Considering the importance of the measure and the material changes in the Bill made by the Select Committee since their Preliminary Report was submitted last year we think that it should be republished before its provisions are taken into consideration by the Council.

PEÁRI MOHAN MUKERJI.
LAKSHMESHWAR SINGH.

12th February 1885.

I wish to add that I regret that my unavoidable absence from the Meetings of the Select Committee in the last stage of their labors and the very short time at my disposal between the receipt by me of the draft report of the majority of the Committee and the date fixed for the submission of the report to the Council, prevents me from recording my opinions at greater length. I adhere to the opinions expressed in my last year's dissent. The measure as a whole is even now opposed to the just rights of the proprietors of land and detrimental to the best interests of the entire community. If not withdrawn, it still requires further and serious consideration by the light of actual ascertained facts and circumstances of the country as opposed to mere opinions and *ex-parte* reports.

LAKSHMESHWAR SINGH.

12th February 1885.

No. III.

THE BENGAL TENANCY BILL, 1885.

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SCHEDULE I.—REPEAL OF ENACTMENTS.
SCHEDULE II.—FORMS OF RECEIPT AND ACCOUNT.
SCHEDULE III.—LIMITATION.

No. III.

Explanation of abbreviations in margin.

D. means Mr. Field's Digest.

C. B., the Bill prepared by the Commission.

B. B., the Bill submitted by the Bengal Government with letter No. 849, dated 27th July, 1881.

SECTION means the corresponding section of the Bill No. II, dated March, 1884.

A

BILL

TO

Amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

[Section 1.]

1. (*1*) This Act may be called the Bengal Tenancy Act, 1885. — Short title.

(*2*) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, appoint in this behalf. — Commencement.

[C. B., s. 1. B. B., s. 1.]

(*3*) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third part of the First Schedule of the Scheduled Districts Act, 1874; and the Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, extend the whole or any portion of this Act to the Division of Orissa or any part thereof. — Local extent.

XIV of 1874.

[C. B., s. 2. B. B., s. 2. Section 2.]

2. (*1*) The enactments specified in Schedule I hereto annexed are repealed in the territories to which this Act extends by its own operation. — Repeal.

(*2*) When this Act is extended to the Division of Orissa or any part thereof, such of those enactments as are in force in that Division or part, or, where a portion only of this Act is so extended, so much of them as is inconsistent with that portion, shall be repealed in that Division or part.

(*3*) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

(*4*) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

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

(*1*) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government khás maháls and revenue-free lands not entered in any register: [D. § 1. C. B., s. 3. B. B., s. 3. Section 3 (1).]

(*2*) "Proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate. [D. § 1. C. B., s. 3. B. B., s. 3. Section 3 (2).]

(*3*) "Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person. [Section 3 (3).]

(*4*) "Landlord" means a person immediately under whom a tenant holds, and includes the Government. [Section 3 (4).]

(*5*) "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant: [D., § 1. C. B., s 3. B. B., s. 3. See s. 227. Section 3 (5).]

In sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII and Schedule III of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent.

(*6*) "Pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery." [Section 3(6)]

(*7*) "Tenure" means the interest of a tenure-holder or an under-tenure-holder.

(*8*) "Permanent tenure" means a tenure which is heritable and which is not held for a limited time.

(*9*) "Holding" means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy. [Section 3(7).]

(*10*) "Village" means an area included in a village map of the revenue-survey within the same exterior boundary, or, where no such maps have been prepared, such area as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested. [B. B., s. 19, Expl. II. Section 27.]

(*11*) "Agricultural year" means, where the Bengalí year prevails, the year commencing on the first day of Bysák, where the Faslí or Amlí year prevails, the year commencing on the first day of Asin, and, where any other year prevails for agricultural purposes, that year. [Sec. 3 (8).]

Bengal Tenancy Bill.

(Chapter II.—Classes of Tenants.—Secs. 4-5.)

(Chapter III.—Tenure-holders.—Secs. 6-7.)

[D., § 20 & 37. C. B., ss. 6 & 16. B.B., ss. 6 & 15.) Section 3 (9).]

(12) "Permanent Settlement" means the Permanent Settlement of Bengal, Bihár and Orissa, made in the year 1793.

[Section 3 (11).]

(13) "Succession" includes both intestate and testamentary succession.

[C. B., s. 1. B. B., s. 8. Section 3 (12).]

(14) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to.

[Section 3 (15).]

(15) "Prescribed" means prescribed from time to time by the Local Government by notification in the official Gazette.

[Section 3 (14).]

(16) "Collector" means the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act.

[Section 3 (16).]

(17) "Revenue-officer" in any provision of this Act includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue-officer under that provision.

(18) "Registered" means registered under any Act for the time being in force for the registration of documents.

CHAPTER II.

CLASSES OF TENANTS.

[Section 4.]

4. There shall be, for the purposes of this Act, the following classes of tenants, namely:—

Classes of tenants.

(1) tenure-holders, including under-tenure-holders,

(2) raiyats, and

(3) under-raiyats, that is to say, tenants holding whether immediately or mediately under raiyats;

and the following classes of raiyats, namely:—

(a) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,

(b) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(c) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

[Section 5.]

5. (1) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includesalso the successors in interest of persons who have acquired such a right.

Meaning of "tenure-holder" and "raiyat."

(2) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right. [D., § 1. C. B., s. 3. B. B., s. 3. "raiyat" and "land."]

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a raiyat the Court shall have regard to—

(a) local custom; and

(b) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard bighás, the tenant shall be presumed to be a tenure-holder until the contrary is shewn.

CHAPTER III.

TENURE-HOLDERS.

Enhancement of rent.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

Enhancement of rent. [D., § 19. C. B., s. 7. B. B. s. 7. Section 6.]

(a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or

(b) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

7. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

Limits of enhancement of rent of tenures.

[D., § 23. C. B., ss. 9 & 12 B. B., ss. 9 & 10. Section 7.]

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

Bengal Tenancy Bill.

(Chapter III.—Tenure-holders.—Secs. 8—15.)

Enhancement of rent.

(3) In determining what is fair and equitable the Court shall not leave to the tenure-holder as profit less than ten per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them, and shall have regard to—

(a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(b) the improvements, if any, made by the tenure-holder or his predecessors in interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

[C. B., s. 10(a). B.B., s. 11(b). Section 9.]

8. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

Power to order gradual enhancement.

[C.B., s 10(b). B.B., s. 11(c). Section 10.]

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

Rent once enhanced may not be altered for fifteen years.

Other incidents of tenures.

Other incidents of tenures. [Section 12.]

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition consistent with the provisions of this Act and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

Permanent tenure-holder not liable to ejectment.

[C.B., s. 13. B.B., ss. 13 & 17. Section 11.]

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immoveable property.

Transfer and transmission of permanent tenure.

[D., § 35. C. B., s. 46. B. B., s. 37. Section 15.]

12. (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by sale in execution of a decree or by summary sale under any law relating to patní or other tenures) can be made only by a registered instrument.

Voluntary transfer of permanent tenure.

Other incidents of tenures.

[D., § 27. C. B., ss. 47, 49. B. B., ss. 39, 41.]

(2) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift or mortgage a permanent tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely:— III of 1877.

(a) when rent is payable in respect of the tenure, a fee of two per centum on the annual rent of the tenure: provided that no such fee shall be less than one rupee or more than one hundred rupees; and

(b) when rent is not payable in respect of the tenure, a fee of two rupees.

(3) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's fee and a notice of the transfer and registration in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

13. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, the Court shall, before, confirming the sale under section 312 of the Code of Civil Procedure, require the purchaser to pay into Court the landlord's fee prescribed by the last foregoing section and such further fee for service of notice of the sale on the landlord as may be prescribed.

Transfer of permanent tenure by sale in execution of decree other than decree for rent.

[C. B., ss., 47, 48 (c). B. B., ss. 39, 40 (c). Section 14.]

XIV of 1882.

(2) When the sale has been confirmed, the Court shall send to the Collector the landlord's fee and a notice of the sale in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

14. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, the Court shall send to the Collector a notice of the sale in the prescribed form.

Transfer of permanent tenure by sale in execution of decree for rent.

[Section 17.]

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's fee prescribed by section 12, and the Collector shall cause the landlord's fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Succession to permanent tenure.

Bengal Tenancy Bill.

(Chapter III.—Tenure-holders.—16-17.)

(Chapter IV.—Raiyats holding at fixed rates.—Sec. 18.)

(Chapter V.—Occupancy-raiyats.—Secs. 19-22.)

Other incidents of tenures. [Section 18 (2).]

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the Collector has received the notice and fees referred to in the last foregoing section.

Bar to recovery of rent pending notice of succession.

17. Subject to the provisions of section 88, the foregoing sections shall apply to the transfer of, or succession to, a share in a permanent tenure.

Transfer of, and succession to, share in permanent tenure.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

[Section 23.]

18. A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

Incidents of holding at fixed rates.

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and

[C. B., s. 13 B. B., ss. 12 & 17]

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

CHAPTER V.

OCCUPANCY-RAIYATS.

General.

General. [B. B., s. 19 (1) & Expl. IV (*e*), proviso. Section 24.]

19. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land shall, when this Act comes into force, have a right of occupancy in that land.

Continuance of existing occupancy-rights.

[Section 26.]

20. (*1*) Every person who for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

Definition of "settled raiyat."

(*2*) A person shall be deemed for the purposes of this section to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

(*3*) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(*4*) Land held by two or more co-sharers as a raiyatí holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer. *General.*

(*5*) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.

(*6*) If a raiyat recovers possession of land under section 87, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

(*7*) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

[Section 23.]

21. (*1*) Every person who is a settled raiyat of a village within the meaning of the last foregoing section shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

Settled raiyats to have occupancy-rights.

(*2*) Every person who, being a settled raiyat of a village within the meaning of the last foregoing section, held land as a raiyat in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

[Sections 28 and 29.]

22. (*1*) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, the occupancy-right shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

Effect of acquisition of occupancy-right by landlord.

(*2*) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, it shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

[D., § 40, Expls. I & II. C. B., s. 18, Expl. IV. B. B., s. 16, Expl. IV (*c*).]

(*3*) A person holding land as an ijárádár or farmer of rents shall not, while so holding, acquire a right of occupancy in any land comprised in his ijárá or farm.

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in ijárá or farm.

Bengal Tenancy Bill.

(Chapter V.—Occupancy-raiyats.—Secs. 23-31.)

Incidents of occupancy-right.

Incidents of occupancy-right. [B. B., s. 69. Section 31 (*a*).]

23. When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

Rights of raiyat in respect of use of land.

[D. s. 42, B. B., s. 21 (*d*). Section 31, cl. (*e*).]

24. An occupancy-raiyat shall pay rent for his holding at fair and equitable rates.

Obligation of raiyat to pay rent.

25. An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

Protection from eviction except on specified grounds.

[C. B., s. 20 (*e*). B. B., ss. 21 (*e*), 31, 69 (*a*). Section 31, cl. (*d*).]

(*a*) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

[C. B., s. 20. B. B., s. 21. Section 31, cls. (*f*) & (*h*).]

26. If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immoveable property: Provided that, in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

Devolution of occupancy-right on death.

Enhancement of rent.

Enhancement of rent [D., § 42, B. B., s. 21, (*d*). Section 39.]

27. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

Presumption as to fair and equitable rent.

[B. B., s. 21 (*d*) [Section 40.]

28. Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced except as provided by this Act.

Restriction on enhancement of money-rents.

[Section 41.]

29. (*1*) The money-rent of an occupancy-raiyat may be enhanced by registered contract, subject to the following conditions:—

Enhancement of rent by registered contract.

(*a*) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

(*b*) the contract must fix the rent for a term of at least fifteen years.

(*2*) The registering officer shall, before registering a contract under this section, ascertain that the contract is not inconsistent with sections 74 and 178 of this Act, and that the raiyat is competent and willing to enter into it, and understands its nature.

(*3*) Nothing in sub-section (*1*), clause (*a*), shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

Enhancement of rent.

(*4*) The Local Government may, from time to time, subject to the control of the Governor General in Council, make rules for the guidance of officers registering contracts under this section.

[D., § 43 (1) and (2). C. B., s. 22 (1), (3) and (4). B. B., s. 23 (1), (3) and (4). Section 43.]

30. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, namely:—

Enhancement of rent by suit.

(*a*) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in the same village, and that there is no sufficient reason for his holding at so low a rate;

(*b*) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;

(*c*) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent;

(*d*) that the productive powers of the land held by the raiyat have been increased by fluvial action.

Explanation.—"Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

[Section 44.]

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate—

Rules as to enhancement on ground of prevailing rate.

(*a*) in determining what is the prevailing rate the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court;

(*b*) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rules made under section 392 of the said Code;

XIV of 1882. [Act XII of 1881, s. 20.]

Bengal Tenancy Bill.

(Chapter V.—Occupancy-raiyats.—Secs. 32-38.)

Enhancement of rent.

(*c*) in determining under this section the rate of rent payable by a raiyat his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;

(*d*) in ascertaining the prevailing rate of rent the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration.

[Section 45.]

Rules as to enhancement on ground of rise in prices.

32. Where an enhancement is claimed on the ground of a rise in prices—

(*a*) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;

(*b*) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

(*c*) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (*a*), the Court may, in its discretion, substitute any shorter periods therefor.

[Section 46.]

Rules as to enhancement on ground of landlord's improvement.

33. Where an enhancement is claimed on the ground of a landlord's improvement—

(*a*) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act;

(*b*) in determining the amount of enhancement the Court shall have regard to—

(i) the increase in the productive powers of the lands caused or likely to be caused by the improvement,

(ii) the cost of the improvement,

(iii) the cost of the cultivation required for utilizing the improvement, and

(iv) the existing rent and the ability of the land to bear a higher rent;

(*c*) a decree under this section shall, on the application of the tenant or his successor in interest, be subject to re-consideration in the event of the improvement not producing or ceasing to produce the estimated effect.

Rules as to enhancement on ground of increase of productive powers due to fluvial action.

Enhancement of rent. [Section 47.]

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(*a*) the Court shall not take into account any increase which is merely temporary or casual;

(*b*) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

[Section 48.]

Enhancement by suit to be fair and equitable.

35. Notwithstanding anything in the foregoing sections the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

[C. B., s. 23 (*d*). B. B., s. 24, (*d*). Section 49.]

Power to order progressive enhancement.

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

[B. B., s. 143. Section 50.]

Limitation of right to bring successive enhancement suits.

37. (*1*) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if within the said period of fifteen years the rent has been commuted under section 40 or a decree has been passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

(*2*) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure. XIV of 1882.

Reduction of rent.

Reduction of rent. [D., § 47. C. B., s. 25 (2) & (3). B. B., s. 25 (2) & (3). Section 51.]

Reduction of rent.

38. (*1*) An occupancy-raiyat holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise, namely:—

(*a*) on the ground that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or

Reduction of rent.

(*b*) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

(*2*) In any suit instituted under this section the Court may direct such reduction of the rent as it thinks fair and equitable.

Bengal Tenancy Bill.

(Chapter V.—Occupancy-raiyats.—Sec. 39-40.)

(Chapter VI.—Non-occupancy-raiyats.—Secs. 41-43.)

Price-lists.

Price lists. [C. B., 122. B. B., s. 145. Section 52.]

Price-lists of staple food-crops.

39. (*1*) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(*2*) The Collector may, if so directed by the Local Government, prepare for any local area, like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(*3*) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area within the said period of one month presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(*4*) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(*5*) The Local Government shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(*6*) In any proceedings under this chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown thereby are correct, unless and until it is proved that they are incorrect.

(*7*) The Local Government, subject to the control of the Governor General in Council, shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

Commutation.

Commutation. [C. B., s. 86. B. B., ss. 90 and 92. Section 53.]

Commutation of rent payable in kind.

40. (*1*) Where an occupancy-raiyat pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

(*2*) The application may be made to the Collector or Sub-divisional Officer, or to an officer making a settlement of rents under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.

(*3*) On the receipt of the application the officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(*4*) In making the determination the officer shall have regard to—

(*a*) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity;

(*b*) the average value of the rent actually received by the landlord during the preceding ten years or during any shorter period for which evidence may be available; and

(*c*) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges.

(*5*) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.

(*6*) If the application is opposed, the officer shall consider whether under all the circumstances of the case it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

[Section 55.]

Application of chapter.

41. This chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats.

[Section 56.]

Initial rent of non-occupancy-raiyat.

42. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

[Section 57.]

Conditions of enhancement of rent.

43. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 46.

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(Chapter VI.—Non-occupancy-raiyats.—Secs. 44-47.)

(Chapter VII.—Under-raiyats.—Secs. 48-49.)

[C. B., s. 79 (5) B. B., ss. 26, 72 (5). Section 58.]

44. A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely :—

Grounds on which non-occupancy-raiyat may be ejected.

(*a*) on the ground that he has failed to pay an arrear of rent ;

(*b*) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected ;

(*c*) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired ;

(*d*) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent has expired.

[Section 59.]

45. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

Conditions of ejectment on ground of expiration of lease.

[Section 60.]

46. (*1*) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

Conditions of ejectment on ground of refusal to agree to enhancement.

(*2*) A landlord desiring to tender an agreement to a raiyat under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner, and when it has been so served it shall for the purposes of this section be deemed to have been tendered.

(*3*) If a raiyat on whom an agreement has been served under sub-section (*2*) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(*4*) When an agreement has been executed and filed by a raiyat under sub-section (*3*), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(*5*) If the raiyat does not execute the agreement and file it under sub-section (*3*), he shall be deemed for the purposes of this section to have refused to execute it.

(*6*) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(*7*) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy.

(*8*) If the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(*9*) In determining what rent is fair and equitable the Court shall have regard to the rents generally paid by raiyats for land of a similar description and with like advantages in the same village.

(*10*) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

[Section 61.]

47. Where a raiyat has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of this chapter, notwithstanding that the lease may purport to admit him to occupation.

Explanation of, "admitted to occupation."

CHAPTER VII.

UNDER-RAIYATS.

[Section 62.]

48. The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, namely :—

Limit of rent recoverable from under-raiyats.

(*a*) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and

(*b*) in any other case—twenty-five per cent.

[Section 63.]

49. An under-raiyat shall not be liable to be ejected by his landlord, except at the end of an agricultural year and after a written notice to quit has been served on him in the prescribed manner not less than six months before the expiration of that year.

Restriction on ejectment of under-raiyats.

Bengal Tenancy Bill.

(Chapter VIII.—General Provisions as to Rent.—Secs. 50—54.)

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

Rules and presumptions as to amount of rent.

Rules and presumptions as to amount of rent.

[D., §§ 20 & 37. C. B., ss. 6 & 16. B. B., ss. 6 & 15. Section 64.]

50. (*1*) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the holding.

Rules and presumptions as to fixity of rent.

[D., §§ 21 & 38. C. B., ss. 6 & 17. B. B., ss. 6 & 16.]

(*2*) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement :

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

[D., § 37. C. B., s. 16., Expl. II. B. B., s. 15, Expl. II.]

(*3*) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

[D., § 20. C. B, s. 6. B. B., s. 6.]

(*4*) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

[Section 65.]

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

Presumption as to amount of rent and conditions of holding.

Alteration of rent on alteration of area.

Alteration of rent on alteration of area.

[D., §§ 19, 2, 43 (3) & 47. C. B., ss. 8, 18, 23 (2) & 25 (1). B. B., ss. 8, 8, 23 (2), 25 (1). Section 66.]

52. (*1*) Every tenant shall—

Alteration of rent in respect of alteration in area.

(*a*) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the holding and which having previously belonged to the holding was lost by diluvion or otherwise without any reduction of the rent being made, and

(*b*) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

Alteration of rent on alteration of area.

(*2*) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

(*a*) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire holding ;

(*b*) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord ;

(*c*) the length of time during which the tenancy has lasted without dispute as to rent or area ; and

(*d*) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(*3*) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which under the circumstances of the case is unfair or inequitable.

(*4*) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the holding.

Payment of rent.

Payment of rent.

[C. B., s. 55 (a). B. B., s. 47 (a). Section 67.]

53. Subject to agreement or established usage, a money-rent payable by a tenure-holder or raiyat shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

Instalments of rent.

[Section 68.]

54. (*1*) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

Time and place for payment of rent.

(*2*) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village office, or at such other convenient place as may be appointed in that behalf by the landlord :

Provided that the Local Government may from time to time make rules, either generally or for

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(Chapter VIII.—General Provisions as to Rent.—Secs. 55—61.)

any specified local area, authorizing a tenant to pay his rent by postal money-order.

Payment of rent.

[D., s. 101. C. B., s. 56, B. B., s. 48.]

(3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear.

[Section 69.]

55. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

Appropriation of payments.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

Receipts and accounts.

Receipts and accounts. [D., § 61. C. B., s. 57. B. B., s. 49 (a) and (b). Section 70.]

56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

Tenant making payment to his landlord entitled to a receipt.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II to this Act as can be specified by the landlord at the time of payment:

Provided that the Local Government may from time to time prescribe or sanction a modified form either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

[C. B., s. 51 (b). B. B., s. 49 (c). Section 71.]

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

Tenant entitled to full discharge or statement of account at close of year.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year a statement of account specifying the several particulars shown in the form of account given in Schedule II to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

58. (1) If a landlord refuses or neglects to deliver to a tenant a receipt containing the particulars prescribed by section 56 for any rent paid by the tenant, the tenant may, within six months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

Receipts and accounts [D., s. 65. C. B., s. 57 (d) & 94. Section 72.]

Penalties and fine for withholding receipts and statements of accounts and failing to keep counterparts.

(2) If a landlord refuses or neglects to deliver to a tenant demanding the same the receipt in full discharge or the statement of account for any year prescribed in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord fails to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

59. (1) The Local Government shall cause to be prepared and kept for sale to landlords at all sub-divisional offices forms of receipts with counterfoils and of statements of account suitable for use under the foregoing sections.

Local Government to prepare forms of receipt and account.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

VII(B.C.) of 1876.

Effect of receipt by registered proprietor.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

Deposit of rent.

Deposit of rent. [D., § 99. C. B., ss. 58 & 59. B. B., ss. 50 & 51. Section 73]

Application to deposit rent in Court.

61. (1) In any of the following cases, namely:—

(a) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;

(b) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or

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(Chapter VIII.—General Provisions as to Rent.—Secs. 62—66.)

Deposit of rent.

(d) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent;

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his holding an application in writing for permission to deposit in the Court the full amount of the money then due.

(2) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (a) and (b), the name of the person to whose credit the deposit is to be entered,

in case (c), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (d), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil Procedure, by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount as the Local Government, from time to time, by rule, directs.

XIV of 1882.

[D. §§ 99 & 100. C. B., s. 60. B. B., s. 52. Section 74.]

Receipt granted by Court for rent deposited to be a valid acquittance.

62. (1) If it appears to the Court to whom an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (a) and (b) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, by the co-sharers to whom the rent is due; and

in case (d) of that section, by the person entitled to the rent.

[D., § 100. C. B., s. 61 (a), B. B., s. 53 (a). Section 75

Notification of receipt of deposit.

63. (1) The Court receiving the deposit shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof, containing a statement of all material particulars.

(2) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith—

in cases (a) and (b) of section 61, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that section, cause a notice of the receipt of the deposit to be posted at the landlord's village-office or in some conspicuous place in the village in which the holding is situate; and

Deposit of rent.

in case (d) of that section, cause a like notice to be served, free of charge, on every person who it has reason to believe claims or is entitled to the deposit.

[D. § 100. C. B., s 61, cls (b) & (c). B. B., s. 53, cls. (b) & (c). Section 76.]

Payment or refund of deposit.

64. (1) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) The payment may, if the Local Government so direct, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(4) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Arrears of rent.

Arrears of rent. [C. B., s. 64. B. B., s. 56. Section 77.]

Liability to sale for arrears in case of tenure, holding at fixed rates and occupancy-holding.

65. Where a tenant is a tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

[D. §§ 12 (5) & 93. C. B., ss. 79(5) & 152. B. B., ss. 72 (5) & 169. Section 78.]

Ejectment for arrears in case of non-occupancy-holding or under-raiyat's holding.

66. (1) When an arrear of rent remains due in respect of the holding of a non-occupancy-raiyat or an under-raiyat at the end of the Bengali year where that year prevails, or at the end of the month of Jeyt where the Fasli or Amli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are

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Arrears of rent.

paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

(3) The Court may for special reasons extend the period of fifteen days mentioned in this section.

[D. § 101. C. B., s. 56. B. B., s. 48. Section 79.]

67. An arrear of rent shall bear simple interest at the rate of twelve per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the institution of the suit.

Interest on arrears.

[D., § 68. C. B., s. 90. B. B., s. 96. Section 80.]

68. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

Power to award damages on rent withheld without reasonable cause or to defendant improperly sued for rent.

Provided that interest shall not be decreed when damages are awarded under this section.

[D., § 69. C. B., s. 91. B. B., s. 97.]

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as it thinks fit.

Produce-rents.

Produce-rents. [C. B., s. 84. B. B., s. 88. Section 81.]

69. (1) Where rent is taken by appraisement or division of the produce,—

Order for appraising or dividing produce.

(a) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or

(b) if there is a dispute about the quantity, value or division of the produce,

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(2) The Collector may, without such an application, make the like order in any case where in the opinion of the District or Sub-divisional Magistrate the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this section, he may by order prohibit the removal of the produce until the appraisement or division has been effected.

70. (1) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

Procedure where officer appointed.

Produce-rents. [Section 82.]

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made, but if either the landlord or the tenant fails to attend either personally or by agent, he may proceed *ex parte*.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard and making such enquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final and shall, on application to a Civil Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office. [C. B., s. 85; B. B., s. 89.]

71. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

Rights and liabilities as to possession of crop.

[Section 83.]

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

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(Chapter VIII.—General Provisions as to Rent.—Secs. 72—75.)

(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants.—Secs. 76—79.)

Liability for rent on change of landlord or after transfer of holding.

Liability for rent on change of landlord or after transfer of holding. [D., §. 9. C. B., §. 78. B. B., s. 70. Section 84.]

72. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

73. When an occupancy-raiyat transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner.

Liability for rent after transfer of holding.

Illegal Cesses, &c.

Illegal cesses, &c. [D.§§ 13 & 57. C. B., s. 71. B. B., s. 63 (2). Section 85.]

74. All impositions upon tenants under the denomination of *abwáb, mahtut*, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

Abwáb, &c., illegal.

[D., § 64. B. B., ss. 63 (2), 64 (*a*), 93. Section 86.]

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

Improvements. [C. B., s. 29. B. B., s. 69. Section 87.]

76. (1) For the purposes of this Act the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

Definition of "improvement."

Improvements.

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section:—

(a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(b) the preparation of land for irrigation;

(c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(e) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto; and

(f) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

(3) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

77. Where a raiyat holds at fixed rates, his landlord shall not be entitled, as such, to prevent him from making any improvement in respect of his holding.

Right to make improvements in case of holding at fixed rates.

[Section 88.]

78. (1) Where a raiyat has an occupancy-right in his holding, neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

Right to make improvement in case of occupancy-holding.

[C. B., s. 77. B. B., s. Section

(2) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

(3) If a question arises between the raiyat and his landlord—

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

79. (1) A non-occupancy-raiyat shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all

Right to make improvement in case of non-occupancy-holding.

[C. B., s. 77. B. B., s. 69. Section 90.]

Bengal Tenancy Bill.

(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants.—Secs. 80—84.)

Improvements. works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(2) A non-occupancy-raiyat who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

[Section 91.] **80.** (1) A landlord may, by application to such Revenue officer as the Local Government may appoint, register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a tenant in making.

Registration of landlord's improvements.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government from time to time by rule directs.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(a) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(b) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

[Section 92.] **81.** (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject matter thereof is under inquiry in a Civil Court.

Application to record evidence as to improvement.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in any subsequent proceedings between the landlord and tenant or any persons claiming under them.

[C. B., ss. 20 (e) and 29. Section 93.] **82.** (1) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

Compensation for raiyats' improvements.

Improvements.

(2) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat.

(3) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat between the 2nd day of March, 1883, and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(5) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

[Section 94.] **83.** (1) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

Principle on which compensation is to be estimated.

(a) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(b) to the condition of the improvement, and the probable duration of its effects;

(c) to the labour and capital required for the making of such an improvement;

(d) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

(e) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and raiyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose, and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient, authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

Acquisition of land for building and other purposes.

Acquisition of land for building and other purposes.

Bengal Tenancy Bill.

(Chapter IX.—Miscellaneous Provisions as to Landlords and Tenants.—Secs. 85—88.)

Acquisition of land for building and other purposes.

Sub-letting.

85. (1) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent.

Restrictions on sub-letting.

(2) A sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years.

(3) Where a raiyat has without the consent of his landlord granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

Surrender and abandonment.

Surrender and abandonment. [D § 12 (3). C. B., s. 79 (3). B. B., s. 72 (3). Section 95.]

86. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

Surrender.

(2) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a raiyat has surrendered his holding the Court shall in the following cases for the purposes of sub-section (2) presume, until the contrary is shown, that such notice was so given, namely:—

(a) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(b) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(4) The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a raiyat has surrendered his holding the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer.

(7) Save as provided in the foregoing sub-section, nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

Surrender and abandonment.

[D. § 12 (4). C.B., s. 79 (4). B.B., s. 72 (4). Section 96.]

87. (1) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

Abandonment.

(2) Before a landlord enters under this section he shall file a notice in the prescribed form in the Collector's office stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause the notice to be published in such manner as the Local Government by rule directs.

(3) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering under this section on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat. If the sub-lessee refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

Sub-division of tenancy.

Sub-division of tenancy. [B. B., ss. 21 (b), 37. Bengal Act VIII of 1869, s. 26. Section 97.]

88. A division of a tenure or holding or distribution of the rent payable in respect thereof shall not be binding on the landlord unless it is made with his consent in writing.

Division of tenancy not binding on landlord without his consent.

Ejectment.

[*Ejectment.* [C. B., s. 79 (5), (6) & (7). B. B., s. 72 (5), (6) and (7). Section 98.]

89. No tenant shall be ejected from his holding except in execution of a decree.

No ejectment except in execution of decree.

Measurements.

[*Measurements.* [D. § 58. C.B., s. 75. B. B., s. 67. Section 99.]

90. (*1*) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him on this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

Landlord's right to measure land.

(*2*) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases :—

(*a*) where the area of the holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area ;

(*b*) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation;

(*c*) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(*3*) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

[D. § 94. B.B., ss. 176 & 177. Section 100].

91. (*1*) Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

Power for Court to order tenant to attend and point out boundaries.

(*2*) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

[D. § 94. C.B., s. 76(*a*). B.B. s. 68 (*c*). Section 101.]

92. (*1*) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

Standard of measurement.

(*2*) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

Measurements.

(*3*) The Local Government may, after local enquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area, and every declaration so made shall be presumed to be correct until the contrary is shown.

[D. § 98. C. B., s. 76 (*b*) B.B., s. 68(*b*).]

Managers.

[*Managers.* [D. § 16. C. B., s. 56 (1). B. B., s. 57 (1). Section 102.]

93. When any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue,

Power to call upon co-owners to show cause why they should not appoint a common manager.

(*a*) inconvenience to the public, or

(*b*) injury to private rights,

the District Judge may, on the application in case (*a*) of the Collector, and in case (*b*) of any one having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager:

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.

VII (B.C.) of 1876

[C.B., s. 65 (2). B. B., s. 57 (2). Section 103.]

94. If the co-owners fail to show cause as aforesaid within one month after service of a notice under the last foregoing section, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

Power to order them to appoint a manager if cause is not shown.

[C. B., s. 66 (1). B. B., s. 58 (1). Section 104.]

95. If the co-owners do not, within such period, not being less than one month after the making of an order under the last foregoing section, as the District Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

Power to appoint manager if order is not obeyed.

(*a*) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or

(*b*) in any case appoint a manager.

[C. B., s. 66 (2). B. B., s. 58 (2). Section 105.]

96. The Local Government may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (*b*) of the last foregoing section; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

Power to nominate person to act in all cases under clause (*b*) of last section.

[C.B., s. 66(3). B. B., s. 58(3). Section 106.]

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immoveable property shall apply to the management.

The Court of Wards Act, 1879, applicable to management by Court of Wards.

IX (B.C. of 1879.

[C. B., s. 67. B. B., s. 59. Section 107.]

98. (*1*) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

Provisions applicable to manager.

(*2*) He shall give such security for the proper discharge of his duties as the District Judge directs.

(*3*) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(*4*) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(*5*) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(*6*) He shall pass his accounts at such period and in such form as the District Judge may direct.

(*7*) He may make any application which the proprietors could make under section 103.

(*8*) He shall be removeable by the order of the District Judge, and not otherwise.

[C.B., s. 68. B. B., s. 60. Section 108.]

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

Power to restore management to co-owners.

100. The High Court may from time to time make rules defining the powers and duties of managers under the foregoing sections.

Power to make rules.

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

[Sections 110 & 117.]

101. (*1*) The Local Government may, in any case with the previous sanction of the Governor General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an order directing that a survey be made, and a record-of-rights be prepared, in respect of the lands in a local area by a Revenue-officer.

Power to order preparation of record-of-rights.

(*2*) The cases in which an order may be made under this section without the previous sanction of the Governor General in Council are the following, namely :—

(*a*) where the landlord or a large proportion of the landlords or of the tenants applies for such an order and deposits, or gives security for, such amount, for the payment of expenses, as the Local Government directs;

(*b*) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally;

(*c*) where the local area is comprised in an estate or tenure which belongs to or is managed by the Government or the Court of Wards; and

(*d*) where a settlement of revenue is being made in respect of the local area.

(*3*) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

[Sections 111 & 118 (*f*).]

102. Where an order is made under the last foregoing section, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely :—

Particulars to be recorded.

(*a*) the name of each tenant ;

(*b*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure ;

(*c*) the situation, quantity and boundaries of the land held by him ;

(*d*) the name of his landlord ;

(*e*) the rent payable ;

(*f*) the mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise ;

(*g*) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;

(*h*) the special conditions and incidents, if any, of the tenancy.

[Section 112.] **103.** On the application of a proprietor or tenure-holder, and on his depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

Power for Revenue-officer to record particulars on application of proprietor or tenure-holder.

[Section 118 (3).] **104.** (*1*) When, in any proceeding under this chapter, it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, and neither the landlord nor the tenant applies for a settlement of rent, the officer shall record the rent payable by the tenant, and the land in respect of which the rent is payable.

Procedure as to recording or settling rents.

(*2*) When it appears that a tenant is holding land in excess of, or less than, that for which he is paying rent, or either the landlord or the tenant applies for a settlement of rent, or in any case under section 101, sub-section (*2*), clause (*d*), the officer shall settle a fair and equitable rent in respect of the land held by the tenant.

[Section 118 (4).] (*3*) In settling rents under this section, the officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents.

[Sections 113 & 118 (7).] **105.** (*1*) When the Revenue-officer has completed a record made under this chapter, he shall cause a draft thereof to be locally published in the prescribed manner and for the prescribed period, and shall receive and consider any objection which may be made to any entry therein during the period of publication.

Publication of record.

(*2*) After the expiration of this period the Revenue-officer shall finally frame the record, and shall cause it to be locally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this chapter.

[Sections 114 & 118 (2).] **106.** If at any time before the final publication of the record under the last foregoing section a dispute arises as to the correctness of any entry (not being an entry of a rent settled under this chapter), or as to the propriety of any omission, which the Revenue-officer proposes to make or has made therein or therefrom, the Revenue-officer shall hear and decide the dispute.

Procedure in case of dispute as to entries in record.

[Sections 114 & 118 (5).] **107.** In all proceedings for the settlement of rents under this chapter, and in all proceedings under the last foregoing section, the Revenue-officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure for the trial of suits, and his decision in every such proceeding shall have the force of a decree.

Procedure to be adopted by Revenue-officer.

X[illegible] of 1882.

[Section 115.] **108.** (*1*) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under the last foregoing section.

Appeals from decisions of Revenue-officers.

(*2*) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under the last foregoing section, and the provisions of the Code of Civil Procedure relating to appeals shall, as nearly as may be, apply to all such appeals.

XIV of 1882.

(*3*) Subject to the provisions of Chapter XLII of the Code of Civil Procedure, an appeal shall lie to the High Court from the decision of a Special Judge in any case under section 106 as if he were a Court subordinate to the High Court within the meaning of the first section of that chapter:

XIV of 1882.

[Section 118 (6).] Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any holding has been settled, the Court may settle a new rent for the holding, but in so doing shall be guided by the rents of the other holdings of the same class comprised in the same record as ascertained or settled under section 104.

[Sections 116 & 118(3).] **109.** (*1*) Every record made under this chapter shall distinguish between the disputed and the undisputed entries therein.

Undisputed entries in record to be presumptive evidence.

(*2*) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

[Section 119.] **110.** When any rent is settled under this chapter, the settlement shall take effect from the beginning of the agricultural year next after the final publication of the record.

Time at which settlement of rent is to take effect.

[Section 117 (4).] **111.** When an order has been made under section 101,—

Stay of proceedings in Civil Court during preparation of record.

(*a*) a Civil Court shall not, until the final publication of the record, entertain a suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the order applies; and

(*b*) the High Court may, if it thinks fit, transfer to the Revenue-officer any proceedings pending in a local Court for the alteration of any such rent or for the determination of any of the matters specified or referred to in section 102.

112. (*1*) The Local Government, with the previous sanction of the Governor General in Council, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, invest a Revenue-officer acting under this chapter with the following powers or either of them, namely:—

Power to authorize a special settlement in special cases.

(*a*) power to settle all rents;

(*b*) power, when settling rents, to reduce rents if in the opinion of the officer the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(*2*) The powers given under this section may be made exercisable within a specified area either generally or with reference to specified cases or classes of cases.

[Section 120.] **113.** When the rent of a tenure or holding is settled under this chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding for fifteen years, and in the case of a non-occupancy-holding, if the rent is settled in any case under section 112 or on the application of the landlord under section 104, for five years. The periods of fifteen and five years shall be counted from the date of the final publication of the record.

Period for which rents as settled are to remain unaltered.

[Section 121.] **114.** Where an order is made under this chapter in any case except under section 101, sub-section (*2*), clause (*d*), the expenses incurred by the Government in carrying out the provisions of this chapter in any local area, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable by the Government from him as if it were an arrear of revenue due by him.

Expenses of proceedings under chapter.

[Section 122.] **115.** When the particulars mentioned in section 102, clause (*b*), have been recorded under this chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

Presumption as to fixity of rent not to apply where record has been prepared.

CHAPTER XI.

RECORD OF PROPRIETORS' PRIVATE LANDS.

[B., § 40, Expl. V. C. B., s. 19, Expl. 3 (*d*), Expl. (4) (*g*).] **116.** Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, a proprietor's private lands known in Bengal as khámár, nij or nij-jot, and in Behar as zirát, nij, sír or kamat, where any such land is held under a lease for a term of years or under a lease from year to year.

Saving as to khámár land.

[B. B., s. 19, Expl. III(*b*). Expl. IV (*f*) Section 30.]

[B.B., ss. 76 to 82. Section 135.] **117.** The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of the last foregoing section.

Power for Government to order survey and record of proprietor's private lands.

[Section 136.] **118.** In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

Power for Revenue-officer to record private land on application of proprietor or tenant.

[Section 137.] **119.** When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 105, 106, 108 and 109 shall apply.

Procedure for recording private land.

[C. B., s. 81. B.B., ss. 3 & 75. Section 138.] **120.** (*1*) The Revenue-officer shall record as a proprietor's private land—

Rules for determination of proprietor's private land.

(*a*) land which is proved to have been cultivated as khámár, zirát, sír, nij, nij-jot or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village usage as proprietor's khámár, zirát, sír, nij, nij-jot or kamat.

(*2*) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

(*3*) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

CHAPTER XII.

DISTRAINT.

[B B., ss. 101, 104, 123. Section 139.] **121.** Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no

Cases in which an application for distraint may be made.

Bengal Tenancy Bill.

(Chapter XII.—Distraint.—Secs. 122-125.)

security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator—

(*a*) any crops or other products of the earth standing or ungathered on the holding;

(*b*) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead:

Provided that an application shall not be made under this section—

VII (B.C.) of 1876. (*1*) by a proprietor or manager as defined under the Land Registration Act, 1876, or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or

(*2*) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or

[B. B., ss. 71, 25.] (*3*) in respect of the produce of any part of the holding which the tenant has sub-let with the written consent of the landlord.

[B. B., ss. 104 & 105. Section 140.]

122. (*1*) Every application under the last foregoing section shall specify— Form of application.

(*a*) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;

(*b*) the name of the tenant;

(*c*) the period in respect of which the arrear is claimed;

(*d*) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable;

(*e*) the nature and approximate value of the produce to be distrained;

(*f*) the place where it is to be found, or such other particulars as may suffice for its identification; and

(*g*) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(*2*) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure for the signing and verification of plaints. XIV of 1882.

123. (*1*) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application. Procedure on receipt of application. [B. B., ss. 105 & 106. Section 141.]

(*2*) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(*3*) Where a Court cannot forthwith admit or reject an application under sub-section (*2*), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(*4*) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may if it thinks fit make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

124. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court: Execution of order of distraint. [B.B., s. 107. Section 142.]

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering. [D. § 111.]

125. (*1*) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made. Service of demand and account. [B. B., s. 108. Section 143.]

(*2*) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(*3*) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on the outer door of the house in which he usually resides.

Bengal Tenancy Bill.

(Chapter XII.—Distraint.—Secs. 126—136.)

126. (*1*) A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation. Right to reap, &c., produce. [B. B., ss. 109 144.]

(*2*) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(*3*) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

127. (*1*) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained and the demand for which it is distrained, and notifying that he will, at a place and on a specified day, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction: Sale proclamation to be issued unless demand is satisfied. [B. B., s. 113. Section 145.]

Provided that when the crops or products distrained from their nature admit of being stored but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(*2*) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

128. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the distraining officer is of opinion that it is likely to sell there to better advantage. Place of sale. [B B., s. 114. Section 146.]

129. (*1*) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing. When produce may be sold standing. [D., § 111. Section 147.]

(*2*) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

130. The property shall be sold by public auction in one or more lots, as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder. Manner of sale. [B.B., s. 115. Section 148.]

131. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorised to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property. Postponement of sale. [B. B., s. 116. Section 149.]

132. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold. Payment of purchase-money. [B. B., s. 117. Section 150.]

133. 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 be given to purchaser. [B B., s. 118. Section 151.]

134. (*1*) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made by the Local Government in this behalf. Proceeds of sale how to be applied. [B. B., s. 119. Section 152.]

(*2*) 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; and the surplus (if any) shall be paid to the person whose property has been sold.

135. 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. Certain officers may not purchase. [B. B., s. 120. Section 153.]

136. (*1*) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 125, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn. Procedure where demand is paid before the sale. [B. B., ss. 111, 112 & 128. Section 154.]

Bengal Tenancy Bill.

(Chapter XII.—Distraint.—Secs. 137 - 142.)

(Chapter XIII.—Judicial Procedure.—Secs. 143-151.)

(2) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his tenant's sub-letting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

[B. B., s 124. Section 155.]

137. (1) When an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Amount paid by under-tenant for his lessor may be deducted from rent.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

[B.B., s. 126. Section 156.]

138. When land is sub-let, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

Conflict between rights of superior and inferior landlords.

[Section 157.]

139. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid under section 134 to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued.

Distraint of property which is under attachment.

[Section 158.]

140. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 121 in any case in which such an application is not permitted by that section may institute a suit against the applicant for the recovery of compensation.

Suit for compensation for wrongful distraint.

141. (1) When the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application to the Civil Courts under this chapter, it may, from time to time, by order, authorize the landlord to distrain, by himself or his agent, any produce for the distraint of which he would be entitled to apply to the Civil Court under this chapter:

Power for Local Government to authorize distraint in certain cases.

Provided that every person distraining any produce under such authorization shall proceed in the manner prescribed by section 124, and shall forthwith give notice, in such form as the High Court may, by rule prescribe, to the Civil Court having jurisdiction to entertain an application for distraining the produce, and that Court shall, with no avoidable delay, depute an officer to take charge of the produce distrained.

(2) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under section 124.

(3) The Local Government may at any time rescind any order made by it under this section.

142. The High Court may from time to time make rules consistent with this Act for regulating the procedure in all cases under this chapter.

Power for High Court to make rules.

CHAPTER XIII.

JUDICIAL PROCEDURE.

[Section 159.]

143. (1) The High Court may, from time to time, with the approval of the Governor General in Council, make rules consistent with this Act declaring that any portions of the Code of Civil Procedure shall not apply to suits between landlord and tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

Power to modify Civil Procedure Code in application to landlord and tenant suits.

XIV of 1882.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure shall apply to all such suits.

XIV of 1882.

[Section 160.]

144. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought.

Jurisdiction in proceedings under Act.

XIV of 1882.

(2) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

Bengal Tenancy Bill.

(Chapter XIII.—Judicial Procedure.—Secs. 145—151.)

[D., § 169. C. B., s. 150. B. B., s. 167 (a). Section 161.]

XIV of 1882.

145. Every náib or gumáshta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending.

Náibs or gumáshtas to be recognized agents.

XIV of 1882.

[D., § 173. C. B., s. 147. B. B., s. 164. Section 163.]

146. The particulars referred to in section 58 of the Code of Civil Procedure shall, in the case of such suits, instead of being entered in the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may from time to time prescribe in this behalf.

Special register of suits.

147. Subject to the provisions of section 373 of the Code of Civil Procedure, where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.

Successive rent-suits.

[C. B., s. 165. B. B., s. 187. Section 163.]

XIV of 1882.

148. The following rules shall apply to suits for the recovery of rent:—

Procedure in rent-suits.

[D., §§ 149 & 155. C. B., s. 167. B. B., s. 189.]

XIV of 1882.

(a) sections 121 to 127 (both inclusive), 129, 305, and 320 to 326 (both inclusive) of the Code of Civil Procedure shall not apply to any such suit;

(b) the plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent, and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification;

[D., § 192. C. B., s. 174. B.B., s. 195.]

(c) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only;

(d) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, 1866;

XIV of 1866.

when a summons is so forwarded in a letter, and it is proved that the letter was duly posted and registered, the Court may presume that the summons has been duly served;

[D., § 108. C. B., s. 184. B. B., s. 206. BB., s. 214.]

(e) a written statement shall not be filed without the leave of the Court;

XIV of 1882.

(f) the rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure shall apply, whether an appeal is allowed or not;

[D., §§ 177 & 223. C. B., ss. 155 & 197. B B., ss. 171 & 219.]

(g) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears;

[C. B., s. 198. B. B., s. 220.]

XIV of 1882.

(h) notwithstanding anything contained in section 232 of the Code of Civil Procedure, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

[Section 164.]

149. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Payment into Court of money admitted to be due to third person.

(2) Where such a payment is made the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

[Section 165.]

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

Payment into Court of money admitted to be due to landlord.

[Section 166.]

151. When a defendant is liable to pay money into Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

Provision as to payment of portion of money.

Bengal Tenancy Bill.

(Chapter XIII.—Judicial Procedure.—Secs. 152—156.)

[Section 167.]

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person as the case may be.

Court to grant receipt.

[D., § 179. C.B., ss. 157 & 220. B. B., ss. 173 & 242. Section 168.]

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

Appeals in rent-suits.

(*a*) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(*b*) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity; and may pass such order as the District Judge thinks fit.

[C. B., ss. 96 & 98 (*b*). B. B., ss. 128 & 130, cl. (*b*). Section 169.]

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing for special reasons a later date from which any such decree shall take effect.

Date from which decree for enhancement takes effect.

[B. B., ss. 21 (*e*), 31, 44 & 45 Vic., C. 41, s. 14. Section 170.]

155. (*1*) A suit for the ejectment of a tenant, on the ground—

Relief against forfeitures.

(*a*) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(*2*) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(*3*) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (*2*).

(*4*) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

[C. B., s. 80. B. B., s. 73. Section 171.]

156. The following rules shall apply in the case of every raiyat ejected from a holding:—

Rights of ejected raiyats in respect of crops and land prepared for sowing.

(*a*) when the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment;

(*b*) when the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value;

(*c*) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage;

Bengal Tenancy Bill.

(Chapter XIII.—Judicial Procedure.—Secs. 157 & 158.)

(Chapter XIV.—Sale for Arrears under Decree.—Secs. 159—162.)

[C. B., s. 80. B. B., s. 73.]

(*d*) if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

[Section 173.]

157. When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

Power for Court to fix fair rent as alternative to ejectment.

[C. B., s. 151. B. B., s. 168. Section 174.]

158. (*1*) The Court having jurisdiction to determine a suit for the possession of land held by a tenant may, on the application of either the landlord or the tenant, determine all or any of the following matters, namely:—

Application to determine incidents of tenancy.

(*a*) the situation, quantity and boundaries of the land held by the tenant;

(*b*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not and whether his rent is liable to enhancement during the continuance of his tenure; and

(*c*) the rent payable by him at the time of the application.

(*2*) If in the opinion of the Court any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure by such Revenue-officer as the Local Government may authorize in that behalf by rule made under section 392 of the said Code.

XIV of 1882.

(*3*) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

[Section 175.]

159. Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as "protected interests", but with power to annul the interests defined in this chapter as "incumbrances:"

General powers of purchaser as to avoidance of incumbrances.

Provided as follows:—

(*a*) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;

(*b*) the power to annul shall be exercisable only in manner by this chapter directed.

[D., §§ 12 (11) and 155. C. B., ss. 226, Expl., & 210. B. B., ss 228, Expl., & 232. Section 176.]

160. The following shall be deemed to be protected interests within the meaning of this chapter—

Protected interests.

(*a*) any under-tenure existing from the time of the Permanent Settlement;

(*b*) any under-tenure recognized by the settlement proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

(*c*) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made;

(*d*) any right of occupancy;

(*e*) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer;

(*f*) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and

(*g*) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

[Section 177.]

161. For the purposes of this chapter—

Meaning of "incumbrance" and "registered and notified incumbrance."

(*a*) the term "incumbrance", used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section;

(*b*) the term "registered and notified incumbrance", used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument of which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided.

[C. B., s. 206, Expl. B. B., s. 228, Expl.]

[C. B. s. 201. B. B., s. 223. Section 178.]

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under section 235 of the Code of Civil Procedure for the attach-

Application for sale of tenure or holding.

XIV of 1882.

ment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the parganná, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

[D. § 152. C. B., s. 208. B. B., s. 225. Section 179.] XIV of 1882.

163. (*1*) Notwithstanding anything contained in the Code of Civil Procedure, when the decree-holder makes the application mentioned in the last foregoing section, the Court shall, if under section 245 of the said Code it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by section 287 of the said Code.

Attachment and proclamation of sale to be issued simultaneously.

(*2*) The proclamation shall, in addition to stating and specifying the particulars mentioned in section 287 of the said Code, announce—

(*a*) in the case of a tenure or a holding of a raiyat holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

(*b*) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

(*3*) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the Local Government may, from time to time, direct in this behalf.

(*4*) Notwithstanding anything contained in section 290 of the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

[C. B., s. 206. B. B., s. 228 (*a*) and Expl. Section 180.]

164. (*1*) When a tenure or a holding at fixed rates has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.

(*2*) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

[C. B., s. 207. B. B., s. 229 (*a*). Section 181 (*1*).]

165. (*1*) If the bidding for a tenure or a holding at fixed rates put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure, announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.

XIV of 1882.

[D., § 155. C. B., s. 210. B. B., s. 232.]

(*2*) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

[B. B., s. 228, cl. (*b*). Section 183.]

166. (*1*) When an occupancy-holding has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

Sale of occupancy-holding with power to avoid all incumbrances, and effect thereof.

(*2*) The purchaser at a sale under this section may in manner provided by the next following section, and not otherwise, annul any incumbrance on the holding.

[Section 184.]

167. (*1*) A purchaser having power to annul an incumbrance under any of the foregoing sections and desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

Procedure for annulling incumbrances under the foregoing sections.

[D., § 153. C. B., s 204. B. B., s. 226. Section 187.] XIV of 1882.

(*2*) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(*3*) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

[B.B., s. 225 (*c*). Section 185.]

168. (*1*) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

(*2*) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

[D., § 246. C. B., s. 211. B. B., s. 233. Section 186.] XIV of 1882.

169. (*1*) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say:—

Rules for disposal of the sale-proceeds.

(*a*) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;

(*b*) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;

(*c*) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the sale;

(*d*) the balance (if any) remaining after the payment of the rent mentioned in clause (*c*) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(*2*) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (*c*), the Court shall determine the dispute, and the determination shall have the force of a decree.

[D., § 158. C. B., s. 209. B. B., s. 231. Section 188.] XIV of 1882.

170. (*1*) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

Tenure or holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.

(*2*) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(*3*) The judgment-debtor or any person having in the tenure or holding any interest voidable on the sale may pay money into Court under this section.

[D., §§ 35, 35, 154. C. B., s. 205. B. B., s. 227. Section 188.]

171. (*1*) When any person having, in a tenure or holding advertised for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,—

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the holding.

(*a*) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per centum per annum and secured by a mortgage of the tenure or holding to him;

(*b*) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and

(*c*) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(*2*) Nothing in this section shall affect any other remedy to which any such person would be entitled.

[D., §§ 35, 36, 154. C. B., s. 205. B. B., s. 227. Section 189.]

172. When a tenure or holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Inferior tenant paying into Court may deduct from rent.

XIV of 1882.

[C. B., s. 208 (1). B. B., s. 230 (1). Section 190.]

173. (*1*) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a holding is sold under this chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

Decree-holder may bid at sale; judgment-debtor may not.

(*2*) The judgment-debtor shall not bid for or purchase a holding so sold.

(*3*) When a judgment-debtor purchases by himself or through another person a holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the judgment-debtor.

174. (*1*) Where a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside, on his depositing in Court, for payment to the decree-holder, the amount recoverable

Application by judgment-debtor to set aside sale.

Bengal Tenancy Bill.

(Chapter XIV.—Sale for Arrears under Decree.—Secs. 175—177.)

(Chapter XV.—Contract and Custom.—Secs. 178—180.)

under the decree with costs, and, for payment to the purchaser, a sum equal to five per cent. of the purchase-money.

(2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale:

XIV of 1882. Provided that, if a judgment-debtor applies under section 311 of the Code of Civil Procedure to set aside the sale of his tenure or holding, he shall not be entitled to make an application under this section.

[Section 191.] XIV of 1882. (3) Section 313 of the Code of Civil Procedure shall not apply to any sale under this chapter.

[Section 192.] **175.** Notwithstanding anything contained in Part IV of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any tenure or holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

Registration of certain instruments creating incumbrances.

III of 1877.

[C. B., s. 206, Expl. B.B., s. 2, Expl. Section 193.] **176.** Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

Notification of incumbrances to landlord.

177. Nothing contained in this chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

Power to create incumbrances not extended.

CHAPTER XV.

CONTRACT AND CUSTOM.

[Section 210.] **178.** (1) Nothing in any contract between a landlord and tenant made before or after the passing of this Act—

Restrictions on exclusion of Act by agreement.

(a) shall bar in perpetuity the acquisition of an occupancy-right in land, or

(b) shall take away an occupancy-right in existence at the date of the contract, or

(c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

(d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and tenant since the 15th day of July, 1880, and before the passing of this Act shall prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land.

(3) Nothing in any contract made between a landlord and tenant after the passing of this Act shall—

(a) prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land;

(b) take away or limit the right of an occupancy-raiyat to use land as provided by section 23;

(c) take away the right of a raiyat to surrender his holding in accordance with section 86;

(d) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage;

(e) take away the right of a raiyat to sub-let subject to and in accordance with the provisions of this Act;

(f) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52;

(g) take away the right of a landlord or tenant to apply for a commutation of rent under section 40; or

(h) affect the provisions of section 67 relating to interest payable on arrears of rent:

Provided as follows:—

(i) nothing in this section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee would under Chapter V be entitled to an occupancy right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;

(ii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of orchard land with agricultural crops.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent mukarrarí lease on any terms agreed on between him and his tenant.

[Section 211.] Permanent mukarrarí leases.

Útbandi, chur and dearah lands. [Section 212.] **180.** (1) Notwithstanding anything in this Act, a raiyat—

(a) who in any part of the country where the custom of útbandi prevails, holds land ordinarily let under that custom and for the time being let under that custom, and

(b) who holds land of the kind known as chur or dearah,—

shall not acquire a right of occupancy—

in case (a), in land ordinarily held under the custom of útbandi and for the time being held under that custom,

in case (b), in the chur or dearah land—

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to raiyats holding land under the custom of útbandi in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be chur or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

Bengal Tenancy Bill.

(Chapter XV.—Contract and Custom.—Secs. 181—183.)

(Chapter XVI.—Limitation. Chapter XVII.—Supplemental.—Secs. 184—187.)

[Section 215.] **181.** Nothing in this Act shall affect any incident of a ghátwálí or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

Saving as to service-tenures.

[Section 216.] **182.** When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

Homesteads.

[Section 217.] **183.** Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Saving of custom.

Illustrations.

(1) A usage under which a raiyat is entitled to sell his holding without the consent of the landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act.

(2) The custom or usage that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

CHAPTER XVI.

LIMITATION.

184. (1) The suits, appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

Limitation in suits, appeals and applications in Schedule III.

[D., §§ 7[illegible] & 79. C. B., s. [illegible] B. B., s. [illegible] Section [illegible]

(2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

185. Sections 7, 8 and 9 of the Indian Limitation Act, 1877, shall not apply to the suits and applications mentioned in the last foregoing section.

Portions of the Indian Limitation Act not applicable to such suits, &c.

[C. B., s. [illegible] B. B., s. [illegible] Section [illegible] XV of 1877.

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

186. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

Penalties for illegal interference with produce.

[Penalties [illegible] C. B., s. [illegible] Section [illegible]

(a) distrains or attempts to distrain the produce of a tenant's holding, or

(b) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or

(c) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code.

XLV of 1860.

(2) Any person who abets within the meaning of the Indian Penal Code the doing of any act mentioned in sub-section (1) shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

XLV of 1860.

Agents and representatives of landlords.

187. (1) Any appearance, application or act, in, before or to any Court or authority, required or authorised by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

Power for landlord to act through agent.

[Section [illegible] Appearance [illegible]

Agents and representatives of landlords.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

[Section 188.]

188. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Joint-landlords to act collectively or by common agent.

Rules under Act.

[Section 189.] *Rules under Act.*

189. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

Power to make rules regarding procedure, powers of officers and service of notices.

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, and may by such rules confer upon any such officer—

(a) any power exercised by a Civil Court in the trial of suits;

(b) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exerciseable by any officer under the Bengal Survey Act, 1875; and

(c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil; and

(2) to prescribe the mode of service of notices under this Act where no mode is prescribed by this or any other Act.

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

Procedure for making, publication and confirmation of rules.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

Rules under Act.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, be amended, added to or cancelled by the authority having power to make the same.

Provisions as to temporarily-settled districts.

Provisions as to temporarily-settled districts.

191. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

[C. E., ss. 6, Excep., & 17, Exception. B. B., ss. 6, Excep., & 16, Exception. Section 193.]

Saving as to land held in a district not permanently settled.

192. When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a particular rent, and while the lease or contract is in force—

[D., § 2. C. E., s. 4. Report of Rent Commission, § 8. B. B., s. 4. Section 193.]

Power to alter rent in case of new assessment of revenue.

(a) land-revenue is for the first time made payable in respect of the land, or

(b) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

Rights of pasturage, &c.

193. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries and the like.

Rights of pasturage, forest-rights, &c.

Saving for conditions binding on landlords.

194. Where a [illegible] holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing

Tenant not entitled by Act to violate conditions binding on landlord.

in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition.

Savings for special enactments.

Savings for special enactments. [D., § 2. C. E., s. 4. Report of Rent Commission, § 8. B. B., s. 4. Section 228.]

195. Nothing in this Act shall affect—

Savings for special enactments.

(a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;

(b) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue-authorities;

(c) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;

(d) any enactment relating to the partition of revenue-paying estates;

(e) any enactment relating to patní tenures which is not expressly repealed by this Act; or

(f) any other special or local law not repealed either expressly or by necessary implication by this Act.

Construction of Act.

Construction of Act.

196. This Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.

Act to be read subject to Acts hereafter passed by Lieutenant-Governor in Council.

SCHEDULE I.

(*See section 2.*)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
VIII of 1793	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamíndárs, independent taluqdárs and other actual proprietors of land in Bengal, Behar and Orissa, passed for those Provinces respectively on the 1st [illegible] 1789, the 25th November, 1790, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
XII of 1805	A Regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including the pargannás of Pattáspur, Kunnáidichour, and Bagrae, at present included in the zila of Midnapur.	Section 7.

SCHEDULE I—*contd.*

Number and year.	Subject of Regulation.	Extent of repeal.
V of 1812	A Regulation for amending some of the rules at present in force for the collection of the Land-revenue.	Sections 2, 3, 4, 26 and 27.
XVIII of 1812	A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3 and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation L, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
XI of 1825	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
IV of 1867	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
VIII of 1879	An Act to define and limit the powers of Settlement-officers.	The whole Act.

Act of the Governor General in Council.

Number and year.	Subject of Act.	Extent of repeal.
X of 1859	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

Bengal Tenancy Bill.

(Schedule II.—Forms of Receipt and Account.)

SCHEDULE II.

FORMS OF RECEIPT AND ACCOUNT.

(See sections 56 and 57.)

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (LANDLORD'S PORTION).

1. Serial number of Receipt

2. Estate ; Village ; Thánd

3. Tenant's name , Son of

4. Particulars of the holding—

Nukdi, Bighás ; rent Rs.

Baouli, Bighás ; Maunds ; or Rs.

Julkur, Rs.
Bunkur, Rs.
Phulkur, Rs.

Government Cesses { Road Cess, Rs. / Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (RAIYAT'S PORTION).

1. Serial number of Receipt

2. Estate ; Village ; Thánd

3. Tenant's name , Son of

4. Particulars of the holding—

Nukdi, Bighás ; rent Rs.

Baouli, Bighás ; Maunds ; or Rs.

Julkur, Rs.
Bunkur, Rs.
Phulkur, Rs.

Government Cesses { Road Cess, Rs. / Public Works Cess, Rs.

5. Signature of the Landlord or his Authorized Agent

Section 55 of the Bengal Tenancy Act, 1885, provides as follows:—

(*1*) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(*2*) If he does not make any such declaration, the payment may be credited to the acc ount of such year and instalment as the landlord thinks fit.

DETAILS OF PAYMENTS (LANDLORD'S PART).

Date of payment, and name of person through whom paid.	Nukdi.		Baouli.		Julkur, &c.		Cesses.	
	Current on account of kist.	Arrear on account of year, kist.	Current on account of crop.	Arrear on account of year, crop.	Current on account of kist.	Arrear on account of year, kist.	Current on account of kist.	Arrear on account of year, kist.

DETAILS OF PAYMENTS (RAIYAT'S PART).

Date of payment, and name of person through whom paid.	Nukdi.		Baouli.		Julkur, &c.		Cesses.		Signature of the landlord or his authorized agent.
	Current on account of kist.	Arrear on account of year, kist.	Current on account of crop.	Arrear on account of year, crop.	Current on account of kist.	Arrear on account of year, kist.	Current on account of kist.	Arrear on account of year, kist.	

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bíghás	Rate	Rs. A. P.
Nukdi			
Government Cesses			

	Bíghás	Maunds	Rs. A. P.
Baouli			
Julkur			
Bunkur			
Phulkur			

	Maunds	Rs. A. P.
4. Demand of the year		
5 Balance of former years (Bakaya)		
		Rs. A. P.
6. Total demand (current and arrear)		
7. Paid each on account of { Current demand ...		
{ Arrear demand ...		
	Maunds	
8. Paid in kind		
		Rs. A. P.
9. Balance outstanding at end of year		

10. Signature of the Landlord or his authorized Agent

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bíghás	Rate	Rs. A. P.
Nukdi			
Government Cesses			

	Bíghás	Maunds	Rs. A. P.
Baouli			
Julkur			
Bunkur			
Phulkur			

	Maunds	Rs. A. P.
4. Demand of the year		
5. Balance of former years (Bakaya)		
		Rs. A. P.
6. Total demand (current and arrear)		
7. Paid each on account of { Current demand ...		
{ Arrear demand ...		
	Maunds	
8. Paid in kind		
		Rs. A. P.
9. Balance outstanding at end of year		

10. Signature of the Landlord or his authorized Agent

Bengal Tenancy Bill.
(Schedule III.—Limitation.)

SCHEDULE III.

LIMITATION.

(See section 184.)

PART I.—*Suits.*

Description of Suit.	Period of Limitation.	Time from which period begins to run.
1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year .	The date of the breach.
2. For the recovery of an arrear of rent—		
(*a*) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same holding.	Six months .	The date of the service of notice of the deposit.
(*b*) in other cases .	Three years .	The last day of the Bengali year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails.
3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat.	Two years .	The date of dispossession.

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
4. From any decree or order under this Act to the Court of a District Judge or Special Judge.	Thirty days .	The date of the decree or order appealed against.
5. From any order of a Collector under this Act to the Commissioner.	Thirty days .	The date of the order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree, except where the judgment-debtor has by fraud or force prevented the execution of the decree.	Three years .	(1) The date of the decree of order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.

R. J. CROSTHWAITE,
Offg. 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 20th February, 1885, and was referred to a Select Committee:—

No. 3 OF 1885.

A Bill to amend section 265 of the Indian Contract Act, 1872.

WHEREAS it is expedient to amend section 265 of the Indian Contract Act, 1872; It is hereby enacted as follows:— IX of 1872.

New section substituted for section 265, Indian Contract Act.

1. For section 265 of the said Act the following shall be substituted, namely:—

"265. In the absence of any contract to the contrary, after the termination of a partnership, the Court may at the suit of any one of the partners or his representatives wind up the business of the firm, provide for the payment of its debts, and distribute the surplus according to the shares of the partners respectively."

Right of partners to sue for winding-up by Court after termination of partnership.

Repeal of part of section 213, Act XIV, 1882.

2. In section 213 of the Code of Civil Procedure the words and figures from and including the word "applications" to the end of the section are hereby repealed. XIV of 1882.

STATEMENT OF OBJECTS AND REASONS.

SECTION 265 of the Indian Contract Act provides that, in the absence of any contract to the contrary, after the termination of a partnership, each partner or his representatives may apply to the Court to wind up the business of the firm, to provide for the payment of its debts and to distribute the surplus according to the shares of the partners respectively. It is explained that the Court mentioned in the section means a Court not inferior to the Court of a District Judge within the limits of whose jurisdiction the place or principal place of business of the firm is situated. This section has been the subject of various decisions by the Calcutta and other High Courts, first as to the meaning of the words "may apply", and secondly with regard to the jurisdiction of the Courts in the case of applications under the section.

2. The use of the words "may apply" has given rise to doubts as to whether the legislature intended that proceedings under the section should be by way of miscellaneous application or by way of regular suit. It is considered that where a partner wishes to have the business of the firm wound up, the debts paid and the surplus distributed, he should proceed by instituting a regular suit. The questions which the Court has to consider in such a case cannot well be decided in a summary manner on a miscellaneous application, and in disposing of an application under section 265 the Court must in effect deal with it as if it were a suit. In using the words "may apply" the legislature intended probably to indicate merely that a partner had a right to have the business wound up, the payment of the debts provided for, and the surplus distributed, by the Court. It is unlikely that there was any intention to declare that the procedure in such a case should be by way of a miscellaneous application.

3. With regard to the question of jurisdiction, the general result of the decided cases is to confine the jurisdiction to the Court of the District Judge and thus to bring on his files a number of suits many of which are unimportant and such as could be equally well decided by the subordinate tribunals. The time of all District Judges is fully occupied by their multifarious duties, and it is very undesirable that the performance of these duties should suffer in consequence of the compulsory institution in their Courts of cases the time and labour expended over which are often entirely disproportionate to the interests at stake.

4. The present Bill has accordingly been prepared. It amends section 265 so as to show plainly that proceedings thereunder are to be by way of a regular suit, and it omits the *Explanation* to the section, thus leaving the question of jurisdiction to be decided by the ordinary rules. The Bill also repeals the last paragraph of section 213 of the Code of Civil Procedure, as the omission of the *Explanation* renders that paragraph unnecessary.

The 16th February, 1885.

C. P. ILBERT.

R. J. CROSTHWAITE,
Offg. Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 28, 1885.

☞ 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 February, 1885, and was referred to a Select Committee:—

No. 3 OF 1885.

A Bill to amend section 265 of the Indian Contract Act, 1872.

WHEREAS it is expedient to amend section 265 of the Indian Contract Act, 1872; It is hereby enacted as follows:— IX of 1872.

New section substituted for section 265, Indian Contract Act.

1. For section 265 of the said Act the following shall be substituted, namely:—

"265. In the absence of any contract to the contrary, after the termination of a partnership, the Court may at the suit of any one of the partners or his representatives wind up the business of the firm, provide for the payment of its debts, and distribute the surplus according to the shares of the partners respectively."

Right of partners to sue for winding-up by Court after termination of partnership.

2. In section 213 of the Code of Civil Procedure the words and figures from and including the word "applications" to the end of the section are hereby repealed. XIV of 1882.

Repeal of part of section 213, Act XIV 1882.

STATEMENT OF OBJECTS AND REASONS.

SECTION 265 of the Indian Contract Act provides that, in the absence of any contract to the contrary, after the termination of a partnership, each partner or his representatives may apply to the Court to wind up the business of the firm, to provide for the payment of its debts and to distribute the surplus according to the shares of the partners respectively. It is explained that the Court mentioned in the section means a Court not inferior to the Court of a District Judge within the limits of whose jurisdiction the place or principal place of business of the firm is situated. This section has been the subject of various decisions by the Calcutta and other High Courts, first as to the meaning of the words "may apply", and secondly with regard to the jurisdiction of the Courts in the case of applications under the section.

2. The use of the words "may apply" has given rise to doubts as to whether the legislature intended that proceedings under the section should be by way of miscellaneous application or by way of regular suit. It is considered that where a partner wishes to have the business of the firm wound up, the debts paid and the surplus distributed, he should proceed by instituting a regular suit. The questions which the Court has to consider in such a case cannot well be decided in a summary manner on a miscellaneous application, and in disposing of an application under section 265 the Court must in effect deal with it as if it were a suit. In using the words "may apply" the legislature intended probably to indicate merely that a partner had a right to have the business wound up, the payment of the debts provided for, and the surplus distributed, by the Court. It is unlikely that there was any intention to declare that the procedure in such a case should be by way of a miscellaneous application.

3. With regard to the question of jurisdiction, the general result of the decided cases is to confine the jurisdiction to the Court of the District Judge and thus to bring on his files a number of suits many of which are unimportant and such as could be equally well decided by the subordinate tribunals. The time of all District Judges is fully occupied by their multifarious duties, and it is very undesirable that the performance of these duties should suffer in consequence of the compulsory institution in their Courts of cases the time and labour expended over which are often entirely disproportionate to the interests at stake.

4. The present Bill has accordingly been prepared. It amends section 265 so as to show plainly that proceedings thereunder are to be by way of a regular suit, and it omits the *Explanation* to the section, thus leaving the question of jurisdiction to be decided by the ordinary rules. The Bill also repeals the last paragraph of section 213 of the Code of Civil Procedure as the omission of the *Explanation* renders that paragraph unnecessary.

The 16th February, 1885.

C. P. ILBERT.

R. J. CROSTHWAITE,
Offg. Secretary to the Goverment of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 7, 1885.

☞ **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 February, 1885, and was referred to a Select Committee:—

No. 3 OF 1885.

A Bill to amend section 265 of the Indian Contract Act, 1872.

WHEREAS it is expedient to amend section 265 of the Indian Contract Act, 1872; It is hereby enacted as follows:— IX of 1872.

New section substituted for section 265, Indian Contract Act.

1. For section 265 of the said Act the following shall be substituted, namely:—

"265. In the absence of any contract to the contrary, after the termination of a partnership, the Court may at the suit of any one of the partners or his representatives wind up the business of the firm, provide for the payment of its debts, and distribute the surplus according to the shares of the partners respectively."

Right of partners to sue for winding-up by Court after termination of partnership.

Repeal of part of section 213, Act XIV 1882.

2. In section 213 of the Code of Civil Procedure the words and figures from and including the word "applications" to the end of the section are hereby repealed. XIV of 1882.

STATEMENT OF OBJECTS AND REASONS.

SECTION 265 of the Indian Contract Act provides that, in the absence of any contract to the contrary, after the termination of a partnership, each partner or his representatives may apply to the Court to wind up the business of the firm, to provide for the payment of its debts and to distribute the surplus according to the shares of the partners respectively. It is explained that the Court mentioned in the section means a Court not inferior to the Court of a District Judge within the limits of whose jurisdiction the place or principal place of business of the firm is situated. This section has been the subject of various decisions by the Calcutta and other High Courts, first as to the meaning of the words "may apply", and secondly with regard to the jurisdiction of the Courts in the case of applications under the section.

2. The use of the words "may apply" has given rise to doubts as to whether the legislature intended that proceedings under the section should be by way of miscellaneous application or by way of regular suit. It is considered that where a partner wishes to have the business of the firm wound up, the debts paid and the surplus distributed, he should proceed by instituting a regular suit. The questions which the Court has to consider in such a case cannot well be decided in a summary manner on a miscellaneous application, and in disposing of an application under section 265 the Court must in effect deal with it as if it were a suit. In using the words "may apply" the legislature intended probably to indicate merely that a partner had a right to have the business wound up, the payment of the debts provided for, and the surplus distributed, by the Court. It is unlikely that there was any intention to declare that the procedure in such a case should be by way of a miscellaneous application.

3. With regard to the question of jurisdiction, the general result of the decided cases is to confine the jurisdiction to the Court of the District Judge and thus to bring on his files a number of suits many of which are unimportant and such as could be equally well decided by the subordinate tribunals. The time of all District Judges is fully occupied by their multifarious duties, and it is very undesirable that the performance of these duties should suffer in consequence of the compulsory institution in their Courts of cases the time and labour expended over which are often entirely disproportionate to the interests at stake.

4. The present Bill has accordingly been prepared. It amends section 265 so as to show plainly that proceedings thereunder are to be by way of a regular suit, and it omits the *Explanation* to the section, thus leaving the question of jurisdiction to be decided by the ordinary rules. The Bill also repeals the last paragraph of section 213 of the Code of Civil Procedure as the omission of the *Explanation* renders that paragraph unnecessary.

The 16th February, 1885.

C. P. ILBERT.

R. J. CROSTHWAITE,
Offg. Secretary to the Goverment 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 27th February, 1885, and was referred to a Select Committee:—

No. 4 OF 1885.

THE LAND ACQUISITION (MINES) BILL, 1885.

CONTENTS.

SECTIONS.

1. Short title, local extent and commencement.
2. Statement in declaration under section 6 of Act X of 1870 that mines not needed.
3. Notice to be given by owner, &c., before working mines lying under land.
4. Inspection of mines by Local Government.
5. If Local Government offers to pay compensation, mines not to be worked.
6. Amount of compensation to be determined under Act X of 1870.
7. If Local Government does not offer to pay compensation, mines may be worked in a proper manner.
8. Power to officer of Local Government to enter and inspect the working of mines.
9. Penalty for refusal to allow inspection.
10. If mines improperly worked, Local Government may require means to be adopted for safety of land acquired.
11. Construction of Act when land acquired has been transferred to a Company.
12. Definition of Company.

A Bill to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.

WHEREAS it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870; It is hereby enacted as follows:— X of 1870.

Short title, local extent and commencement.

1. (*1*) This Act may be called the Land Acquisition (Mines) Act, 1885.

(*2*) It extends to the whole of British India; and

(*3*) It shall come into force at once.

Statement in declaration under section 6 of Act X of 1870 that mines not needed.

2. (*1*) When the Local Government makes a declaration under section 6 of the Land Acquisition Act, 1870, that land is needed for a public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that any mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as are necessary to be dug or carried away or used in the construction of the work for the purpose of which the land is being acquired, are not needed. [cf. 8 Vic, c. 20, s. 77.] X of 1870.

(*2*) If any such statement is inserted in the declaration, any mines of coal, iron-stone, slate or other minerals under the land or portion of the land specified in the declaration, except as aforesaid, shall not, when the Collector takes possession of the land under section 16 or section 17 of the said Act, vest in the Government.

Notice to be given by owner, &c., before working mines lying under land.

3. If the owner, lessee or occupier of any mines or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the Local Government notice in writing of his intention so to do thirty days before the commencement of working. [cf. 8 Vic., c. 20, s. 78.]

Inspection of mines by Local Government.

4. On the receipt of a notice under the last foregoing section, the Local Government may cause the mines or minerals to be inspected by a person appointed by it for the purpose. [cf. 8 Vic., c. 20, s. 78.]

The Land Acquisition (Mines) Bill, 1885.
(*Sections 5-12.*)

[cf. 8 Vic., c. 20, s. 78.]

5. (*1*) If it appears to the Local Government that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon, the Local Government may at any time before the expiration of thirty days from the receipt of the notice under section 3 offer either—

If Local Government offers to pay compensation, mines not to be worked.

(*a*) to pay compensation for the mines or minerals or part thereof to the owner, lessee or occupier thereof; or

(*b*) to pay compensation to the owner, lessee or occupier of the mines or minerals, or part thereof, in consideration of his working or getting them in such manner and subject to such restrictions as the Local Government may in its offer specify.

(*2*) If the offer mentioned in case (*a*) is made, then the owner, lessee or occupier shall not work or get the mines or minerals or part thereof;

(*3*) If the offer mentioned in case (*b*) is made, then the owner, lessee or occupier shall not work or get the mines or minerals, or part thereof, save in the manner and subject to the restrictions specified by the Local Government.

[cf. 8 Vic., c. 20, s. 78.]

6. If the Local Government and the owner, lessee or occupier of any such mines or minerals, do not agree as to the amount of compensation to be paid under the last foregoing section, the same shall be settled in accordance with the procedure prescribed by the Land Acquisition Act, 1870, for determining the amount of compensation.

Amount of compensation to be determined under Act X of 1870.

X of 1870.

[cf. 8 Vic., c 20, s. 79.]

7. (*1*) If before the expiration of the said thirty days the Local Government does not offer to pay any compensation to the owner, lessee or occupier of the mines or minerals for any loss he may sustain as provided in section 5, the owner, lessee or occupier may work the mines, or any part thereof, in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

If Local Government does not offer to pay compensation, mines may be worked in a proper manner.

(*2*) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee or occupier of the mines or minerals shall at once at his own expense repair the damage or remove the obstruction, as the case may require.

(*3*) If the repair or removal is not at once effected, or, if the Local Government so thinks fit, without waiting for the same to be effected by the owner, lessee or occupier, the Local Government may execute the same and recover from the owner, lessee or occupier the expense occasioned thereby.

8. For better ascertaining whether any such mines are being worked or have been worked so as to damage the land acquired or the works thereon, an officer appointed for this purpose by the Local Government may, after giving twenty-four hours' notice in writing, enter on any land in or near which the land acquired is situate, and wherein any such mines are being worked or are supposed to be worked, and enter into and return from any such mines or the works connected therewith; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and use all necessary means for discovering the distance from the land acquired to the parts of the mines which are being worked or about to be worked.

Power to officer of Local Government to enter and inspect the working of mines.

9. If any owner, lessee or occupier of any such mines refuses to allow any officer appointed by the Local Government for that purpose to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the Local Government a sum not exceeding two hundred rupees.

Penalty for refusal to allow inspection.

10. If it appears that any such mines have been worked contrary to the provisions of this Act, the Local Government may, if it thinks fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired, and preventing injury thereto; and, if after such notice any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired, the Local Government may itself construct the works and recover the expense thereof from the owner, lessee or occupier.

If mines improperly worked, Local Government may require means to be adopted for safety of land acquired.

11. When a statement under section 2 has been made regarding any land and the land has been acquired for a Company and has been transferred by the Local Government to the Company, then sections 3 to 10, both inclusive, shall be read as if for the words "the Local Government" wherever they occur in those sections the words "the Company which has acquired the land" were substituted.

Construction of Act when land acquired has been transferred to a Company.

12. In this Act "Company" means a Company registered under the Indian Companies Act, 1882, or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent.

Definition of Company.

VI

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.

2. Act XXII of 1863, which was replaced by the Land Acquisition Act, 1870, contained specific provisions (sections 51 and 52) for cases in which mines and minerals lay under land taken up under that Act. These provisions were not, however, re-enacted in the Act of 1870, which, as the Government is advised, contemplates the acquisition of the underlying minerals as well as the surface of the land.

3. Hitherto this state of the law has caused no inconvenience. Now, however, owing to its being proposed to extend railways across districts where there is a certain amount of coal to be found, notice has been drawn to the inconvenience of the existing law which practically compels the Government either to purchase all the mines and minerals under the land over which it is proposed to construct a line or to abandon the undertaking altogether.

4. Under these circumstances, the present Bill has been prepared. It does not, however, simply re-enact the provisions which Act XXII of 1863 formerly contained, inasmuch as they do not appear to be adapted to the circumstances of the case. It follows rather the rules contained in the English Railway Clauses Consolidation Act, 1845, (8 Vic., c. 20, ss. 77 *et seq.*) which it extends to the acquisition of land for all purposes and not merely for the construction of Railways.

5. It provides, first, (section 2) that when a declaration is made by the Local Government under section 6 of the Land Acquisition Act, the Local Government may, if it thinks fit, insert in the declaration a statement that any mines or minerals lying under the land to be acquired are not needed, and that if any such statement is inserted in the declaration, the mines or menerals lying under the land shall not, when the Collector takes possession of the land under section 16 or section 17 of the Act, vest in the Government.

6. It then (section 3) declares that if the owner, lessee or occupier of any mines or minerals lying under any land so acquired is desirous of working the same, he shall give the local Government notice in writing of his intention so to do thirty days before the commencement of working.

7. Next (section 4), the Bill empowers the local Government to cause the mines or minerals to be inspected by a person appointed by it for the purpose.

8. If it appears (section 5) to the local Government that the working of the mines or minerals is likely to cause damage to the surface of the land or any works thereon, the Local Government may at any time before the expiration of thirty days from the receipt of the notice, offer either—

(*a*) to pay compensation for the mines or minerals to the owner, lessee or occupier;

(*b*) to pay compensation to the owner, lessee or occupier of the mines or minerals in consideration of his working or getting them in such manner and subject to such restrictions, as the Local Government may in its offer specify.

If the offer mentioned in case (*a*) is made, then the owner, lessee or occupier is prohibited from working the mines or minerals, whilst if the offer mentioned in case (*b*) is made, then he may not work or get the mines or minerals, save in the manner and subject to the restrictions specified by the local Government.

9. The Bill next provides (section 6) for the manner in which the amount of compensation to be paid under section 5 is to be determined.

10. Should, however, the local Government not offer to pay any compensation, section 7 permits the owner, lessee or occupier of the mines or minerals to work the mines in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate. Should any damage or obstruction be caused by improper working of the mines, the section provides for the repairing of the damage or the removal of the obstruction by or at the cost of the owner, lessee or occupier.

11. Sections 8 and 9 provide for the inspection of mines for the purpose of ascertaining whether they are being worked or have been worked so as to damage the land which has been acquired and section 10 declares that if any mines have been improperly worked, the Local Government may require the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary for making safe the land acquired and preventing injury thereto.

12. Lastly, section 11 makes the provisions of sections 3 to 10 applicable to cases where the land acquired has been transferred to a company, and section 12 defines what the term "Company" as used in the Bill means.

The 24th February, 1885.

T. C. HOPE.

R. J. CROSTHWAITE,

Offg. Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 14, 1885.

☞ 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 27th February, 1885, and was referred to a Select Committee:—

No. 4 OF 1885.

THE LAND ACQUISITION (MINES) BILL, 1885.

CONTENTS.

SECTIONS.

1. Short title, local extent and commencement.
2. Statement in declaration under section 6 of Act X of 1870 that mines not needed.
3. Notice to be given by owner, &c., before working mines lying under land.
4. Inspection of mines by Local Government.
5. If Local Government offers to pay compensation, mines not to be worked.
6. Amount of compensation to be determined under Act X of 1870.
7. If Local Government does not offer to pay compensation, mines may be worked in a proper manner.
8. Power to officer of Local Government to enter and inspect the working of mines.
9. Penalty for refusal to allow inspection.
10. If mines improperly worked, Local Government may require means to be adopted for safety of land acquired.
11. Construction of Act when land acquired has been transferred to a Company.
12. Definition of Company.

A Bill to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.

WHEREAS it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870; It is hereby enacted as follows:— X of 1870.

1. (*1*) This Act may be called the Land Acquisition (Mines) Act, 1885.

Short title, local extent and commencement.

(*2*) It extends to the whole of British India; and

(*3*) It shall come into force at once.

2. (*1*) When the Local Government makes a declaration under section 6 of the Land Acquisition Act, 1870, that land is needed for a public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that any mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as are necessary to be dug or carried away or used in the construction of the work for the purpose of which the land is being acquired, are not needed. [cf. 8 Vic, c. 20, s. 77.] X of 1870.

Statement in declaration under section 6 of Act X of 1870 that mines not needed.

(*2*) If any such statement is inserted in the declaration, any mines of coal, iron-stone, slate or other minerals under the land or portion of the land specified in the declaration, except as aforesaid, shall not, when the Collector takes possession of the land under section 16 or section 17 of the said Act, vest in the Government.

3. If the owner, lessee or occupier of any mines or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the Local Government notice in writing of his intention so to do thirty days before the commencement of working. [cf. 8 Vic., c. 20, s. 78.]

Notice to be given by owner, &c., before working mines lying under land.

4. On the receipt of a notice under the last foregoing section, the Local Government may cause the mines or minerals to be inspected by a person appointed by it for the purpose. [cf. 8 Vic., c. 20, s. 78.]

Inspection of mines by Local Government.

The Land Acquisition (Mines) Bill, 1885.
(*Sections 5-12.*)

[cf. 8 Vic., c. 20, s. 78.]

5. (*1*) If it appears to the Local Government that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon, the Local Government may at any time before the expiration of thirty days from the receipt of the notice under section 3 offer either—

If Local Government offers to pay compensation, mines not to be worked.

(*a*) to pay compensation for the mines or minerals or part thereof to the owner, lessee or occupier thereof; or

(*b*) to pay compensation to the owner, lessee or occupier of the mines or minerals, or part thereof, in consideration of his working or getting them in such manner and subject to such restrictions as the Local Government may in its offer specify.

(*2*) If the offer mentioned in case (*a*) is made, then the owner, lessee or occupier shall not work or get the mines or minerals or part thereof;

(*3*) If the offer mentioned in case (*b*) is made, then the owner, lessee or occupier shall not work or get the mines or minerals, or part thereof, save in the manner and subject to the restrictions specified by the Local Government.

[cf. 8 Vic., c. 20, s. 78.]

6. If the Local Government and the owner, lessee or occupier of any such mines or minerals, do not agree as to the amount of compensation to be paid under the last foregoing section, the same shall be settled in accordance with the procedure prescribed by the Land Acquisition Act, 1870, for determining the amount of compensation.

Amount of compensation to be determined under Act X of 1870.

X of 1870.

[cf. 8 V c., c. 20, s. 79.]

7. (*1*) If before the expiration of the said thirty days the Local Government does not offer to pay any compensation to the owner, lessee or occupier of the mines or minerals for any loss he may sustain as provided in section 5, the owner, lessee or occupier may work the mines, or any part thereof, in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

If Local Government does not offer to pay compensation, mines may be worked in a proper manner.

(*2*) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee or occupier of the mines or minerals shall at once at his own expense repair the damage or remove the obstruction, as the case may require.

(*3*) If the repair or removal is not at once effected, or, if the Local Government so thinks fit, without waiting for the same to be effected by the owner, lessee or occupier, the Local Government may execute the same and recover from the owner, lessee or occupier the expense occasioned thereby.

8. For better ascertaining whether any such mines are being worked or have been worked so as to damage the land acquired or the works thereon, an officer appointed for the purpose by the Local Government may, after giving twenty-four hours' notice in writing, enter on any land in or near which the land acquired is situate, and wherein any such mines are being worked or are supposed to be worked, and enter into and return from any such mines or the works connected therewith; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and use all necessary means for discovering the distance from the land acquired to the parts of the mines which are being worked or about to be worked.

Power to officer of Local Government to enter and inspect the working of mines.

9. If any owner, lessee or occupier of any such mines refuses to allow any officer appointed by the Local Government for that purpose to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the Local Government a sum not exceeding two hundred rupees.

Penalty for refusal to allow inspection.

10. If it appears that any such mines have been worked contrary to the provisions of this Act, the Local Government may, if it thinks fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired, and preventing injury thereto; and, if after such notice any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired, the Local Government may itself construct the works and recover the expense thereof from the owner, lessee or occupier.

If mines improperly worked, Local Government may require means to be adopted for safety of land acquired.

11. When a statement under section 2 has been made regarding any land and the land has been acquired for a Company and has been transferred by the Local Government to the Company, then sections 3 to 10, both inclusive, shall be read as if for the words "the Local Government" wherever they occur in those sections the words "the Company which has acquired the land" were substituted.

Construction of Act when land acquired has been transferred to a Company.

12. In this Act "Company" means a Company registered under the Indian Companies Act, 1882, or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent.

Definition of Company.

VI of 1882.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.

2. Act XXII of 1863, which was replaced by the Land Acquisition Act, 1870, contained specific provisions (sections 51 and 52) for cases in which mines and minerals lay under land taken up under that Act. These provisions were not, however, re-enacted in the Act of 1870, which, as the Government is advised, contemplates the acquisition of the underlying minerals as well as the surface of the land.

3. Hitherto this state of the law has caused no inconvenience. Now, however, owing to its being proposed to extend railways across districts where there is a certain amount of coal to be found, notice has been drawn to the inconvenience of the existing law which practically compels the Government either to purchase all the mines and minerals under the land over which it is proposed to construct a line or to abandon the undertaking altogether.

4. Under these circumstances, the present Bill has been prepared. It does not, however, simply re-enact the provisions which Act XXII of 1863 formerly contained, inasmuch as they do not appear to be adapted to the circumstances of the case. It follows rather the rules contained in the English Railway Clauses Consolidation Act, 1845, (8 Vic., c. 20, ss. 77 *et seq.*) which it extends to the acquisition of land for all purposes and not merely for the construction of Railways.

5. It provides, first, (section 2) that when a declaration is made by the Local Government under section 6 of the Land Acquisition Act, the Local Government may, if it thinks fit, insert in the declaration a statement that any mines or minerals lying under the land to be acquired are not needed, and that if any such statement is inserted in the declaration, the mines or menerals lying under the land shall not, when the Collector takes possession of the land under section 16 or section 17 of the Act, vest in the Government.

6. It then (section 3) declares that if the owner, lessee or occupier of any mines or minerals lying under any land so acquired is desirous of working the same, he shall give the local Government notice in writing of his intention so to do thirty days before the commencement of working.

7. Next (section 4), the Bill empowers the local Government to cause the mines or minerals to be inspected by a person appointed by it for the purpose.

8. If it appears (section 5) to the local Government that the working of the mines or minerals is likely to cause damage to the surface of the land or any works thereon, the Local Government may at any time before the expiration of thirty days from the receipt of the notice, offer either—

(*a*) to pay compensation for the mines or minerals to the owner, lessee or occupier;
(*b*) to pay compensation to the owner, lessee or occupier of the mines or minerals in consideration of his working or getting them in such manner and subject to such restrictions, as the Local Government may in its offer specify.

If the offer mentioned in case (*a*) is made, then the owner, lessee or occupier is prohibited from working the mines or minerals, whilst if the offer mentioned in case (*b*) is made, then he may not work or get the mines or minerals, save in the manner and subject to the restrictions specified by the local Government.

9. The Bill next provides (section 6) for the manner in which the amount of compensation to be paid under section 5 is to be determined.

10. Should, however, the local Government not offer to pay any compensation, section 7 permits the owner, lessee or occupier of the mines or minerals to work the mines in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate. Should any damage or obstruction be caused by improper working of the mines, the section provides for the repairing of the damage or the removal of the obstruction by or at the cost of the owner, lessee or occupier.

11. Sections 8 and 9 provide for the inspection of mines for the purpose of ascertaining whether they are being worked or have been worked so as to damage the land which has been acquired and section 10 declares that if any mines have been improperly worked, the Local Government may require the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary for making safe the land acquired and preventing injury thereto.

12. Lastly, section 11 makes the provisions of sections 3 to 10 applicable to cases where the land acquired has been transferred to a company, and section 12 defines what the term "Company" as used in the Bill means.

The 24th February, 1885.

T. C. HOPE.

R. J. CROSTHWAITE,
Offg. Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 21, 1885.

☞ 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 27th February, 1885, and was referred to a Select Committee:—

No. 4 OF 1885.

THE LAND ACQUISITION (MINES) BILL, 1885.

CONTENTS.

SECTIONS.

1. Short title, local extent and commencement.
2. Statement in declaration under section 6 of Act X of 1870 that mines not needed.
3. Notice to be given by owner, &c., before working mines lying under land.
4. Inspection of mines by Local Government.
5. If Local Government offers to pay compensation, mines not to be worked.
6. Amount of compensation to be determined under Act X of 1870.
7. If Local Government does not offer to pay compensation, mines may be worked in a proper manner.
8. Power to officer of Local Government to enter and inspect the working of mines.
9. Penalty for refusal to allow inspection.
10. If mines improperly worked, Local Government may require means to be adopted for safety of land acquired.
11. Construction of Act when land acquired has been transferred to a Company.
12. Definition of Company.

A Bill to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.

WHEREAS it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870; It is hereby enacted as follows:— X of 1870

1. (*1*) This Act may be called the Land Acquisition (Mines) Act, 1885.

Short title, local extent and commencement.

(*2*) It extends to the whole of British India; and

(*3*) It shall come into force at once.

2. (*1*) When the Local Government makes a declaration under section 6 of the Land Acquisition Act, 1870, that land is needed for a public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that any mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as are necessary to be dug or carried away or used in the construction of the work for the purpose of which the land is being acquired, are not needed. [cf. 8 Vic, c. 20, s. 77.] X of 1870.

Statement in declaration under section 6 of Act X of 1870 that mines not needed.

(*2*) If any such statement is inserted in the declaration, any mines of coal, iron-stone, slate or other minerals under the land or portion of the land specified in the declaration, except as aforesaid, shall not, when the Collector takes possession of the land under section 16 or section 17 of the said Act, vest in the Government.

3. If the owner, lessee or occupier of any mines or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the Local Government notice in writing of his intention so to do thirty days before the commencement of working. [cf. 8 Vic., c. 20, s. 78.]

Notice to be given by owner, &c., before working mines lying under land.

4. On the receipt of a notice under the last foregoing section, the Local Government may cause the mines or minerals to be inspected by a person appointed by it for the purpose. [cf. 8 Vic, c. 20, s. 78.]

Inspection of mines by Local Government.

The Land Acquisition (Mines) Bill, 1885.
(Sections 5-12.)

[cf. 8 Vic., c. 20, s. 78.]

5. (*1*) If it appears to the Local Government that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon, the Local Government may at any time before the expiration of thirty days from the receipt of the notice under section 3 offer either—

If Local Government offers to pay compensation, mines not to be worked.

(*a*) to pay compensation for the mines or minerals or part thereof to the owner, lessee or occupier thereof; or

(*b*) to pay compensation to the owner, lessee or occupier of the mines or minerals, or part thereof, in consideration of his working or getting them in such manner and subject to such restrictions as the Local Government may in its offer specify.

(*2*) If the offer mentioned in case (*a*) is made, then the owner, lessee or occupier shall not work or get the mines or minerals or part thereof;

(*3*) If the offer mentioned in case (*b*) is made, then the owner, lessee or occupier shall not work or get the mines or minerals, or part thereof, save in the manner and subject to the restrictions specified by the Local Government.

[cf. 8 Vic., c. 20, s. 78.]

6. If the Local Government and the owner, lessee or occupier of any such mines or minerals, do not agree as to the amount of compensation to be paid under the last foregoing section, the same shall be settled in accordance with the procedure prescribed by the Land Acquisition Act, 1870, for determining the amount of compensation.

Amount of compensation to be determined under Act X of 1870.

X of 1870

[cf. 8 Vic., c. 20, s. 79.]

7. (*1*) If before the expiration of the said thirty days the Local Government does not offer to pay any compensation to the owner, lessee or occupier of the mines or minerals for any loss he may sustain as provided in section 5, the owner, lessee or occupier may work the mines, or any part thereof, in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

If Local Government does not offer to pay compensation, mines may be worked in a proper manner.

(*2*) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee or occupier of the mines or minerals shall at once at his own expense repair the damage or remove the obstruction, as the case may require.

(*3*) If the repair or removal is not at once effected, or, if the Local Government so thinks fit, without waiting for the same to be effected by the owner, lessee or occupier, the Local Government may execute the same and recover from the owner, lessee or occupier the expense occasioned thereby.

8. For better ascertaining whether any such mines are being worked or have been worked so as to damage the land acquired or the works thereon, an officer appointed for this purpose by the Local Government may, after giving twenty-four hours' notice in writing, enter on any land in or near which the land acquired is situate, and wherein any such mines are being worked or are supposed to be worked, and enter into and return from any such mines or the works connected therewith; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and use all necessary means for discovering the distance from the land acquired to the parts of the mines which are being worked or about to be worked.

Power to officer of Local Government to enter and inspect the working of mines.

9. If any owner, lessee or occupier of any such mines refuses to allow any officer appointed by the Local Government for that purpose to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the Local Government a sum not exceeding two hundred rupees.

Penalty for refusal to allow inspection.

10. If it appears that any such mines have been worked contrary to the provisions of this Act, the Local Government may, if it thinks fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired, and preventing injury thereto; and, if after such notice any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired, the Local Government may itself construct the works and recover the expense thereof from the owner, lessee or occupier.

If mines improperly worked, Local Government may require means to be adopted for safety of land acquired.

11. When a statement under section 2 has been made regarding any land and the land has been acquired for a Company and has been transferred by the Local Government to the Company, then sections 3 to 10, both inclusive, shall be read as if for the words "the Local Government" wherever they occur in those sections the words "the Company which has acquired the land" were substituted.

Construction of Act when land acquired has been transferred to a Company.

12. In this Act "Company" means a Company registered under the Indian Companies Act, 1882, or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent.

Definition of Company.

VI of 1882.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.

2. Act XXII of 1863, which was replaced by the Land Acquisition Act, 1870, contained specific provisions (sections 51 and 52) for cases in which mines and minerals lay under land taken up under that Act. These provisions were not, however, re-enacted in the Act of 1870, which, as the Government is advised, contemplates the acquisition of the underlying minerals as well as the surface of the land.

3. Hitherto this state of the law has caused no inconvenience. Now, however, owing to its being proposed to extend railways across districts where there is a certain amount of coal to be found, notice has been drawn to the inconvenience of the existing law which practically compels the Government either to purchase all the mines and minerals under the land over which it is proposed to construct a line or to abandon the undertaking altogether.

4. Under these circumstances, the present Bill has been prepared. It does not, however, simply re-enact the provisions which Act XXII of 1863 formerly contained, inasmuch as they do not appear to be adapted to the circumstances of the case. It follows rather the rules contained in the English Railway Clauses Consolidation Act, 1845, (8 Vic., c. 20, ss. 77 *et seq.*) which it extends to the acquisition of land for all purposes and not merely for the construction of Railways.

5. It provides, first, (section 2) that when a declaration is made by the Local Government under section 6 of the Land Acquisition Act, the Local Government may, if it thinks fit, insert in the declaration a statement that any mines or minerals lying under the land to be acquired are not needed, and that if any such statement is inserted in the declaration, the mines or minerals lying under the land shall not, when the Collector takes possession of the land under section 16 or section 17 of the Act, vest in the Government.

6. It then (section 3) declares that if the owner, lessee or occupier of any mines or minerals lying under any land so acquired is desirous of working the same, he shall give the local Government notice in writing of his intention so to do thirty days before the commencement of working.

7. Next (section 4), the Bill empowers the local Government to cause the mines or minerals to be inspected by a person appointed by it for the purpose.

8. If it appears (section 5) to the local Government that the working of the mines or minerals is likely to cause damage to the surface of the land or any works thereon, the Local Government may at any time before the expiration of thirty days from the receipt of the notice, offer either—

(*a*) to pay compensation for the mines or minerals to the owner, lessee or occupier;

(*b*) to pay compensation to the owner, lessee or occupier of the mines or minerals in consideration of his working or getting them in such manner and subject to such restrictions, as the Local Government may in its offer specify.

If the offer mentioned in case (*a*) is made, then the owner, lessee or occupier is prohibited from working the mines or minerals, whilst if the offer mentioned in case (*b*) is made, then he may not work or get the mines or minerals, save in the manner and subject to the restrictions specified by the local Government.

9. The Bill next provides (section 6) for the manner in which the amount of compensation to be paid under section 5 is to be determined.

10. Should, however, the local Government not offer to pay any compensation, section 7 permits the owner, lessee or occupier of the mines or minerals to work the mines in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate. Should any damage or obstruction be caused by improper working of the mines, the section provides for the repairing of the damage or the removal of the obstruction by or at the cost of the owner, lessee or occupier.

11. Sections 8 and 9 provide for the inspection of mines for the purpose of ascertaining whether they are being worked or have been worked so as to damage the land which has been acquired and section 10 declares that if any mines have been improperly worked, the Local Government may require the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary for making safe the land acquired and preventing injury thereto.

12. Lastly, section 11 makes the provisions of sections 3 to 10 applicable to cases where the land acquired has been transferred to a company, and section 12 defines what the term "Company" as used in the Bill means.

The 24th February, 1885.

T. C. HOPE.

R. J. CROSTHWAITE,
Offg. Secretary to the Government of India.

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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 13th March 1885, and was referred to a Select Committee :—

No. 5 OF 1885.

A Bill to amend the Petroleum Act, 1881.

WHEREAS it is expedient to amend the Petroleum Act, 1881, in manner hereinafter appearing; VIII of 1881 It is hereby enacted as follows :—

Short title and commencement.

1. (*1*) This Act may be called the Petroleum Act, 1885; and

(*2*) It shall come into force at once.

VIII of 1881.

Amendment of *explanation* to definition of "petroleum" in section 3 of Act VIII of 1881.

2. In section 3 of the Petroleum Act, 1881, in the *explanation* to the definition of "petroleum," for the last thirteen words the following words shall be substituted, namely :—

"in accordance with the directions contained in the schedule hereto annexed, with an apparatus which has been stamped and certified as provided by section 17A, within a period of five years immediately preceding the date on which the apparatus is used for the testing, and after the corrections (if any) which the certificate declares are to be applied to the results of the testing have been made."

Amendment of definition of "dangerous petroleum" in section 3 of Act VIII of 1881.

3. In section 3 of the said Act, in the definition of "dangerous petroleum", for the word "seventy-three" the word "seventy-six" shall be substituted; and to the same definition the following words shall be added, namely :—

"Provided that, when all or any of the petroleum on board a ship, or in the possession of any dealer, is declared by the master of the ship, or the consignees of the cargo, or by the dealer, as the case may be, to be of one uniform quality, the petroleum shall not be deemed to be dangerous if the samples selected from such petroleum, when tested as aforesaid, have their flashing points, on an average, at or above seventy-three degrees of Fahrenheit's thermometer and if no one of the said samples has its flashing point below seventy degrees of that thermometer."

Repeal of word 'glass" in section 5 of same Act.

4. In the proviso to section 5 of the said Act, the word "glass" shall be repealed.

Substitution of certain words in section 6 of the same Act.

5. In section 6 of the said Act, for the last seventeen words the following shall be substituted, namely :—

"have attached thereto a label in conspicuous characters stating the description of the petroleum, with the addition of the words 'highly inflammable' and with the addition—

"(*d*) in the case of a vessel kept, of the name and address of the consignee or owner;

"(*e*) in the case of a vessel transported, of the name and address of the sender; and

"(*f*) in the case of a vessel sold or exposed for sale, of the name and address of the vendor."

New sections substituted for section 7 of the same Act.

Power for Local Government to make rules as to importation of petroleum.

6. For section 7 of the said Act the following sections shall be substituted :—

"7. (*1*) The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum, and in particular—

"(*a*) to determine the ports at which only petroleum may be imported;

"(*b*) to ascertain the quantity and description of any petroleum on board a ship;

"(*c*) to determine the places at which and the conditions on and subject to which petroleum may be landed, stored or transhipped;

"(*d*) to fix the fees to be paid for the storage of petroleum at such places;

"(*e*) to provide for the selection by an officer appointed by the Local Government in this behalf, and for the delivery to him by the consignees of samples of all petroleum so landed and stored; and

"(*f*) to provide, in the case of each consignment which is stated to be of one uniform quality, for the averaging of the results of testing the selected samples."

"(2) In this section 'ship' includes anything made for the conveyance by water of human beings or property.

"7A. (*1*) Petroleum landed and stored in accordance with rules made under the last foregoing section shall not be removed from the place at which it is stored until the samples selected therefrom in accordance with the said rules have been tested by an officer appointed by the Local Government in this behalf in the manner described in the schedule hereto annexed with an apparatus which has been stamped and certified as provided by section 17 A, and until such officer has given a certificate that the petroleum is not dangerous petroleum.

Procedure after petroleum has been landed and stored.

"(2) If the said officer after testing the said samples refuses to give the said certificate in respect of any petroleum, the Local Government may permit the consignee within a time to be fixed by the Local Government in this behalf—

"(*a*) to rectify the petroleum,

"(*b*) to apply for a license to import the petroleum as dangerous petroleum, or

"(*c*) to re-export the petroleum.

"(3) If the consignee does not within the time fixed under sub-section (2) avail himself of the permission granted under that sub-section, the Local Government may order the petroleum to be destroyed."

7. After section 17 of the said Act the following section shall be inserted, namely:—

New section to be inserted after section 17.

"*Test-apparatus.*

[cf. 42 & 43 Vic., c. 47, s. 3.]

"17A. Whereas a model of the apparatus for testing petroleum under this Act constructed in accordance with the description contained in the schedule hereto annexed has been deposited in the office of the Chemical Examiner to Government, Calcutta, and has been marked with the words 'Model test-apparatus;' It is hereby enacted as follows:—

Model test-apparatus.

[cf. 42 & 43 Vic., c. 47 s. 3.]

"(*1*) The Chemical Examiner with whom the said model test-apparatus is deposited may, on payment of such fee as the Governor General in Council may, from time to time, by notification in the *Gazette of India*, prescribe, compare with the said model and verify every apparatus for testing petroleum which is submitted to him for the purpose.

Verification of test-apparatus.

"(2) If any apparatus for testing petroleum, when compared and verified as provided by this section, is found correct, or correct subject to certain corrections to be applied to the results of the tests, the Chemical Examiner shall stamp the same with a special number, and shall further give a certificate in writing under his hand to the effect that the apparatus has been compared and verified by him and found to be correct, or correct subject to certain specified corrections to be applied to the results of the tests.

"(3) Every certificate granted under this section shall, until the contrary is proved, be deemed to be conclusive proof of the matters stated therein.

"(4) Subject to the payment of such fees as the Governor General in Council may, by notification in the *Gazette of India*, prescribe in this behalf, the said model test-apparatus shall be at all reasonable times open to inspection by any person desiring to inspect it."

8. For the Schedule to the said Act the following schedule shall be substituted, namely:—

New schedule substituted for the schedule to the same Act.

"THE SCHEDULE.

"*I.—Nature of the Test-apparatus.*

"The apparatus consists of the following parts:—

(1) the oil-cup;

(2) the cover, with slide, test-lamp, and clockwork arrangement for opening and closing the holes in the cover, and for dipping the test-flame;

(3) the water-bath or heating vessel;

(4) the tripod stand, with jacket, and spirit-lamp for heating the water-bath;

(5) the thermometer for indicating the temperature of the oil in the oil-cup;

(6) the thermometer for indicating the temperature of the water in the water-bath;

(7) the thermometer for indicating the temperature of the oil before it is poured into the oil-cup;

(8) the dropping bottle, for replenishing the test-lamp;

(9) the forceps, for adjusting the wick of the test-lamp.

"The oil-cup is a cylindrical flat-bottomed vessel, made of gun-metal or brass, and tinned or silvered inside. A gauge is fixed to the inside of the cup to regulate the height to which it is to be filled with the sample under examination.

"The cup is provided with a close fitting overlapping cover, which carries the thermometer, the test-lamp, and the adjuncts thereto. The test-lamp is suspended upon two supports by means of trunnions, which allow it to be easily inclined to a particular angle and restored to its original position. The socket in the cover, which is to hold a round bulb thermometer for indicating the temperature of the oil during the testing operation, is so adjusted that the bulb of the latter is always inserted in a definite position below the surface of the liquid.

"The cover is provided with three holes, one in the centre and two smaller ones close to the sides. These are closed and opened by means of a pivoted slide. When the slide is moved so as to uncover the holes, the suspended lamp is caught by a projection fixed on the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. As the slide moves back so as to cover the holes, the lamp returns to its original position. Upon the cover, in front of and in a line with the nozzle of the lamp, is fixed a white bead, the diameter of which represents the size of the test-flame to be used.

"The water-bath or heating vessel is so constructed that, when the oil-cup is placed in position in it, an air-space or air-chamber intervenes between the two; consequently, in applying the test under ordinary circumstances, the heat is transmitted gradually to the oil from the hot water through the air-space. The water-bath is fitted with a socket for receiving a long bulb thermometer, to indicate the temperature of the water. It is also provided with a funnel, an overflow-pipe and two handles.

"The water-bath rests upon a tripod stand, which is fitted with a copper cylinder or jacket, so that the bath is surrounded by an enclosed air-space, which retains and regulates the heat. One of the legs of the stand serves as a support for a spirit-lamp, which is attached to it by a small swing bracket.

"The clockwork arrangement, by which during the operation of testing the slide is withdrawn, and the test-flame dipped into the cup and raised again as the slide is replaced, is provided with a ratchet key for setting it in action for each test, and with a trigger for starting it each time that the test-flame is applied.

"*II.—Directions for drawing the Sample and preparing it for Testing.*

"1. *Drawing the sample.*—In all cases the testing officer shall personally superintend the drawing of the sample from an original unopened tin.

"An opening sufficiently large to admit of the oil being rapidly poured or syphoned from the tin shall be made.

"Two bottles, each of the capacity of about 40 fluid ounces, are to be filled with the oil. One of these, the contents of which is intended to be preserved for reference in case of need, is to be carefully corked, the cork being well driven home, cut off level with the neck, and melted sealing-wax worked into it. The other bottle may be either stoppered or corked.

"2. *Preparing the sample for testing.*—About ten fluid ounces of the oil, sufficient for three tests, are transferred from the bottle into which the sample has been drawn to a pint flask or bottle, which is to be immersed in water in which ice is floating until a thermometer, introduced into the oil, indicates a temperature not exceeding 50° Fahrenheit.

"*III.—Directions for preparing and using the Test-apparatus.*

"1. *Preparing the water-bath.*—The water-bath is filled by pouring water into the funnel until it begins to flow out at the overflow-pipe. The temperature of the water at the commencement of each test, as indicated by the long bulb thermometer, is to be 130° Fahrenheit, and this is attained in the first instance by mixing hot and cold water, either 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 the water is heated by means of the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

"2. *Preparing the test-lamp.*—The test-lamp is fitted with a piece of cylindrical wick of such thickness that it fills the wick-holder, but may readily be moved to and fro for the purpose of adjusting the size of the flame. In the body of the lamp, upon the wick, which is coiled within it, is placed a small tuft of cotton wool, moistened with petroleum, any oil not absorbed by the wool being removed. When the lamp has been lighted, the wick is adjusted by means of a pair of forceps until the flame is of the size of the bead fixed on the cover of the oil-cup; should a particular test occupy so long a time that the flame begins to get smaller, through the supply of oil in the lamp becoming exhausted, three or four drops of petroleum are allowed to fall upon the tuft of wool in the lamp from the small open orifice of the bottle provided for that purpose. This can be safely done without interrupting the test.

"3. *Filling the oil-cup.*—The oil-cup having been previously cooled, by placing it bottom downwards in water at a temperature not exceeding 50° Fahrenheit, is to be rapidly wiped dry, placed on a level surface in a good light, and the oil to be tested is poured in very slowly, without splashing, until its surface is level with the point of the gauge which is fixed in the cup. The round bulb thermometer is inserted into the lid of the cup, care being taken that the projecting rim of the collar touches the edge of the socket; the test-lamp, prepared as already described, is placed in position, and the cover is then put on to the cup and pressed down so that its edge rests on the rim of the cup.

"4. *Application of the test.*—The water-bath, with its thermometer in position, is placed in some locality where it is not exposed to currents of air, and where the light is sufficiently subdued to admit of the size of the entire test-flame being compared with that of the bead on the cover. The cup is carefully lifted without shaking it, and placed in the bath, the test-lamp is lighted, and the clockwork wound up by turning the key. The thermometer in the oil-cup is now watched, and when the temperature has reached 56° Fahrenheit the clockwork is set in motion by pressing the trigger.

"If no flash takes place the clockwork is at once re-wound, and the trigger pressed at 57° Fahrenheit, and so on, at every degree rise of temperature, until the flash occurs, or until a temperature of 95° Fahrenheit has been reached.

"If the flash takes place at any temperature below 77° Fahrenheit the temperature at which it occurs is to be recorded. Two fresh portions of the sample are then to be successively tested in a similar manner and the results recorded. If no greater difference than 2° Fahrenheit exists between any two of the three recorded results, each result is to be corrected for atmospheric pressure, as hereafter described, and the average of the three corrected

results is the flashing point of the sample. In the event of there being a greater difference than 2° Fahrenheit between any two of the results, the series of tests is to be reject d and a fresh series, of three, similarly obtained, and so on until a sufficiently concordant series is furnished, when the results are to be corrected and the average taken in the manner already described.

"If a temperature of 76° Fahrenheit has been reached without a flash occurring, the application of the test flame is to be continued at every degree rise of temperature until a temperature of 95° Fahrenheit has been reached. If no flash has occurred up to this point, the oil-cup is to be removed from the water-bath, and the temperature of the water in the water-bath is to be reduced to 95° Fahrenheit by pouring cold water into the funnel (the hot water escaping by the overflow-pipe). The air-chamber is then to be filled to a depth of 1½ inches with water at a temperature of about 95° Fahrenheit, the oil-cup is to be replaced in the water-bath and the spirit-lamp attached to the water-bath is to be lighted and placed underneath. The test-flame is then to be again applied, from 96° Fahrenheit, at every degree rise of temperature as indicated by the thermometer in the oil-cup until a flash takes place or until a temperature of 200° Fahrenheit has been reached. If during this operation the test flame appears to diminish in size, the lamp is to be replenished in the manner prescribed at (2) without interrupting the test.

"If a flash occurs at any temperature between 76° and 200° Fahrenheit the temperature at which it occurs, subject to correction for atmospheric pressure, is the flashing point of the sample.

"In repeating a test, a fresh sample of oil must always be used, the tested sample being thrown away, and the cup must be wiped dry from any adhering oil and cooled, as already described, before receiving the fresh sample.

"5. *Correction for atmospheric pressure.*—As the flashing point of an oil is influenced by changes in atmospheric pressure to an average extent of 1·6° Fahrenheit for every inch of the barometer, a correction of the observed flashing point may become necessary. For this purpose a table is appended to this schedule, giving the flashing points of oils ranging from 65° to 80° Fahrenheit, under pressure ranging from 27 to 31 inches of mercury.

"The table is used in the following manner :—

"*Example.*—An oil has given a flashing point of 71°, the barometer being at 28·6 inches; take the nearest number to 71° in the vertical column headed 28·6. This number is 70·8. Substitute for this the number in the same horizontal line in the column headed 30 (the normal height of the barometer). The substituted number, that is, the true flashing point of the oil, is 73°.

"*Table for correction of Flashing Points indicated by the Test for Variations in Barometric Pressure on either side of Thirty Inches.*

Barometer in Inches.

27	27·2	27·4	27·6	27·8	28	28·2	28·4	28·6	28·8	29	29·2	29·4	29·6	29·8	30	30·2	30·4	30·6	30·8	31
Flashing Point in Degrees Fahrenheit.																				
60·2	60·5	60·8	61·2	61·5	61·8	62·1	62·4	62·8	63·1	63·4	63·7	64	64·4	64·7	65	65·3	65·6	66	66·3	66·6
61·2	61·5	61·8	62·2	62·5	62·8	63·1	63·4	63·8	64·1	64·4	64·7	65	65·4	65·7	66	66·3	66·6	67	67·3	67·6
62·2	62·5	62·8	63·2	63·5	63·8	64·1	64·4	64·8	65·1	65·4	65·7	66	66·4	66·7	67	67·3	67·6	68	68·3	68·6
63·2	63·5	63·8	64·2	64·5	64·8	65·1	65·4	65·8	66·1	66·4	66·7	67	67·4	67·7	68	68·3	68·6	69	69·3	69·6
64·2	64·5	64·8	65·2	65·5	65·8	66·1	66·4	66·8	67·1	67·4	67·7	68	68·4	68·7	69	69·3	69·6	70	70·3	70·6
65·2	65·5	65·8	66·2	66·5	66·8	67·1	67·4	67·8	68·1	68·4	68·7	69	69·4	69·7	70	70·3	70·6	71	71·3	71·6
66·2	66·5	66·8	67·2	67·5	67·8	68·1	68·4	68·8	69·1	69·4	69·7	70	70·4	70·7	71	71·3	71·6	72	72·3	72·6
67·2	67·5	67·8	68·2	68·5	68·8	69·1	69·4	69·8	70·1	70·4	70·7	71	71·4	71·7	72	72·3	72·6	73	73·3	73·6
68·2	68·5	68·8	69·2	69·5	69·8	70·1	70·4	70·8	71·1	71·4	71·7	72	72·4	72·7	73	73·3	73·6	74	74·3	74·6
69·2	69·5	69·8	70·2	70·5	70·8	71·1	71·4	71·8	72·1	72·4	72·7	73	73·4	73·7	74	74·3	74·6	75	75·3	75·6
70·2	70·5	70·8	71·2	71·5	71·8	72·1	72·4	72·8	73·1	73·4	73·7	74	74·4	74·7	75	75·3	75·6	76	76·3	76·6
71·2	71·5	71·8	72·2	72·5	72·8	73·1	73·4	73·8	74·1	74·4	74·7	75	75·4	75·7	76	76·3	76·6	77	77·3	77·6
72·2	72·5	72·8	73·2	73·5	73·8	74·1	74·4	74·8	75·1	75·4	75·7	76	76·4	76·7	77	77·3	77·6	78	78·3	78·6
73·2	73·5	73·8	74·2	74·5	74·8	75·1	75·4	75·8	76·1	76·4	76·7	77	77·4	77·7	78	78·3	78·6	79	79·3	79·6
74·2	74·5	74·8	75·2	75·5	75·8	76·1	76·4	76·8	77·1	77·4	77·7	78	78·4	78·7	79	79·3	79·6	80	80·3	80·6
75·2	75·5	75·8	76·2	76·5	76·8	77·1	77·4	77·8	78·1	78·4	78·7	79	79·4	79·7	80	80·3	80·6	81	81·3	81·6"

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to amend the Petroleum Act, 1881, in certain points in which experience has shewn that its amendment would be desirable.

2. "Dangerous petroleum" is defined by the Act (section 3) as petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer. The Government of India does not see any reason for changing the standard so fixed, but in view of the possibility of variations in the application of the test, which, according to the opinions of the experts, may, even with the utmost care, cause deviations of 2° or 3° in the results, it is of opinion that the nominal legal minimum standard for non-dangerous petroleum may be slightly raised. Accordingly, section 3 of the Bill fixes the standard for dangerous petroleum at 76° instead of 73°, but to this enhanced standard a proviso is added to the effect that a consignment represented to be of one uniform quality shall not be deemed to be dangerous when on an average of tests the oil does not fall below that standard by more than 3°, and no one sample has a flashing point below 70°.

3. Section 5 of the Act permits small quantities of dangerous petroleum to be kept in "glass," among other, vessels, if each vessel does not contain more than a pint and is securely stopped. Looking to the comparatively fragile nature of glass vessels and to the possibility of such vessels, when filled with the highly volatile liquids included under the head of "dangerous petroleum," bursting even if "securely stopped," when exposed to powerful sunlight for a brief period, the prudence of including *glass* vessels among those specified in the section is, as has been pointed out to the Government of India, doubtful. Section 4 of the Bill therefore amends the section by the omission of the word "glass."

4. The object of section 5 of the Bill is to bring the provisions of section 6 of the Act, which relate to the marking of the vessels containing dangerous petroleum, and which declare that all such vessels "shall bear an indelible mark on a label in conspicuous characters, stating the nature of the contents thereof" into accordance with the English law (34 & 35 Vic., cap. 105, section 6), which lays down that the label shall state in conspicuous characters the description of the petroleum with the addition of the words "highly inflammable" and with the addition of the name and address of the consignee or owner or of the sender or vendor.

5. As the Act now stands, not only is the importation of "dangerous" petroleum subjected to a strict system of licensing, but no petroleum may be landed from any ship until samples of the petroleum on board thereof have been delivered for the purpose of the petroleum being tested.

While considering that the importation of dangerous petroleum should continue to be thus regulated, the Government of India is of opinion that the restrictions at present placed on the importation of other petroleum may be somewhat relaxed. It seems to it that, instead of requiring the delivery of samples before any oil is landed, it would be sufficient to give the Local Government power to determine the places at which, and the conditions on and subject to which, petroleum may be landed and stored. The necessary power is conferred by section 6 of the Bill, which substitutes a new section for section 7 of the Act. There would thus be nothing to prevent petroleum, other than dangerous petroleum, being in future landed and stored at once. But, in order to protect the public, no petroleum should be allowed to be removed from the place where it is stored until it has been tested and declared to satisfy the legal standard. Section 7A therefore provides this, and further declares that, when petroleum which has been so landed and stored is found not to come up to the legal standard, the Local Government may direct the consignees either to rectify it or to import it as dangerous petroleum or to re-export within a fixed period, and that, on the consignees failing to do whichever of these things they may be directed to do, the Local Government may order the petroleum to be destroyed.

In addition to re-producing clauses (*a*) and (*c*) of the present section 7, the new section 7 further empowers the Local Government to make rules to fix the fees to be paid for the storage of petroleum at places appointed for the purpose, and to regulate the selection of samples and the averaging the results of testing selected samples.

6. Section 7 of the Bill introduces certain new provisions in the Act as to the test-apparatus to be used. As the Act at present stands, the schedule contains a specification explanatory of the test-apparatus. As it is, however, proposed by this Bill to substitute a new schedule for the present one, in which a new description of the test-apparatus is inserted, it seems desirable, for the convenience of the public, to provide for the deposit of a model test-apparatus, which shall be open to inspection, and after which all the instruments to be used under the Act shall be constructed. This is what the new section 17 A, which section 7 of the Bill adds to the Act, does. This section also provides for the verification of each test-apparatus which it is proposed to use for the purposes of the Act. Each apparatus when verified is to be marked with a special number, and the officer making the verification is to give a certificate in which shall be noted any corrections which must be applied to the results of the tests made with the apparatus. This last provision is necessary, because it is practically impossible to construct instruments which will not need corrections of this sort. The certificate granted is declared to be conclusive proof of the matters stated therein.

7. Section 8 of the Bill substitutes a new schedule for the schedule at present appended to the Act, the instructions contained in which it is now generally admitted require modification.

This schedule has been prepared mainly by Sir F. Abel in conjunction with Mr. Redwood and Dr. Warden, the Professor of Chemistry in the Medical College, Calcutta, and Chemical Examiner to Government, and Dr. Lyon, the Chemical Analyser in Bombay, and it has also been examined and considered by Professor Pedler of the Presidency College, Calcutta. It embodies very definite directions regarding the sampling and testing of petroleum, and it lays down in a most detailed manner the procedure to be adopted. The Governor General in Council believes that the adoption of this schedule will meet all the difficulties which have been found to occur under the present law in regard to the sampling and testing of petroleum, and that, if the procedure therein described is carefully followed, there is every reason to hope that trustworthy and generally concordant results will be obtained.

9. Lastly, the new provisions as to the deposit of a model test-apparatus and the verification of all other test-apparatus therewith has necessitated the amendment of the *explanation* of the term "flashing point" which is appended to the definition of "petroleum" in section 3. It is necessary that, in order to ascertain the true flashing point, the petroleum should be tested with a verified and certificated apparatus, and after the corrections (if any) to be applied to the results of the testing have been made. Moreover, it would appear to be necessary that every apparatus used for the testing of petroleum should be verified at least once in every five years. All these points are provided for in the amendment made by section 2 of the Bill.

J. GIBBS.

The 10th March, 1885.

R. J. CROSTHWAITE,
Offg. 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 13th March 1885, and was referred to a Select Committee:—

No. 6 OF 1885.

A Bill to amend the law relating to Government Securities.

WHEREAS it is expedient to amend the law relating to Government securities in manner hereinafter appearing; It is hereby enacted as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Indian Securities Act, 1885; and

(*2*) It shall come into force at once.

[Cf. Act III of 1881, s. 2.]

Definitions.

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

The expression "Government securities" includes promissory notes, debentures, stock-certificates, and all other securities issued by the Government of India or by any Local Government, in respect of any loan issued under notification in the official Gazette, whether before or after the passing of this Act: and

"prescribed" means prescribed by rules made from time to time by the Governor General in Council in this behalf.

IX of 1872.

Right of survivors of joint payees of Government securities.

3. (*1*) Notwithstanding anything contained in the Indian Contract Act, section 45, when a Government security is payable to two or more persons jointly and any of them dies, the security shall be payable to the survivor or survivors of those persons.

(*2*) Nothing herein contained shall affect any claim which the representative of the deceased person may have against the survivor or survivors in respect of the security jointly payable to them and the deceased.

(*3*) This section shall apply whether the death of the person to whom the security was jointly payable occurred or occurs before or after this Act comes into force.

[Cf. sec. 49 of 33 & 34 Vic., cap. 71.]

Issue of renewed securities.

4. Any person to whom a Government security is payable may, on payment of the prescribed fee and on delivering the security duly receipted to the prescribed officer, obtain from the officer a renewed security payable to himself.

Issue of duplicate securities.

5. (*1*) When a Government security has been wholly or partly lost or destroyed the person to whom it was payable at the time of the loss or destruction or his representative may, on application to the prescribed officer, and on producing proof to his satisfaction of the loss or destruction, obtain from him an order for:—

(*a*) the payment of interest in respect of the security said to be lost or destroyed pending the issue of a duplicate security; and

(*b*) the issue of a duplicate security payable to such person.

(*2*) An order shall not be passed under sub-section (*1*) until after the issue of the prescribed notification of the loss or destruction and after the expiration of the prescribed period, nor until the applicant has given the prescribed indemnity against the claims of all persons deriving title under the security lost or destroyed.

(*3*) A list of the securities in respect of which an order is passed under sub-section (*1*) shall be published in the *Gazette of India* at such times as the Governor General in Council may, from time to time, direct.

Period after which Government is released from liability in respect of original security.

6. When a renewed security has been issued under section 4, or a duplicate security has been issued under section 5, the Government shall be discharged of all liability in respect of the original security of which such renewed or duplicate security has been issued—

[Cf. 33 & 34 Vic., cap. 71, s. 51.]

(*a*) in the case of a renewed security, after the lapse of six years from the date of the issue of the renewed security,

(*b*) in the case of a duplicate security, after the lapse of six years from the date of the publication under section 5, sub-sec-

tion (3), of the list in which the security is first mentioned, or from the date of the last payment of interest on the original security, whichever date is latest.

Power for Governor General in Council to make rules.

7. The Governor General in Council may, from time to time, make rules to prescribe—

(*a*) the fees to be paid for applications under sections 4 and 5;

(*b*) the form in which securities delivered for renewal are to be receipted;

(*c*) the officer who is to exercise all or any of the powers and perform all or any of the duties prescribed by sections 4 and 5;

(*d*) the proof which is to be produced by persons applying for duplicate securities;

(*e*) the form and mode of publication of the notification mentioned in section 5 and the period after which interest may be paid or a duplicate security may be issued under that section;

(*f*) the nature and amount of the indemnity to be given by a person applying under section 5 for the payment of interest or the issue of a duplicate security; and

(*g*) generally all matters connected with the grant of renewed and duplicate securities.

Publication of drafts and rules.

8. (*1*) The Governor General in Council shall before making rules under the last foregoing section, publish a draft of the proposed rules in such manner as may, in his opinion, be sufficient for the information of the public.

(*2*) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(*3*) The Governor General in Council shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*4*) Every rule made under the last foregoing section shall be published in the *Gazette of India*, and the publication in the *Gazette of India* of a rule purporting to be made under that section shall be conclusive evidence that it has been duly made.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide for certain matters connected with Government securities as to which legislation appears to be desirable.

2. Under the English law, on the death of one of several joint promisees or creditors, the right to sue on the contract vests in the survivors or survivor, and, on the death of the last of two or more survivors, in his personal representative. But a person receiving money under this right of survivorship may be accountable for it to the representatives of the deceased.

3. This rule has been altered in India by section 45 of the Contract Act, which provides that—

"When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly."

4. With reference to this section, the Law Commissioners, who prepared the draft of the Act, remarked:—"In regulating the devolution of rights and liabilities, we propose, in accordance with the rule of English Courts of Equity and of the Indian Code of Civil Procedure, that joint liabilities and rights shall, after the death of one of the persons liable or entitled, go to his representative jointly with the survivor, and after the death of the survivor to the representatives of both jointly." So far as can be ascertained, this proposal was accepted without criticism in India.

5. It appears that, both before and since the passing of the Contract Act, the practice of the Indian Public Debt Offices has been to treat the right of suing on, and giving receipts for money payable under, Government promissory notes as vesting in the survivor or survivors of two or more joint holders. But the law officers of the Government have recently given an opinion that, having regard to section 45 of the Contract Act, it is not safe to continue this practice.

6. Under these circumstances, the Government of India think that legislation is desirable both for the purpose of confirming what has been done in the past, and for the purpose of laying down a convenient rule for the future.

7. Accordingly, section 3 of the Bill declares that, notwithstanding anything contained in the Indian Contract Act, 1872, section 45, when a Government security is payable to two or more persons jointly and any of them dies, the security shall be payable to the survivor or survivors of those persons. But to this a clause is added making it clear that the section will not affect the liability of the survivor or survivors to the representative of the deceased holder of the security.

8. Lastly, sections 4 to 6 of the Bill deal with the issue of renewed and duplicate Government securities.

9. With regard to the renewal of Government securities, the holder of a security may, under existing rules, upon payment of the prescribed fee and delivering up his security properly receipted, obtain a clear title in the form of a renewed security in his own favour. This right is affirmed by section 4 of the Bill; but as Government by the renewal becomes liable in respect of the new note independently of any question as to legal completeness of discharge upon the original security, opportunity is taken to fix a term within which claims in respect of the original security must be made. Accordingly, section 6 of the Bill releases Government from liability in respect of the original security after the lapse of six years from the date of the issue of the renewed security.

10. With regard to duplicate securities, the practice has hitherto been, when a Government security has been lost or destroyed, to issue a notification, under the terms of the security, of the discharge of the security upon a given date, and to refuse to issue any duplicate until six years (the period fixed by the law of limitation) has elapsed from the date so fixed for discharge. If, however, the loan is not mature, no such notification of discharge can be issued, and the Government is obliged to refuse to issue any duplicate, in the face of the risk of claims being made in respect of the security alleged to be lost. The Bill adopts the existing practice in respect of the issue of duplicates, but, by applying in every case the period of limitation which under the existing law applies only in the case of securities of loans dischargeable upon notice given at any time, enables the Government to issue duplicates (under the usual safeguard of a bond of indemnity) in every case of a security proved to have been lost or destroyed.

A. COLVIN.

The 10th March, 1885.

R. J. CROSTHWAITE,
Offg. Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 28, 1885.

☞ 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 13th March 1885, and was referred to a Select Committee :—

No. 5 OF 1885.

A Bill to amend the Petroleum Act, 1881.

VIII of 1881.

WHEREAS it is expedient to amend the Petroleum Act, 1881, in manner hereinafter appearing; It is hereby enacted as follows :—

Short title and commencement.

1. (*1*) This Act may be called the Petroleum Act, 1885; and

(*2*) It shall come into force at once.

VIII of 1881.

Amendment of *explanation* to definition of "petroleum" in section 3 of Act VIII of 1881.

2. In section 3 of the Petroleum Act, 1881, in the *explanation* to the definition of "petroleum," for the last thirteen words the following words shall be substituted, namely :—

"in accordance with the directions contained in the schedule hereto annexed, with an apparatus which has been stamped and certified as provided by section 17A, within a period of five years immediately preceding the date on which the apparatus is used for the testing, and after the corrections (if any) which the certificate declares are to be applied to the results of the testing have been made."

Amendment of definition of "dangerous petroleum" in section 3 of Act VIII of 1881.

3. In section 3 of the said Act, in the definition of "dangerous petroleum", for the word "seventy-three" the word "seventy-six" shall be substituted; and to the same definition the following words shall be added, namely :—

"Provided that, when all or any of the petroleum on board a ship, or in the possession of any dealer, is declared by the master of the ship, or the consignees of the cargo, or by the dealer, as the case may be, to be of one uniform quality, the petroleum shall not be deemed to be dangerous if the samples selected from such petroleum, when tested as aforesaid, have their flashing points, on an average, at or above seventy-three degrees of Fahrenheit's thermometer and if no one of the said samples has its flashing point below seventy degrees of that thermometer."

Repeal of word "glass" in section 5 of same Act.

4. In the proviso to section 5 of the said Act, the word "glass" shall be repealed.

Substitution of certain words in section 6 of the same Act.

5. In section 6 of the said Act, for the last seventeen words the following shall be substituted, namely :—

"have attached thereto a label in conspicuous characters stating the description of the petroleum, with the addition of the words 'highly inflammable' and with the addition—

"(*d*) in the case of a vessel kept, of the name and address of the consignee or owner;

"(*e*) in the case of a vessel transported, of the name and address of the sender; and

"(*f*) in the case of a vessel sold or exposed for sale, of the name and address of the vendor."

New sections substituted for section 7 of the same Act.

6. For section 7 of the said Act the following sections shall be substituted :—

Power for Local Government to make rules as to importation of petroleum.

"7. (*1*) The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum, and in particular—

"(*a*) to determine the ports at which only petroleum may be imported;

"(*b*) to ascertain the quantity and description of any petroleum on board a ship;

"(*c*) to determine the places at which and the conditions on and subject to which petroleum may be landed, stored or transhipped;

"(*d*) to fix the fees to be paid for the storage of petroleum at such places;

"(*e*) to provide for the selection by an officer appointed by the Local Government in this behalf, and for the delivery to him by the consignees of samples of all petroleum so landed and stored; and

"(*f*) to provide, in the case of each consignment which is stated to be of one uniform quality, for the averaging of the results of testing the selected samples."

"(2) In this section 'ship' includes anything made for the conveyance by water of human beings or property.

Procedure after petroleum has been landed and stored.

"7A. (*1*) Petroleum landed and stored in accordance with rules made under the last foregoing section shall not be removed from the place at which it is stored until the samples selected therefrom in accordance with the said rules have been tested by an officer appointed by the Local Government in this behalf in the manner described in the schedule hereto annexed with an apparatus which has been stamped and certified as provided by section 17 A, and until such officer has given a certificate that the petroleum is not dangerous petroleum.

"(2) If the said officer after testing the said samples refuses to give the said certificate in respect of any petroleum, the Local Government may permit the consignee within a time to be fixed by the Local Government in this behalf—

"(*a*) to rectify the petroleum,

"(*b*) to apply for a license to import the petroleum as dangerous petroleum, or

"(*c*) to re-export the petroleum.

"(*3*) If the consignee does not within the time fixed under sub-section (*2*) avail himself of the permission granted under that sub-section, the Local Government may order the petroleum to be destroyed."

New section to be inserted after section 17.

7. After section 17 of the said Act the following section shall be inserted, namely:—

"*Test-apparatus.*

[cf. 42 & 43 Vic., c. 47, s. 3.]

Model test-apparatus.

"17A. Whereas a model of the apparatus for testing petroleum under this Act constructed in accordance with the description contained in the schedule hereto annexed has been deposited in the office of the Chemical Examiner to Government, Calcutta, and has been marked with the words 'Model test-apparatus;' It is hereby enacted as follows:—

[cf. 42 & 43 Vic., c. 47 s. 3.]

Verification of test-apparatus.

"(*1*) The Chemical Examiner with whom the said model test-apparatus is deposited may, on payment of such fee as the Governor General in Council may, from time to time, by notification in the *Gazette of India*, prescribe, compare with the said model and verify every apparatus for testing petroleum which is submitted to him for the purpose.

"(*2*) If any apparatus for testing petroleum, when compared and verified as provided by this section, is found correct, or correct subject to certain corrections to be applied to the results of the tests, the Chemical Examiner shall stamp the same with a special number, and shall further give a certificate in writing under his hand to the effect that the apparatus has been compared and verified by him and found to be correct, or correct subject to certain specified corrections to be applied to the results of the tests.

"(*3*) Every certificate granted under this section shall, until the contrary is proved, be deemed to be conclusive proof of the matters stated therein.

"(*4*) Subject to the payment of such fees as the Governor General in Council may, by notification in the *Gazette of India*, prescribe in this behalf, the said model test-apparatus shall be at all reasonable times open to inspection by any person desiring to inspect it."

New schedule substituted for the schedule to the same Act.

8. For the Schedule to the said Act the following schedule shall be substituted, namely:—

"THE SCHEDULE.

"*I.—Nature of the Test-apparatus.*

"The apparatus consists of the following parts:—

(1) the oil-cup;

(2) the cover, with slide, test-lamp, and clockwork arrangement for opening and closing the holes in the cover, and for dipping the test-flame;

(3) the water-bath or heating vessel;

(4) the tripod stand, with jacket, and spirit-lamp for heating the water-bath;

(5) the thermometer for indicating the temperature of the oil in the oil-cup;

(6) the thermometer for indicating the temperature of the water in the water-bath;

(7) the thermometer for indicating the temperature of the oil before it is poured into the oil-cup;

(8) the dropping bottle, for replenishing the test-lamp;

(9) the forceps, for adjusting the wick of the test-lamp.

"The oil-cup is a cylindrical flat-bottomed vessel, made of gun-metal or brass, and tinned or silvered inside. A gauge is fixed to the inside of the cup to regulate the height to which it is to be filled with the sample under examination.

"The cup is provided with a close fitting overlapping cover, which carries the thermometer, the test-lamp, and the adjuncts thereto. The test-lamp is suspended upon two supports by means of trunnions, which allow it to be easily inclined to a particular angle and restored to its original position. The socket in the cover, which is to hold a round bulb thermometer for indicating the temperature of the oil during the testing operation, is so adjusted that the bulb of the latter is always inserted in a definite position below the surface of the liquid.

"The cover is provided with three holes, one in the centre and two smaller ones close to the sides. These are closed and opened by means of a pivoted slide. When the slide is moved so as to uncover the holes, the suspended lamp is caught by a projection fixed on the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. As the slide moves back so as to cover the holes, the lamp returns to its original position. Upon the cover, in front of and in a line with the nozzle of the lamp, is fixed a white bead, the diameter of which represents the size of the test-flame to be used.

"The water-bath or heating vessel is so constructed that, when the oil-cup is placed in position in it, an air-space or air-chamber intervenes between the two; consequently, in applying the test under ordinary circumstances, the heat is transmitted gradually to the oil from the hot water through the air-space. The water-bath is fitted with a socket for receiving a long bulb thermometer, to indicate the temperature of the water. It is also provided with a funnel, an overflow-pipe and two handles.

"The water-bath rests upon a tripod stand, which is fitted with a copper cylinder or jacket, so that the bath is surrounded by an enclosed air-space, which retains and regulates the heat. One of the legs of the stand serves as a support for a spirit-lamp, which is attached to it by a small swing bracket.

"The clockwork arrangement, by which during the operation of testing the slide is withdrawn, and the test-flame dipped into the cup and raised again as the slide is replaced, is provided with a ratchet key for setting it in action for each test, and with a trigger for starting it each time that the test-flame is applied.

"*II.—Directions for drawing the Sample and preparing it for Testing.*

"1. *Drawing the sample.*—In all cases the testing officer shall personally superintend the drawing of the sample from an original unopened tin.

"An opening sufficiently large to admit of the oil being rapidly poured or syphoned from the tin shall be made.

"Two bottles, each of the capacity of about 40 fluid ounces, are to be filled with the oil. One of these, the contents of which is intended to be preserved for reference in case of need, is to be carefully corked, the cork being well driven home, cut off level with the neck, and melted sealing-wax worked into it. The other bottle may be either stoppered or corked.

"2. *Preparing the sample for testing.*—About ten fluid ounces of the oil, sufficient for three tests, are transferred from the bottle into which the sample has been drawn to a pint flask or bottle, which is to be immersed in water in which ice is floating until a thermometer, introduced into the oil, indicates a temperature not exceeding 50° Fahrenheit.

"*III.—Directions for preparing and using the Test-apparatus.*

"1. *Preparing the water-bath.*—The water-bath is filled by pouring water into the funnel until it begins to flow out at the overflow-pipe. The temperature of the water at the commencement of each test, as indicated by the long bulb thermometer, is to be 130° Fahrenheit, and this is attained in the first instance by mixing hot and cold water, either 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 the water is heated by means of the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

"2. *Preparing the test-lamp.*—The test-lamp is fitted with a piece of cylindrical wick of such thickness that it fills the wick-holder, but may readily be moved to and fro for the purpose of adjusting the size of the flame. In the body of the lamp, upon the wick, which is coiled within it, is placed a small tuft of cotton wool, moistened with petroleum, any oil not absorbed by the wool being removed. When the lamp has been lighted, the wick is adjusted by means of a pair of forceps until the flame is of the size of the bead fixed on the cover of the oil-cup; should a particular test occupy so long a time that the flame begins to get smaller, through the supply of oil in the lamp becoming exhausted, three or four drops of petroleum are allowed to fall upon the tuft of wool in the lamp from the small open orifice of the bottle provided for that purpose. This can be safely done without interrupting the test.

"3. *Filling the oil-cup.*—The oil-cup having been previously cooled, by placing it bottom downwards in water at a temperature not exceeding 50° Fahrenheit, is to be rapidly wiped dry, placed on a level surface in a good light, and the oil to be tested is poured in very slowly, without splashing, until its surface is level with the point of the gauge which is fixed in the cup. The round bulb thermometer is inserted into the lid of the cup, care being taken that the projecting rim of the collar touches the edge of the socket; the test-lamp, prepared as already described, is placed in position, and the cover is then put on to the cup and pressed down so that its edge rests on the rim of the cup.

"4. *Application of the test.*—The water-bath, with its thermometer in position, is placed in some locality where it is not exposed to currents of air, and where the light is sufficiently subdued to admit of the size of the entire test-flame being compared with that of the bead on the cover. The cup is carefully lifted without shaking it, and placed in the bath, the test-lamp is lighted, and the clockwork wound up by turning the key. The thermometer in the oil-cup is now watched, and when the temperature has reached 56° Fahrenheit the clockwork is set in motion by pressing the trigger.

"If no flash takes place the clockwork is at once re-wound, and the trigger pressed at 57° Fahrenheit, and so on, at every degree rise of temperature, until the flash occurs, or until a temperature of 95° Fahrenheit has been reached.

"If the flash takes place at any temperature below 77° Fahrenheit the temperature at which it occurs is to be recorded. Two fresh portions of the sample are then to be successively tested in a similar manner and the results recorded. If no greater difference than 2° Fahrenheit exists between any two of the three recorded results, each result is to be corrected for atmospheric pressure, as hereafter described, and the average of the three corrected

results is the flashing point of the sample. In the event of there being a greater difference than 2° Fahrenheit between any two of the results, the series of tests is to be rejected and a fresh series, of three, similarly obtained, and so on until a sufficiently concordant series is furnished, when the results are to be corrected and the average taken in the manner already described.

"If a temperature of 76° Fahrenheit has been reached without a flash occurring, the application of the test-flame is to be continued at every degree rise of temperature until a temperature of 95° Fahrenheit has been reached. If no flash has occurred up to this point, the oil-cup is to be removed from the water-bath, and the temperature of the water in the water-bath is to be reduced to 95° Fahrenheit by pouring cold water into the funnel (the hot water escaping by the overflow-pipe). The air-chamber is then to be filled to a depth of 1½ inches with water at a temperature of about 95° Fahrenheit, the oil-cup is to be replaced in the water-bath and the spirit-lamp attached to the water-bath is to be lighted and placed underneath. The test-flame is then to be again applied, from 96° Fahrenheit, at every degree rise of temperature as indicated by the thermometer in the oil-cup until a flash takes place or until a temperature of 200° Fahrenheit has been reached. If during this operation the test-flame appears to diminish in size, the lamp is to be replenished in the manner prescribed at (2) without interrupting the test.

"If a flash occurs at any temperature between 76° and 200° Fahrenheit the temperature at which it occurs, subject to correction for atmospheric pressure, is the flashing point of the sample.

"In repeating a test, a fresh sample of oil must always be used, the tested sample being thrown away, and the cup must be wiped dry from any adhering oil and cooled, as already described, before receiving the fresh sample.

"5. *Correction for atmospheric pressure.*—As the flashing point of an oil is influenced by changes in atmospheric pressure to an average extent of 1·6° Fahrenheit for every inch of the barometer, a correction of the observed flashing point may become necessary. For this purpose a table is appended to this schedule, giving the flashing points of oils ranging from 65° to 80° Fahrenheit, under pressure ranging from 27 to 31 inches of mercury.

"The table is used in the following manner:—

"*Example.*—An oil has given a flashing point of 71°, the barometer being at 28·6 inches; take the nearest number to 71° in the vertical column headed 28·6. This number is 70·8. Substitute for this the number in the same horizontal line in the column headed 30 (the normal height of the barometer). The substituted number, that is, the true flashing point of the oil, is 73°.

"*Table for correction of Flashing Points indicated by the Test for Various Variations in Barometric Pressure on either side of Thirty Inches.*

Barometer in Inches.	Flashing Point in Degrees Fahrenheit.																	
27	60·2	61·2	62·2	63·2	64·2	65·2	66·2	67·2	68·2	69·2	70·2	71·2	72·2	73·2	74·2	75·2	76·2	77·2
27·2	60·5	61·5	62·5	63·5	64·5	65·5	66·5	67·5	68·5	69·5	70·5	71·5	72·5	73·5	74·5	75·5	76·5	77·5
27·4	60·8	61·8	62·8	63·8	64·8	65·8	66·8	67·8	68·8	69·8	70·8	71·8	72·8	73·8	74·8	75·8	76·8	77·8
27·6	61·2	62·2	63·2	64·2	65·2	66·2	67·2	68·2	69·2	70·2	71·2	72·2	73·2	74·2	75·2	76·2	77·2	78·2
27·8	61·5	62·5	63·5	64·5	65·5	66·5	67·5	68·5	69·5	70·5	71·5	72·5	73·5	74·5	75·5	76·5	77·5	78·5
28	61·8	62·8	63·8	64·8	65·8	66·8	67·8	68·8	69·8	70·8	71·8	72·8	73·8	74·8	75·8	76·8	77·8	78·8
28·2	62·1	63·1	64·1	65·1	66·1	67·1	68·1	69·1	70·1	71·1	72·1	73·1	74·1	75·1	76·1	77·1	78·1	79·1
28·4	62·4	63·4	64·4	65·4	66·4	67·4	68·4	69·4	70·4	71·4	72·4	73·4	74·4	75·4	76·4	77·4	78·4	79·4
28·6	62·8	63·8	64·8	65·8	66·8	67·8	68·8	69·8	70·8	71·8	72·8	73·8	74·8	75·8	76·8	77·8	78·8	79·8
28·8	63·1	64·1	65·1	66·1	67·1	68·1	69·1	70·1	71·1	72·1	73·1	74·1	75·1	76·1	77·1	78·1	79·1	80·1
30·6	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81		
30·4	65·6	66·6	67·6	68·6	69·6	70·6	71·6	72·6	73·6	74·6	75·6	76·6	77·6	78·6	79·6	80·6		
30·2	65·3	66·3	67·3	68·3	69·3	70·3	71·3	72·3	73·3	74·3	75·3	76·3	77·3	78·3	79·3	80·3		
30	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80		
29·8	64·7	65·7	66·7	67·7	68·7	69·7	70·7	71·7	72·7	73·7	74·7	75·7	76·7	77·7	78·7	79·7		
29·6	64·4	65·4	66·4	67·4	68·4	69·4	70·4	71·4	72·4	73·4	74·4	75·4	76·4	77·4	78·4	79·4		
29·4	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79		
29·2	63·7	64·7	65·7	66·7	67·7	68·7	69·7	70·7	71·7	72·7	73·7	74·7	75·7	76·7	77·7	78·7		
29	63·4	64·4	65·4	66·4	67·4	68·4	69·4	70·4	71·4	72·4	73·4	74·4	75·4	76·4	77·4	78·4		
28·8	63·1	64·1	65·1	66·1	67·1	68·1	69·1	70·1	71·1	72·1	73·1	74·1	75·1	76·1	77·1	78·1		
28·6	62·8	63·8	64·8	65·8	66·8	67·8	68·8	69·8	70·8	71·8	72·8	73·8	74·8	75·8	76·8	77·8		
28·4	62·4	63·4	64·4	65·4	66·4	67·4	68·4	69·4	70·4	71·4	72·4	73·4	74·4	75·4	76·4	77·4		
28·2	62·1	63·1	64·1	65·1	66·1	67·1	68·1	69·1	70·1	71·1	72·1	73·1	74·1	75·1	76·1	77·1		
28	61·8	62·8	63·8	64·8	65·8	66·8	67·8	68·8	69·8	70·8	71·8	72·8	73·8	74·8	75·8	76·8		
27·8	61·5	62·5	63·5	64·5	65·5	66·5	67·5	68·5	69·5	70·5	71·5	72·5	73·5	74·5	75·5	76·5		
27·6	61·2	62·2	63·2	64·2	65·2	66·2	67·2	68·2	69·2	70·2	71·2	72·2	73·2	74·2	75·2	76·2		
27·4	60·8	61·8	62·8	63·8	64·8	65·8	66·8	67·8	68·8	69·8	70·8	71·8	72·8	73·8	74·8	75·8		
27·2	60·5	61·5	62·5	63·5	64·5	65·5	66·5	67·5	68·5	69·5	70·5	71·5	72·5	73·5	74·5	75·5		
27	60·2	61·2	62·2	63·2	64·2	65·2	66·2	67·2	68·2	69·2	70·2	71·2	72·2	73·2	74·2	75·2		

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to amend the Petroleum Act, 1881, in certain points in which experience has shewn that its amendment would be desirable.

2. "Dangerous petroleum" is defined by the Act (section 3) as petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer. The Government of India does not see any reason for changing the standard so fixed, but in view of the possibility of variations in the application of the test, which, according to the opinions of the experts, may, even with the utmost care, cause deviations of 2° or 3° in the results, it is of opinion that the nominal legal minimum standard for non-dangerous petroleum may be slightly raised. Accordingly, section 3 of the Bill fixes the standard for dangerous petroleum at 76° instead of 73°, but to this enhanced standard a proviso is added to the effect that a consignment represented to be of one uniform quality shall not be deemed to be dangerous when on an average of tests the oil does not fall below that standard by more than 3°, and no one sample has a flashing point below 70°.

3. Section 5 of the Act permits small quantities of dangerous petroleum to be kept in "glass," among other, vessels, if each vessel does not contain more than a pint and is securely stopped. Looking to the comparatively fragile nature of glass vessels and to the possibility of such vessels, when filled with the highly volatile liquids included under the head of "dangerous petroleum," bursting even if "securely stopped," when exposed to powerful sunlight for a brief period, the prudence of including *glass* vessels among those specified in the section is, as has been pointed out to the Government of India, doubtful. Section 4 of the Bill therefore amends the section by the omission of the word "glass."

4. The object of section 5 of the Bill is to bring the provisions of section 6 of the Act, which relate to the marking of the vessels containing dangerous petroleum, and which declare that all such vessels "shall bear an indelible mark on a label in conspicuous characters, stating the nature of the contents thereof" into accordance with the English law (34 & 35 Vic., cap. 105, section 6), which lays down that the label shall state in conspicuous characters the description of the petroleum with the addition of the words "highly inflammable" and with the addition of the name and address of the consignee or owner or of the sender or vendor.

5. As the Act now stands, not only is the importation of "dangerous" petroleum subjected to a strict system of licensing, but no petroleum may be landed from any ship until samples of the petroleum on board thereof have been delivered for the purpose of the petroleum being tested.

While considering that the importation of dangerous petroleum should continue to be thus regulated, the Government of India is of opinion that the restrictions at present placed on the importation of other petroleum may be somewhat relaxed. It seems to it that, instead of requiring the delivery of samples before any oil is landed, it would be sufficient to give the Local Government power to determine the places at which, and the conditions on and subject to which, petroleum may be landed and stored. The necessary power is conferred by section 6 of the Bill, which substitutes a new section for section 7 of the Act. There would thus be nothing to prevent petroleum, other than dangerous petroleum, being in future landed and stored at once. But, in order to protect the public, no petroleum should be allowed to be removed from the place where it is stored until it has been tested and declared to satisfy the legal standard. Section 7A therefore provides this, and further declares that, when petroleum which has been so landed and stored is found not to come up to the legal standard, the Local Government may direct the consignees either to rectify it or to import it as dangerous petroleum or to re-export within a fixed period, and that, on the consignees failing to do whichever of these things they may be directed to do, the Local Government may order the petroleum to be destroyed.

In addition to re-producing clauses (*a*) and (*c*) of the present section 7, the new section 7 further empowers the Local Government to make rules to fix the fees to be paid for the storage of petroleum at places appointed for the purpose, and to regulate the selection of samples and the averaging the results of testing selected samples.

6. Section 7 of the Bill introduces certain new provisions in the Act as to the test-apparatus to be used. As the Act at present stands, the schedule contains a specification explanatory of the test-apparatus. As it is, however, proposed by this Bill to substitute a new schedule for the present one, in which a new description of the test-apparatus is inserted, it seems desirable, for the convenience of the public, to provide for the deposit of a model test-apparatus, which shall be open to inspection, and after which all the instruments to be used under the Act shall be constructed. This is what the new section 17 A, which section 7 of the Bill adds to the Act, does. This section also provides for the verification of each test-apparatus which it is proposed to use for the purposes of the Act. Each apparatus when verified is to be marked with a special number, and the officer making the verification is to give a certificate in which shall be noted any corrections which must be applied to the results of the tests made with the apparatus. This last provision is necessary, because it is practically impossible to construct instruments which will not need corrections of this sort. The certificate granted is declared to be conclusive proof of the matters stated therein.

7. Section 8 of the Bill substitutes a new schedule for the schedule at present appended to the Act, the instructions contained in which it is now generally admitted require modification.

This schedule has been prepared mainly by Sir F. Abel in conjunction with Mr. Redwood and Dr. Warden, the Professor of Chemistry in the Medical College, Calcutta, and Chemical Examiner to Government, and Dr. Lyon, the Chemical Analyser in Bombay, and it has also been examined and considered by Professor Pedler of the Presidency College, Calcutta. It embodies very definite directions regarding the sampling and testing of petroleum, and it lays down in a most detailed manner the procedure to be adopted. The Governor General in Council believes that the adoption of this schedule will meet all the difficulties which have been found to occur under the present law in regard to the sampling and testing of petroleum, and that, if the procedure therein described is carefully followed, there is every reason to hope that trustworthy and generally concordant results will be obtained.

9. Lastly, the new provisions as to the deposit of a model test-apparatus and the verification of all other test-apparatus therewith has necessitated the amendment of the *explanation* of the term "flashing point" which is appended to the definition of "petroleum" in section 3. It is necessary that, in order to ascertain the true flashing point, the petroleum should be tested with a verified and certificated apparatus, and after the corrections (if any) to be applied to the results of the testing have been made. Moreover, it would appear to be necessary that every apparatus used for the testing of petroleum should be verified at least once in every five years. All these points are provided for in the amendment made by section 2 of the Bill.

J. GIBBS.

The 10th March, 1885.

R. J. CROSTHWAITE,
Offg. Secretary to the Government 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 13th March 1885, and was referred to a Select Committee:—

No. 6 OF 1885.

A Bill to amend the law relating to Government Securities.

WHEREAS it is expedient to amend the law relating to Government securities in manner hereinafter appearing; It is hereby enacted as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Indian Securities Act, 1885; and

(*2*) It shall come into force at once.

[Cf. Act III of 1881, s. 2.]

Definitions.

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

The expression "Government securities" includes promissory notes, debentures, stock-certificates, and all other securities issued by the Government of India or by any Local Government, in respect of any loan issued under notification in the official Gazette, whether before or after the passing of this Act: and

"prescribed" means prescribed by rules made from time to time by the Governor General in Council in this behalf.

IX of 1872.

Right of survivors of joint payees of Government securities.

3. (*1*) Notwithstanding anything contained in the Indian Contract Act, section 45, when a Government security is payable to two or more persons jointly and any of them dies, the security shall be payable to the survivor or survivors of those persons.

(*2*) Nothing herein contained shall affect any claim which the representative of the deceased person may have against the survivor or survivors in respect of the security jointly payable to them and the deceased.

(*3*) This section shall apply whether the death of the person to whom the security was jointly payable occurred or occurs before or after this Act comes into force.

[Cf. sec. 49 of 33 & 34 Vic., cap. 71.]

Issue of renewed securities.

4. Any person to whom a Government security is payable may, on payment of the prescribed fee and on delivering the security duly receipted to the prescribed officer, obtain from the officer a renewed security payable to himself.

Issue of duplicate securities.

5. (*1*) When a Government security has been wholly or partly lost or destroyed the person to whom it was payable at the time of the loss or destruction or his representative may, on application to the prescribed officer, and on producing proof to his satisfaction of the loss or destruction, obtain from him an order for:—

(*a*) the payment of interest in respect of the security said to be lost or destroyed pending the issue of a duplicate security; and

(*b*) the issue of a duplicate security payable to such person.

(*2*) An order shall not be passed under sub-section (*1*) until after the issue of the prescribed notification of the loss or destruction and after the expiration of the prescribed period, nor until the applicant has given the prescribed indemnity against the claims of all persons deriving title under the security lost or destroyed.

(*3*) A list of the securities in respect of which an order is passed under sub-section (*1*) shall be published in the *Gazette of India* at such times as the Governor General in Council may, from time to time, direct.

Period after which Government is released from liability in respect of original security.

6. When a renewed security has been issued under section 4, or a duplicate security has been issued under section 5, the Government shall be discharged of all liability in respect of the original security of which such renewed or duplicate security has been issued—

[Cf. 33 & 34 Vic., cap. 71, s. 51.]

(*a*) in the case of a renewed security, after the lapse of six years from the date of the issue of the renewed security,

(*b*) in the case of a duplicate security, after the lapse of six years from the date of the publication under section 5, sub-sec-

tion (3), of the list in which the security is first mentioned, or from the date of the last payment of interest on the original security, whichever date is latest.

Power for Governor General in Council to make rules.

7. The Governor General in Council may, from time to time, make rules to prescribe—

(*a*) the fees to be paid for applications under sections 4 and 5;

(*b*) the form in which securities delivered for renewal are to be receipted;

(*c*) the officer who is to exercise all or any of the powers and perform all or any of the duties prescribed by sections 4 and 5;

(*d*) the proof which is to be produced by persons applying for duplicate securities;

(*e*) the form and mode of publication of the notification mentioned in section 5 and the period after which interest may be paid or a duplicate security may be issued under that section;

(*f*) the nature and amount of the indemnity to be given by a person applying under section 5 for the payment of interest or the issue of a duplicate security; and

(*g*) generally all matters connected with the grant of renewed and duplicate securities.

Publication of drafts and rules.

8. (*1*) The Governor General in Council shall before making rules under the last foregoing section, publish a draft of the proposed rules in such manner as may, in his opinion, be sufficient for the information of the public.

(*2*) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(*3*) The Governor General in Council shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*4*) Every rule made under the last foregoing section shall be published in the *Gazette of India*, and the publication in the *Gazette of India* of a rule purporting to be made under that section shall be conclusive evidence that it has been duly made.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide for certain matters connected with Government securities as to which legislation appears to be desirable.

2. Under the English law, on the death of one of several joint promisees or creditors, the right to sue on the contract vests in the survivors or survivor, and, on the death of the last of two or more survivors, in his personal representative. But a person receiving money under this right of survivorship may be accountable for it to the representatives of the deceased.

3. This rule has been altered in India by section 45 of the Contract Act, which provides that—

"When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly."

4. With reference to this section, the Law Commissioners, who prepared the draft of the Act, remarked :—"In regulating the devolution of rights and liabilities, we propose, in accordance with the rule of English Courts of Equity and of the Indian Code of Civil Procedure, that joint liabilities and rights shall, after the death of one of the persons liable or entitled, go to his representative jointly with the survivor, and after the death of the survivor to the representatives of both jointly." So far as can be ascertained, this proposal was accepted without criticism in India.

5. It appears that, both before and since the passing of the Contract Act, the practice of the Indian Public Debt Offices has been to treat the right of suing on, and giving receipts for money payable under, Government promissory notes as vesting in the survivor or survivors of two or more joint holders. But the law officers of the Government have recently given an opinion that, having regard to section 45 of the Contract Act, it is not safe to continue this practice.

6. Under these circumstances, the Government of India think that legislation is desirable both for the purpose of confirming what has been done in the past, and for the purpose of laying down a convenient rule for the future.

7. Accordingly, section 3 of the Bill declares that, notwithstanding anything contained in the Indian Contract Act, 1872, section 45, when a Government security is payable to two or more persons jointly and any of them dies, the security shall be payable to the survivor or survivors of those persons. But to this a clause is added making it clear that the section will not affect the liability of the survivor or survivors to the representative of the deceased holder of the security.

8. Lastly, sections 4 to 6 of the Bill deal with the issue of renewed and duplicate Government securities.

9. With regard to the renewal of Government securities, the holder of a security may, under existing rules, upon payment of the prescribed fee and delivering up his security properly receipted, obtain a clear title in the form of a renewed security in his own favour. This right is affirmed by section 4 of the Bill; but as Government by the renewal becomes liable in respect of the new note independently of any question as to legal completeness of discharge upon the original security, opportunity is taken to fix a term within which claims in respect of the original security must be made. Accordingly, section 6 of the Bill releases Government from liability in respect of the original security after the lapse of six years from the date of the issue of the renewed security.

10. With regard to duplicate securities, the practice has hitherto been, when a Government security has been lost or destroyed, to issue a notification, under the terms of the security, of the discharge of the security upon a given date, and to refuse to issue any duplicate until six years (the period fixed by the law of limitation) has elapsed from the date so fixed for discharge. If, however, the loan is not mature, no such notification of discharge can be issued, and the Government is obliged to refuse to issue any duplicate, in the face of the risk of claims being made in respect of the security alleged to be lost. The Bill adopts the existing practice in respect of the issue of duplicates, but, by applying in every case the period of limitation which under the existing law applies only in the case of securities of loans dischargeable upon notice given at any time, enables the Government to issue duplicates (under the usual safeguard of a bond of indemnity) in every case of a security proved to have been lost or destroyed.

A. COLVIN.

The 10th March, 1885.

R. J. CROSTHWAITE,
Offg. Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, APRIL 4, 1885.

☞ 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 13th March 1885, and was referred to a Select Committee :—

No. 5 OF 1885.

A Bill to amend the Petroleum Act, 1881.

WHEREAS it is expedient to amend the Petroleum Act, 1881, in manner hereinafter appearing; VIII of 1881. It is hereby enacted as follows :—

Short title and commencement.

1. (*1*) This Act may be called the Petroleum Act, 1885; and

(*2*) It shall come into force at once.

VIII of 1881.

Amendment of *explanation* to definition of "petroleum" in section 3 of Act VIII of 1881.

2. In section 3 of the Petroleum Act, 1881, in the *explanation* to the definition of "petroleum," for the last thirteen words the following words shall be substituted, namely :—

"in accordance with the directions contained in the schedule hereto annexed, with an apparatus which has been stamped and certified as provided by section 17A, within a period of five years immediately preceding the date on which the apparatus is used for the testing, and after the corrections (if any) which the certificate declares are to be applied to the results of the testing have been made."

Amendment of definition of "dangerous petroleum" in section 3 of Act VIII of 1881.

3. In section 3 of the said Act, in the definition of "dangerous petroleum", for the word "seventy-three" the word "seventy-six" shall be substituted; and to the same definition the following words shall be added, namely :—

"Provided that, when all or any of the petroleum on board a ship, or in the possession of any dealer, is declared by the master of the ship, or the consignees of the cargo, or by the dealer, as the case may be, to be of one uniform quality, the petroleum shall not be deemed to be dangerous if the samples selected from such petroleum, when tested as aforesaid, have their flashing points, on an average, at or above seventy-three degrees of Fahrenheit's thermometer and if no one of the said samples has its flashing point below seventy degrees of that thermometer."

Repeal of word "glass" in section 5 of same Act.

4. In the proviso to section 5 of the said Act, the word "glass" shall be repealed.

Substitution of certain words in section 6 of the same Act.

5. In section 6 of the said Act, for the last seventeen words the following shall be substituted, namely :—

"have attached thereto a label in conspicuous characters stating the description of the petroleum, with the addition of the words 'highly inflammable' and with the addition—

"(*d*) in the case of a vessel kept, of the name and address of the consignee or owner;

"(*e*) in the case of a vessel transported, of the name and address of the sender; and

"(*f*) in the case of a vessel sold or exposed for sale, of the name and address of the vendor."

New sections substituted for section 7 of the same Act.

6. For section 7 of the said Act the following sections shall be substituted :—

Power for Local Government to make rules as to importation of petroleum.

"7. (*1*) The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum, and in particular—

"(*a*) to determine the ports at which only petroleum may be imported;

"(*b*) to ascertain the quantity and description of any petroleum on board a ship;

"(*c*) to determine the places at which and the conditions on and subject to which petroleum may be landed, stored or transhipped;

"(*d*) to fix the fees to be paid for the storage of petroleum at such places;

"(*e*) to provide for the selection by an officer appointed by the Local Government in this behalf, and for the delivery to him by the consignees of samples of all petroleum so landed and stored; and

"(*f*) to provide, in the case of each consignment which is stated to be of one uniform quality, for the averaging of the results of testing the selected samples."

"(2) In this section 'ship' includes anything made for the conveyance by water of human beings or property.

Procedure after petroleum has been landed and stored.

"7A. (*1*) Petroleum landed and stored in accordance with rules made under the last foregoing section shall not be removed from the place at which it is stored until the samples selected therefrom in accordance with the said rules have been tested by an officer appointed by the Local Government in this behalf in the manner described in the schedule hereto annexed with an apparatus which has been stamped and certified as provided by section 17 A, and until such officer has given a certificate that the petroleum is not dangerous petroleum.

"(*2*) If the said officer after testing the said samples refuses to give the said certificate in respect of any petroleum, the Local Government may permit the consignee within a time to be fixed by the Local Government in this behalf—

"(*a*) to rectify the petroleum,

"(*b*) to apply for a license to import the petroleum as dangerous petroleum, or

"(*c*) to re-export the petroleum.

"(*3*) If the consignee does not within the time fixed under sub-section (*2*) avail himself of the permission granted under that sub-section, the Local Government may order the petroleum to be destroyed."

New section to be inserted after section 17.

7. After section 17 of the said Act the following section shall be inserted, namely:—

"*Test-apparatus.*

[cf. 42 & 43 Vic., c. 47, s. 3.]

Model test-apparatus.

"17A. Whereas a model of the apparatus for testing petroleum under this Act constructed in accordance with the description contained in the schedule hereto annexed has been deposited in the office of the Chemical Examiner to Government, Calcutta, and has been marked with the words 'Model test-apparatus;' It is hereby enacted as follows:—

[cf. 42 & 43 Vic., c. 47 s. 3.]

Verification of test-apparatus.

"(*1*) The Chemical Examiner with whom the said model test-apparatus is deposited may, on payment of such fee as the Governor General in Council may, from time to time, by notification in the *Gazette of India*, prescribe, compare with the said model and verify every apparatus for testing petroleum which is submitted to him for the purpose.

"(*2*) If any apparatus for testing petroleum, when compared and verified as provided by this section, is found correct, or correct subject to certain corrections to be applied to the results of the tests, the Chemical Examiner shall stamp the same with a special number, and shall further give a certificate in writing under his hand to the effect that the apparatus has been compared and verified by him and found to be correct, or correct subject to certain specified corrections to be applied to the results of the tests.

"(*3*) Every certificate granted under this section shall, until the contrary is proved, be deemed to be conclusive proof of the matters stated therein.

"(*4*) Subject to the payment of such fees as the Governor General in Council may, by notification in the *Gazette of India*, prescribe in this behalf, the said model test-apparatus shall be at all reasonable times open to inspection by any person desiring to inspect it."

New schedule substituted for the schedule to the same Act.

8. For the Schedule to the said Act the following schedule shall be substituted, namely:—

"THE SCHEDULE.

"*I.—Nature of the Test-apparatus.*

"The apparatus consists of the following parts:—

(1) the oil-cup;

(2) the cover, with slide, test-lamp, and clockwork arrangement for opening and closing the holes in the cover, and for dipping the test-flame;

(3) the water-bath or heating vessel;

(4) the tripod stand, with jacket, and spirit-lamp for heating the water-bath;

(5) the thermometer for indicating the temperature of the oil in the oil-cup;

(6) the thermometer for indicating the temperature of the water in the water-bath;

(7) the thermometer for indicating the temperature of the oil before it is poured into the oil-cup;

(8) the dropping bottle, for replenishing the test-lamp;

(9) the forceps, for adjusting the wick of the test-lamp.

"The oil-cup is a cylindrical flat-bottomed vessel, made of gun-metal or brass, and tinned or silvered inside. A gauge is fixed to the inside of the cup to regulate the height to which it is to be filled with the sample under examination.

"The cup is provided with a close fitting overlapping cover, which carries the thermometer, the test-lamp, and the adjuncts thereto. The test-lamp is suspended upon two supports by means of trunnions, which allow it to be easily inclined to a particular angle and restored to its original position. The socket in the cover, which is to hold a round bulb thermometer for indicating the temperature of the oil during the testing operation, is so adjusted that the bulb of the latter is always inserted in a definite position below the surface of the liquid.

"The cover is provided with three holes, one in the centre and two smaller ones close to the sides. These are closed and opened by means of a pivoted slide. When the slide is moved so as to uncover the holes, the suspended lamp is caught by a projection fixed on the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. As the slide moves back so as to cover the holes, the lamp returns to its original position. Upon the cover, in front of and in a line with the nozzle of the lamp, is fixed a white bead, the diameter of which represents the size of the test-flame to be used.

"The water-bath or heating vessel is so constructed that, when the oil-cup is placed in position in it, an air-space or air-chamber intervenes between the two; consequently, in applying the test under ordinary circumstances, the heat is transmitted gradually to the oil from the hot water through the air-space. The water-bath is fitted with a socket for receiving a long bulb thermometer, to indicate the temperature of the water. It is also provided with a funnel, an overflow-pipe and two handles.

"The water-bath rests upon a tripod stand, which is fitted with a copper cylinder or jacket, so that the bath is surrounded by an enclosed air-space, which retains and regulates the heat. One of the legs of the stand serves as a support for a spirit-lamp, which is attached to it by a small swing bracket.

"The clockwork arrangement, by which during the operation of testing the slide is withdrawn, and the test-flame dipped into the cup and raised again as the slide is replaced, is provided with a ratchet key for setting it in action for each test, and with a trigger for starting it each time that the test-flame is applied.

"*II.—Directions for drawing the Sample and preparing it for Testing.*

"1. *Drawing the sample.*—In all cases the testing officer shall personally superintend the drawing of the sample from an original unopened tin.

"An opening sufficiently large to admit of the oil being rapidly poured or syphoned from the tin shall be made.

"Two bottles, each of the capacity of about 40 fluid ounces, are to be filled with the oil. One of these, the contents of which is intended to be preserved for reference in case of need, is to be carefully corked, the cork being well driven home, cut off level with the neck, and melted sealing-wax worked into it. The other bottle may be either stoppered or corked.

"2. *Preparing the sample for testing.*—About ten fluid ounces of the oil, sufficient for three tests, are transferred from the bottle into which the sample has been drawn to a pint flask or bottle, which is to be immersed in water in which ice is floating until a thermometer, introduced into the oil, indicates a temperature not exceeding 50° Fahrenheit.

"*III.—Directions for preparing and using the Test-apparatus.*

"1. *Preparing the water-bath.*—The water-bath is filled by pouring water into the funnel until it begins to flow out at the overflow-pipe. The temperature of the water at the commencement of each test, as indicated by the long bulb thermometer, is to be 130° Fahrenheit, and this is attained in the first instance by mixing hot and cold water, either 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 the water is heated by means of the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

"2. *Preparing the test-lamp.*—The test-lamp is fitted with a piece of cylindrical wick of such thickness that it fills the wick-holder, but may readily be moved to and fro for the purpose of adjusting the size of the flame. In the body of the lamp, upon the wick, which is coiled within it, is placed a small tuft of cotton wool, moistened with petroleum, any oil not absorbed by the wool being removed. When the lamp has been lighted, the wick is adjusted by means of a pair of forceps until the flame is of the size of the bead fixed on the cover of the oil-cup; should a particular test occupy so long a time that the flame begins to get smaller, through the supply of oil in the lamp becoming exhausted, three or four drops of petroleum are allowed to fall upon the tuft of wool in the lamp from the small open orifice of the bottle provided for that purpose. This can be safely done without interrupting the test.

"3. *Filling the oil-cup.*—The oil-cup having been previously cooled, by placing it bottom downwards in water at a temperature not exceeding 50° Fahrenheit, is to be rapidly wiped dry, placed on a level surface in a good light, and the oil to be tested is poured in very slowly, without splashing, until its surface is level with the point of the gauge which is fixed in the cup. The round bulb thermometer is inserted into the lid of the cup, care being taken that the projecting rim of the collar touches the edge of the socket; the test-lamp, prepared as already described, is placed in position, and the cover is then put on to the cup and pressed down so that its edge rests on the rim of the cup.

"4. *Application of the test.*—The water-bath, with its thermometer in position, is placed in some locality where it is not exposed to currents of air, and where the light is sufficiently subdued to admit of the size of the entire test-flame being compared with that of the bead on the cover. The cup is carefully lifted without shaking it, and placed in the bath, the test-lamp is lighted, and the clockwork wound up by turning the key. The thermometer in the oil-cup is now watched, and when the temperature has reached 56° Fahrenheit the clockwork is set in motion by pressing the trigger.

"If no flash takes place the clockwork is at once re-wound, and the trigger pressed at 57° Fahrenheit, and so on, at every degree rise of temperature, until the flash occurs, or until a temperature of 95° Fahrenheit has been reached.

"If the flash takes place at any temperature below 77° Fahrenheit the temperature at which it occurs is to be recorded. Two fresh portions of the sample are then to be successively tested in a similar manner and the results recorded. If no greater difference than 2° Fahrenheit exists between any two of the three recorded results, each result is to be corrected for atmospheric pressure, as hereafter described, and the average of the three corrected

results is the flashing point of the sample. In the event of there being a greater difference than 2° Fahrenheit between any two of the results, the series of tests is to be rejected and a fresh series, of three, similarly obtained, and so on until a sufficiently concordant series is furnished, when the results are to be corrected and the average taken in the manner already described.

"If a temperature of 76° Fahrenheit has been reached without a flash occurring, the application of the test-flame is to be continued at every degree rise of temperature until a temperature of 95° Fahrenheit has been reached. If no flash has occurred up to this point, the oil-cup is to be removed from the water-bath, and the temperature of the water in the water-bath is to be reduced to 95° Fahrenheit by pouring cold water into the funnel (the hot water escaping by the overflow-pipe). The air-chamber is then to be filled to a depth of 1½ inches with water at a temperature of about 95° Fahrenheit, the oil-cup is to be replaced in the water-bath and the spirit-lamp attached to the water-bath is to be lighted and placed underneath. The test-flame is then to be again applied, from 96° Fahrenheit, at every degree rise of temperature as indicated by the thermometer in the oil-cup until a flash takes place or until a temperature of 200° Fahrenheit has been reached. If during this operation the test-flame appears to diminish in size, the lamp is to be replenished in the manner prescribed at (2) without interrupting the test.

"If a flash occurs at any temperature between 76° and 200° Fahrenheit the temperature at which it occurs, subject to correction for atmospheric pressure, is the flashing point of the sample.

"In repeating a test, a fresh sample of oil must always be used, the tested sample being thrown away, and the cup must be wiped dry from any adhering oil and cooled, as already described, before receiving the fresh sample.

"5. *Correction for atmospheric pressure.*—As the flashing point of an oil is influenced by changes in atmospheric pressure to an average extent of 1·6° Fahrenheit for every inch of the barometer, a correction of the observed flashing point may become necessary. For this purpose a table is appended to this schedule, giving the flashing points of oils ranging from 65° to 80° Fahrenheit, under pressure ranging from 27 to 31 inches of mercury.

"The table is used in the following manner:—

"*Example.*—An oil has given a flashing point of 71°, the barometer being at 28·6 inches; take the nearest number to 71° in the vertical column headed 28·6. This number is 70·8. Substitute for this the number in the same horizontal line in the column headed 30 (the normal height of the barometer). The substituted number, that is, the true flashing point of the oil, is 73°.

"*Table for correction of Flashing Points indicated by the Test for Variations in Barometric Pressure on either side of Thirty Inches.*

Barometer in Inches.	Flashing Point in Degrees Fahrenheit.																
27	27·2	27·4	27·6	27·8	28	28·2	28·4	28·6	28·8	29	29·2	29·4	29·6	29·8	30	30·2	30·4	30·6	30·8	31
60·2	60·5	60·8	61·2	61·5	61·8	62·1	62·4	62·8	63·1	63·4	63·7	64	64·4	64·7	65	65·3	65·6	66	66·3	66·6
61·2	61·5	61·8	62·2	62·5	62·8	63·1	63·4	63·8	64·1	64·4	64·7	65	65·4	65·7	66	66·3	66·6	67	67·3	67·6
62·2	62·5	62·8	63·2	63·5	63·8	64·1	64·4	64·8	65·1	65·4	65·7	66	66·4	66·7	67	67·3	67·6	68	68·3	68·6
63·2	63·5	63·8	64·2	64·5	64·8	65·1	65·4	65·8	66·1	66·4	66·7	67	67·4	67·7	68	68·3	68·6	69	69·3	69·6
64·2	64·5	64·8	65·2	65·5	65·8	66·1	66·4	66·8	67·1	67·4	67·7	68	68·4	68·7	69	69·3	69·6	70	70·3	70·6
65·2	65·5	65·8	66·2	66·5	66·8	67·1	67·4	67·8	68·1	68·4	68·7	69	69·4	69·7	70	70·3	70·6	71	71·3	71·6
66·2	66·5	66·8	67·2	67·5	67·8	68·1	68·4	68·8	69·1	69·4	69·7	70	70·4	70·7	71	71·3	71·6	72	72·3	72·6
67·2	67·5	67·8	68·2	68·5	68·8	69·1	69·4	69·8	70·1	70·4	70·7	71	71·4	71·7	72	72·3	72·6	73	73·3	73·6
68·2	68·5	68·8	69·2	69·5	69·8	70·1	70·4	70·8	71·1	71·4	71·7	72	72·4	72·7	73	73·3	73·6	74	74·3	74·6
69·2	69·5	69·8	70·2	70·5	70·8	71·1	71·4	71·8	72·1	72·4	72·7	73	73·4	73·7	74	74·3	74·6	75	75·3	75·6
70·2	70·5	70·8	71·2	71·5	71·8	72·1	72·4	72·8	73·1	73·4	73·7	74	74·4	74·7	75	75·3	75·6	76	76·3	76·6
71·2	71·5	71·8	72·2	72·5	72·8	73·1	73·4	73·8	74·1	74·4	74·7	75	75·4	75·7	76	76·3	76·6	77	77·3	77·6
72·2	72·5	72·8	73·2	73·5	73·8	74·1	74·4	74·8	75·1	75·4	75·7	76	76·4	76·7	77	77·3	77·6	78	78·3	78·6
73·2	73·5	73·8	74·2	74·5	74·8	75·1	75·4	75·8	76·1	76·4	76·7	77	77·4	77·7	78	78·3	78·6	79	79·3	79·6
74·2	74·5	74·8	75·2	75·5	75·8	76·1	76·4	76·8	77·1	77·4	77·7	78	78·4	78·7	79	79·3	79·6	80	80·3	80·6
75·2	75·5	75·8	76·2	76·5	76·8	77·1	77·4	77·8	78·1	78·4	78·7	79	79·4	79·7	80	80·3	80·6	81	81·3	81·6

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to amend the Petroleum Act, 1881, in certain points in which experience has shewn that its amendment would be desirable.

2. "Dangerous petroleum" is defined by the Act (section 3) as petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer. The Government of India does not see any reason for changing the standard so fixed, but in view of the possibility of variations in the application of the test, which, according to the opinions of the experts, may, even with the utmost care, cause deviations of 2° or 3° in the results, it is of opinion that the nominal legal minimum standard for non-dangerous petroleum may be slightly raised. Accordingly, section 3 of the Bill fixes the standard for dangerous petroleum at 76° instead of 73°, but to this enhanced standard a proviso is added to the effect that a consignment represented to be of one uniform quality shall not be deemed to be dangerous when on an average of tests the oil does not fall below that standard by more than 3°, and no one sample has a flashing point below 70°.

3. Section 5 of the Act permits small quantities of dangerous petroleum to be kept in "glass," among other, vessels, if each vessel does not contain more than a pint and is securely stopped. Looking to the comparatively fragile nature of glass vessels and to the possibility of such vessels, when filled with the highly volatile liquids included under the head of "dangerous petroleum," bursting even if "securely stopped," when exposed to powerful sunlight for a brief period, the prudence of including *glass* vessels among those specified in the section is, as has been pointed out to the Government of India, doubtful. Section 4 of the Bill therefore amends the section by the omission of the word "glass."

4. The object of section 5 of the Bill is to bring the provisions of section 6 of the Act, which relate to the marking of the vessels containing dangerous petroleum, and which declare that all such vessels "shall bear an indelible mark on a label in conspicuous characters, stating the nature of the contents thereof" into accordance with the English law (34 & 35 Vic., cap. 105, section 6), which lays down that the label shall state in conspicuous characters the description of the petroleum with the addition of the words "highly inflammable" and with the addition of the name and address of the consignee or owner or of the sender or vendor.

5. As the Act now stands, not only is the importation of "dangerous" petroleum subjected to a strict system of licensing, but no petroleum may be landed from any ship until samples of the petroleum on board thereof have been delivered for the purpose of the petroleum being tested.

While considering that the importation of dangerous petroleum should continue to be thus regulated, the Government of India is of opinion that the restrictions at present placed on the importation of other petroleum may be somewhat relaxed. It seems to it that, instead of requiring the delivery of samples before any oil is landed, it would be sufficient to give the Local Government power to determine the places at which, and the conditions on and subject to which, petroleum may be landed and stored. The necessary power is conferred by section 6 of the Bill, which substitutes a new section for section 7 of the Act. There would thus be nothing to prevent petroleum, other than dangerous petroleum, being in future landed and stored at once. But, in order to protect the public, no petroleum should be allowed to be removed from the place where it is stored until it has been tested and declared to satisfy the legal standard. Section 7A therefore provides this, and further declares that, when petroleum which has been so landed and stored is found not to come up to the legal standard, the Local Government may direct the consignees either to rectify it or to import it as dangerous petroleum or to re-export within a fixed period, and that, on the consignees failing to do whichever of these things they may be directed to do, the Local Government may order the petroleum to be destroyed.

In addition to re-producing clauses (*a*) and (*c*) of the present section 7, the new section 7 further empowers the Local Government to make rules to fix the fees to be paid for the storage of petroleum at places appointed for the purpose, and to regulate the selection of samples and the averaging the results of testing selected samples.

6. Section 7 of the Bill introduces certain new provisions in the Act as to the test-apparatus to be used. As the Act at present stands, the schedule contains a specification explanatory of the test-apparatus. As it is, however, proposed by this Bill to substitute a new schedule for the present one, in which a new description of the test-apparatus is inserted, it seems desirable, for the convenience of the public, to provide for the deposit of a model test-apparatus, which shall be open to inspection, and after which all the instruments to be used under the Act shall be constructed. This is what the new section 17 A, which section 7 of the Bill adds to the Act, does. This section also provides for the verification of each test-apparatus which it is proposed to use for the purposes of the Act. Each apparatus when verified is to be marked with a special number, and the officer making the verification is to give a certificate in which shall be noted any corrections which must be applied to the results of the tests made with the apparatus. This last provision is necessary, because it is practically impossible to construct instruments which will not need corrections of this sort. The certificate granted is declared to be conclusive proof of the matters stated therein.

7. Section 8 of the Bill substitutes a new schedule for the schedule at present appended to the Act, the instructions contained in which it is now generally admitted require modification.

This schedule has been prepared mainly by Sir F. Abel in conjunction with Mr. Redwood and Dr. Warden, the Professor of Chemistry in the Medical College, Calcutta, and Chemical Examiner to Government, and Dr. Lyon, the Chemical Analyser in Bombay, and it has also been examined and considered by Professor Pedler of the Presidency College, Calcutta. It embodies very definite directions regarding the sampling and testing of petroleum, and it lays down in a most detailed manner the procedure to be adopted. The Governor General in Council believes that the adoption of this schedule will meet all the difficulties which have been found to occur under the present law in regard to the sampling and testing of petroleum, and that, if the procedure therein described is carefully followed, there is every reason to hope that trustworthy and generally concordant results will be obtained.

9. Lastly, the new provisions as to the deposit of a model test-apparatus and the verification of all other test-apparatus therewith has necessitated the amendment of the *explanation* of the term "flashing point" which is appended to the definition of "petroleum" in section 3. It is necessary that, in order to ascertain the true flashing point, the petroleum should be tested with a verified and certificated apparatus, and after the corrections (if any) to be applied to the results of the testing have been made. Moreover, it would appear to be necessary that every apparatus used for the testing of petroleum should be verified at least once in every five years. All these points are provided for in the amendment made by section 2 of the Bill.

J. GIBBS.

The 10th March, 1885.

R. J. CROSTHWAITE,
Offg. 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 13th March 1885, and was referred to a Select Committee:—

No. 6 OF 1885.

A Bill to amend the law relating to Government Securities.

WHEREAS it is expedient to amend the law relating to Government securities in manner hereinafter appearing; It is hereby enacted as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Indian Securities Act, 1885; and

(*2*) It shall come into force at once.

[Cf. Act III of 1881, s. 2]

Definitions.

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

The expression "Government securities" includes promissory notes, debentures, stock-certificates, and all other securities issued by the Government of India or by any Local Government, in respect of any loan issued under notification in the official Gazette, whether before or after the passing of this Act: and

"prescribed" means prescribed by rules made from time to time by the Governor General in Council in this behalf.

IX of 1872.

Right of survivors of joint payees of Government securities.

3. (*1*) Notwithstanding anything contained in the Indian Contract Act, section 45, when a Government security is payable to two or more persons jointly and any of them dies, the security shall be payable to the survivor or survivors of those persons.

(*2*) Nothing herein contained shall affect any claim which the representative of the deceased person may have against the survivor or survivors in respect of the security jointly payable to them and the deceased.

(*3*) This section shall apply whether the death of the person to whom the security was jointly payable occurred or occurs before or after this Act comes into force.

[Cf. sec. 49 of 33 & 34 Vic., cap. 71.]

Issue of renewed securities.

4. Any person to whom a Government security is payable may, on payment of the prescribed fee and on delivering the security duly receipted to the prescribed officer, obtain from the officer a renewed security payable to himself.

Issue of duplicate securities.

5. (*1*) When a Government security has been wholly or partly lost or destroyed the person to whom it was payable at the time of the loss or destruction or his representative may, on application to the prescribed officer, and on producing proof to his satisfaction of the loss or destruction, obtain from him an order for:—

(*a*) the payment of interest in respect of the security said to be lost or destroyed pending the issue of a duplicate security; and

(*b*) the issue of a duplicate security payable to such person.

(*2*) An order shall not be passed under sub-section (*1*) until after the issue of the prescribed notification of the loss or destruction and after the expiration of the prescribed period, nor until the applicant has given the prescribed indemnity against the claims of all persons deriving title under the security lost or destroyed.

(*3*) A list of the securities in respect of which an order is passed under sub-section (*1*) shall be published in the *Gazette of India* at such times as the Governor General in Council may, from time to time, direct.

Period after which Government is released from liability in respect of original security.

6. When a renewed security has been issued under section 4, or a duplicate security has been issued under section 5, the Government shall be discharged of all liability in respect of the original security of which such renewed or duplicate security has been issued— [Cf. 33 & 34 Vic., cap. 71, s. 51.]

(*a*) in the case of a renewed security, after the lapse of six years from the date of the issue of the renewed security,

(*b*) in the case of a duplicate security, after the lapse of six years from the date of the publication under section 5, sub-sec-

tion (3), of the list in which the security is first mentioned, or from the date of the last payment of interest on the original security, whichever date is latest.

Power for Governor General in Council to make rules.

7. The Governor General in Council may, from time to time, make rules to prescribe—

(*a*) the fees to be paid for applications under sections 4 and 5;

(*b*) the form in which securities delivered for renewal are to be receipted;

(*c*) the officer who is to exercise all or any of the powers and perform all or any of the duties prescribed by sections 4 and 5;

(*d*) the proof which is to be produced by persons applying for duplicate securities;

(*e*) the form and mode of publication of the notification mentioned in section 5 and the period after which interest may be paid or a duplicate security may be issued under that section;

(*f*) the nature and amount of the indemnity to be given by a person applying under section 5 for the payment of interest or the issue of a duplicate security; and

(*g*) generally all matters connected with the grant of renewed and duplicate securities.

Publication of drafts and rules.

8. (*1*) The Governor General in Council shall before making rules under the last foregoing section, publish a draft of the proposed rules in such manner as may, in his opinion, be sufficient for the information of the public.

(*2*) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(*3*) The Governor General in Council shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*4*) Every rule made under the last foregoing section shall be published in the *Gazette of India*, and the publication in the *Gazette of India* of a rule purporting to be made under that section shall be conclusive evidence that it has been duly made.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to provide for certain matters connected with Government securities as to which legislation appears to be desirable.

2. Under the English law, on the death of one of several joint promisees or creditors, the right to sue on the contract vests in the survivors or survivor, and, on the death of the last of two or more survivors, in his personal representative. But a person receiving money under this right of survivorship may be accountable for it to the representatives of the deceased.

3. This rule has been altered in India by section 45 of the Contract Act, which provides that—

"When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly."

4. With reference to this section, the Law Commissioners, who prepared the draft of the Act, remarked :—"In regulating the devolution of rights and liabilities, we propose, in accordance with the rule of English Courts of Equity and of the Indian Code of Civil Procedure, that joint liabilities and rights shall, after the death of one of the persons liable or entitled, go to his representative jointly with the survivor, and after the death of the survivor to the representatives of both jointly." So far as can be ascertained, this proposal was accepted without criticism in India.

5. It appears that, both before and since the passing of the Contract Act, the practice of the Indian Public Debt Offices has been to treat the right of suing on, and giving receipts for money payable under, Government promissory notes as vesting in the survivor or survivors of two or more joint holders. But the law officers of the Government have recently given an opinion that, having regard to section 45 of the Contract Act, it is not safe to continue this practice.

6. Under these circumstances, the Government of India think that legislation is desirable both for the purpose of confirming what has been done in the past, and for the purpose of laying down a convenient rule for the future.

7. Accordingly, section 3 of the Bill declares that, notwithstanding anything contained in the Indian Contract Act, 1872, section 45, when a Government security is payable to two or more persons jointly and any of them dies, the security shall be payable to the survivor or survivors of those persons. But to this a clause is added making it clear that the section will not affect the liability of the survivor or survivors to the representative of the deceased holder of the security.

8. Lastly, sections 4 to 6 of the Bill deal with the issue of renewed and duplicate Government securities.

9. With regard to the renewal of Government securities, the holder of a security may, under existing rules, upon payment of the prescribed fee and delivering up his security properly receipted, obtain a clear title in the form of a renewed security in his own favour. This right is affirmed by section 4 of the Bill; but as Government by the renewal becomes liable in respect of the new note independently of any question as to legal completeness of discharge upon the original security, opportunity is taken to fix a term within which claims in respect of the original security must be made. Accordingly, section 6 of the Bill releases Government from liability in respect of the original security after the lapse of six years from the date of the issue of the renewed security.

10. With regard to duplicate securities, the practice has hitherto been, when a Government security has been lost or destroyed, to issue a notification, under the terms of the security, of the discharge of the security upon a given date, and to refuse to issue any duplicate until six years (the period fixed by the law of limitation) has elapsed from the date so fixed for discharge. If, however, the loan is not mature, no such notification of discharge can be issued, and the Government is obliged to refuse to issue any duplicate, in the face of the risk of claims being made in respect of the security alleged to be lost. The Bill adopts the existing practice in respect of the issue of duplicates, but, by applying in every case the period of limitation which under the existing law applies only in the case of securities of loans dischargeable upon notice given at any time, enables the Government to issue duplicates (under the usual safeguard of a bond of indemnity) in every case of a security proved to have been lost or destroyed.

A. COLVIN.

The 10th March, 1885.

R. J. CROSTHWAITE,
Offg. Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, MAY 16, 1885.

☞ 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 14th May, 1885, and was referred to a Select Committee :—

No. 7 OF 1885.

A Bill to amend the Local Authorities Loan Act, 1879.

WHEREAS it is expedient to amend the Local Authorities Loan Act, 1879; It is hereby enacted as follows :— XI of 1879.

Addition to section 8, Act XI of 1879.

1. After clause (*b*) of the proviso to section 8 of the said Act the following shall be added :—

"or

"(*c*) to affect the power conferred on any local authority by any such enactment to charge its funds by guaranteeing the payment of interest on money to be raised for any purpose to which the funds of the local authority may be applied."

STATEMENT OF OBJECTS AND REASONS.

IT is proposed that a light railway be constructed in the Tanjore District of the Madras Presidency by a Company, and that the interest on the capital to be raised by the Company for the undertaking be guaranteed by the Local Fund Board of Tanjore.

But section 8 of the Local Authorities Loan Act, 1879, prohibits any local authority from charging its funds except as provided by that Act and the rules made thereunder ; and the Act provides, and the rules that may be made under it can provide, for no other means of charging funds than borrowing on their security.

It is considered desirable, therefore, that the Act should be so amended as to enable the local legislature to pass any enactment that may be necessary for authorising a local authority to guarantee the interest on money raised for any purpose to which the funds of the local authority may be applied.

T. C. HOPE.

The 7th May, 1885.

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 May, 1885, and was referred to a Select Committee:—

No. 8 OF 1885.

THE LAHORE TRAMWAYS BILL, 1885.

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3. Powers to make, maintain and use tramways.

C.—Construction and Maintenance of Tramways and of Streets on which they are laid.

4. Powers to grantees to break up streets and lay rails, &c.
5. Grantees to keep tramways and adjoining part of street in repair.
6. Obligations of grantees when they have broken up street.
7. Reservation of power of Committee and Government over streets.

D.—Rights over Tramways and Streets on which they are laid.

8. Grantees' exclusive right over tramways.
9. Grantees to have right of user only.
10. Power of Committee and Government officers to regulate traffic on streets.

E.—Traffic on Tramways.

11. Rates of fares and charges.
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15. Penalty for obstructing grantees in the exercise of their powers.
16. Penalty for interfering with tramway.
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18. Penalty for avoiding payment of proper fare.
19. Power of servant of grantees to arrest persons avoiding payment of fare.

G.—Powers to make Rules.

20. Powers to make rules.

H.—Miscellaneous.

21. Construction of clauses 17 and 24 of agreement.
22. Exemption from certain municipal taxation.
23. Provisions as to general Acts.

THE SCHEDULE.

A Bill to authorize the making, and to regulate the working, of Street Tramways in Lahore.

WHEREAS the Municipal Committee of Lahore, by an agreement dated the seventh day of February, 1885, a copy whereof is set forth in the schedule annexed to this Act, granted, for the considerations therein expressed, to David Parkes Masson, John Robson and Arthur Milford Ker, their heirs, executors, administrators and assigns, hereinafter called the grantees, the right to construct, maintain and use a tramway or tramways in Lahore upon the terms, subject to the conditions and in the manner mentioned in the said agreement, and the said agreement was made subject to the confirmation and recognition thereof by the Government of the Punjab;

and whereas the Government of the Punjab has confirmed and recognised the said agreement and it is now expedient that effect be given to it, subject to the provisions and limitations hereinafter contained; It is hereby enacted as follows:—

A.—Preliminary.

1. *(1)* This Act may be called the Lahore Tramways Act, 1885; and

Short title.

The Lahore Tramways Bill, 1885.—(Sections 2-8.)

Commencement.

(2) It shall come into force at once.

Definitions.

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

"Committee" means the Committee established for the Municipality of Lahore under the Punjab Municipal Act, 1884:

XIII of 1884.

"tramway" means a tramway, or any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway: and

[Act XIII of 1884, s. 2.]

"street" means any way, street, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way, and along or across which any tramway authorized by this Act is or is intended to be laid, and includes the surface-soil and sub-soil of any such street, and the footway and drains of any such street, and any bridge, culvert or causeway forming part of any such street.

B.—Powers of grantees generally.

Powers to make, maintain and use tramways.

3. Subject to the provisions of this Act, and to the terms and conditions of the said agreement so far as the same are not inconsistent with this Act, the grantees may make, maintain and use any of the tramways for the construction, maintenance and use of which provision is made in the said agreement:

Provided that any such tramway shall not be opened for public traffic until it has been inspected and certified by the engineer to the Committee to be fit for such traffic.

C.—Construction and Maintenance of Tramways and of Streets on which they are laid.

Power to grantees to break up streets and lay rails, &c.

4. Subject to the terms and conditions of the said agreement, the grantees may, from time to time, for the purpose of constructing, maintaining or renewing any tramway under this Act, open or break up any street, and therein or thereon lay sleepers and rails, and repair, alter or remove the same; and may, for the purposes aforesaid, do in and on any such street all other acts which may, from time to time, be necessary for constructing, maintaining or renewing the tramway:

Provided that they shall not, without the consent of the Committee, open or break up at any one time a greater length than one hundred yards of any street which does not exceed a quarter of a mile in length; and, in the case of any street exceeding a quarter of a mile in length, they shall leave an interval of at least a quarter of a mile between any two places at which they may open or break up the street, and shall not open or break up at any such place a greater length than one hundred yards.

Grantees to keep tramways and adjoining part of street in repair.

5. The grantees shall, at their own expense, at all times maintain and keep in good condition and repair, in such manner as the Committee from time to time direct, all tramways constructed by them under this Act, and so much of any street as lies between the rails of any such tramway; and in the case of double lines or turnouts or sidings, the portion of the road between the tramways, and in every case so much of the road as extends eighteen inches beyond the rails of and on each side of any such tramway.

Obligations of grantees when they have broken up street.

6. When the grantees have, for the purposes of section 4 or section 5, opened or broken up any portion of a street, they shall be under the following further obligations, namely:—

(a) they shall, with all convenient speed, and in all cases within six weeks at the most, unless the Committee otherwise consent in writing, complete the work for which the street has been opened or broken up, fill in the ground and make good the surface, and, to the satisfaction of the Committee, restore the street to as good a condition as that in which it was before it was opened or broken up, and clear away all surplus materials or rubbish occasioned thereby;

(b) they shall, in the meantime, cause the place where the street is opened or broken up to be fenced and watched, and to be properly lighted at night; and

(c) they shall make good all damage done to drains, sewers, water-pipes and gas-pipes, and to the wires or other materials or things used for any system of lighting, and whether belonging to the Committee, to the Government or to private persons, and shall make compensation for any other damage done in the execution of the powers granted to them.

Reservation of power of Committee and Government over streets.

7. (1) Nothing in this Act shall prevent the Committee or any Government officers from opening, breaking up, widening, altering, diverting or improving any street traversed by a tramway for the purposes for which they might otherwise under the law for the time being in force lawfully open, break up, widen, alter, divert or improve such street:

Provided that—

(a) they shall cause as little detriment or inconvenience to the grantees as circumstances admit; and

(b) before they commence any work whereby the traffic on the tramway will be interrupted, they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the grantees not less than eighteen hours previous notice of their intention to commence the work, specifying the time at which they will commence it.

(2) The Committee or officers aforesaid or the Secretary of State for India in Council shall not be liable to pay to the grantees any compensation for injury done to the tramway by the execution of any work referred to in sub-section (1), or for loss of traffic occasioned by the reasonable use of any power lawfully exercised in connection with the same.

D.—Rights over Tramways and Streets on which they are laid.

Grantees' exclusive right over tramways.

8. The grantees shall, subject to the provisions of this Act and to the terms and conditions of the said agreement, have the exclusive use of their tramways for carriages with flange wheels or other wheels suitable only to run on a grooved rail:

The Lahore Tramways Bill, 1885.—(Sections 9-19.)

Provided that nothing in this Act shall affect the right of the public to pass along or across any part of any road along or across which any tramway is laid, whether on or off the tramway, with carriages not having flange wheels or wheels suitable to run on a grooved rail.

Grantees to have right of user only.

9. Notwithstanding anything in this Act or in the said agreement, the grantees shall not acquire any right other than that of user over any street along or across which they lay any tramway.

Power of Committee and Government officers to regulate traffic on streets.

10. Nothing in this Act shall affect the powers of the Committee or of any Government officers to regulate the passage of any traffic along or across any street along or across which any tramway is laid down, and the Committee or officers aforesaid may exercise their authority as well on as off the tramway, and with respect as well to the traffic of the grantees as to the traffic of other persons.

E.—Traffic on Tramways.

Rates of fares and charges.

11. The grantees may, from time to time, by a notice published in such languages and in such manner as the Local Government may prescribe, fix the rates of fares and charges for carrying passengers and goods in their carriages:

Provided that the rates of passenger fares shall not exceed one anna per mile for each passenger in the lower class, and two annas per mile for each passenger in the higher or first class.

Mode of payment of fares and charges.

12. The fares and charges by this Act authorized shall be paid to such persons, at such places upon or near to the tramways, and in such manner and under such regulations as the grantees may, by a notice published as aforesaid, from time to time prescribe.

Carriage of dangerous or offensive goods.

13. (1) No person shall be entitled to carry or to require to be carried on any tramway constructed under this Act any goods of a dangerous or offensive nature.

(2) Every person taking such goods with him on any such tramway shall, before entering the carriage, give notice of their nature to the servant of the grantees in charge of the carriage.

(3) Every person sending such goods by any such tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the book-keeper or other servant of the grantees with whom they are left at the time of such sending.

(4) The grantees may refuse to take any parcel which they may suspect to contain goods of a dangerous or offensive nature, or require it to be opened to ascertain the fact.

F.—Offences and Penalties.

Penalty for failure of grantees to comply with certain provisions of Act and agreement.

14. If the grantees—

(a) construct or maintain any tramway, or run any car or carriage thereon, otherwise than in accordance with the said agreement;

(b) open any tramway for traffic before it has been inspected and certified in manner required by section 3;

(c) open or break up any street otherwise than as permitted by this Act, or having opened or broken up a street fail to discharge any of the obligations imposed on them by section 6, clauses (a) and (b); or

(d) fail to keep the rails of any tramway and the portions of the street adjoining the same in repair as required by section 5,—

each of them shall (without prejudice to the enforcement of specific performance of the requirements of this Act or of the said agreement or to any other remedy against them), on complaint of the Committee or of any person injuriously affected thereby, be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for each day after the first day during which the offence continues to be committed.

Penalty for obstructing grantees in the exercise of their powers.

15. Any person who, without lawful excuse (the proof whereof shall lie on him), wilfully obstructs any person acting under the authority of the grantees in the lawful exercise of their powers in constructing, repairing or renewing a tramway, or injures or destroys any mark made for the purpose of setting out the line of the tramway, shall be punished with fine which may extend to fifty rupees.

Penalty for interfering with tramway.

16. Any person who, without lawful excuse (the proof whereof shall lie on him), wilfully does any of the following things, namely:—

(a) interferes with, removes or alters any part of a tramway constructed under this Act, or of the works connected therewith;

(b) does anything in such a manner as to obstruct any carriage using any such tramway; or

(c) abets, within the meaning of the Indian Penal Code, the doing of anything mentioned in clause (a) or clause (b),—

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

Penalty for taking or sending dangerous or offensive goods without giving notice.

17. Any person taking or sending by any tramway any goods of a dangerous or offensive nature without giving the notice required by section 13, shall be punished with fine which may extend to fifty rupees.

Penalty for avoiding payment of proper fare.

18. If any person travelling or having travelled in any carriage of the grantees avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional fare for the additional distance or attempts to avoid payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit the carriage, he shall be punished with fine which may extend to ten rupees.

Power of servant of grantees to arrest persons avoiding payment of fare.

19. Any servant of the grantees, and any person called in by him for his assistance, may arrest and take to the nearest police-station any person who is

discovered either in or after committing or attempting to commit an offence punishable under section 18 and whose name and residence are refused by him and are unknown to such servant or person; and the police-officer in charge of the police-station, on receiving a complaint that such an offence has been committed, shall adopt such legal measures as may be necessary to cause the accused person to be taken before a Magistrate with the least possible delay.

G.—Power to make Rules.

Powers to make rules.

20. (*1*) The Committee at a special meeting may, with the sanction of the Local Government, from time to time, make such rules consistent with this Act as to the rate of speed, number of passengers and mode of use of the tramways, and as to the licensing and control of drivers, conductors and other persons having charge of the carriages of the grantees, as the convenience and safety of the public may, in the opinion of the Committee, require.

(*2*) The grantees may, with the like sanction, from time to time, make rules consistent with this Act for preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to them, and

for regulating the travelling in any carriage belonging to them.

(*3*) The authority making any rule under this section may prescribe as a punishment for the breach of it a fine which may extend to twenty rupees.

(*4*) All rules made under this section shall be published in the local official Gazette.

H.—Miscellaneous.

Construction of clauses 17 and 24 of agreement.

21. For the purposes of clauses 17 and 24 of the agreement set forth in the schedule annexed to this Act, the want of sufficient funds shall not be deemed to be a circumstance beyond the control of the grantees.

Exemption from certain municipal taxation.

22. The plant, rolling-stock and other vehicles, yards, workshops, engine-sheds and depôts of the grantees shall, for a period of five years from the passing of this Act, be exempt from all municipal taxation except such lighting-rates and water-tax as may, from time to time, be payable in respect of the yards, workshops, engine-sheds and depôts.

Provisions as to general Acts.

23. Nothing in this Act shall exempt the grantees or any tramway constructed by them under this Act from the provisions of any general enactment relating to tramways now in force or which may hereafter be passed.

THE SCHEDULE.

ARTICLES OF AGREEMENT made this seventh day of February, 1885, between the MUNICIPAL COMMITTEE OF LAHORE, PUNJAB, hereinafter called the Lahore Municipality, of the one part, and D. P. MASSON, JOHN ROBSON and ARTHUR MILFORD KER OF LAHORE, hereinafter called the grantees, of the other part.

WHEREAS the said Lahore Municipality, subject to the confirmation of the Government of the Punjab, and to the recognition of this agreement by the said Government of the Punjab, have agreed to grant to the said grantees the right to construct, maintain and use a tramway or tramways in Lahore upon the terms and conditions hereinafter contained.

2. NOW THESE PRESENTS witness that, in consideration of the covenants hereinafter contained, and on the part of the said Lahore Municipality to be performed, the said grantees for themselves, their heirs, executors and assigns do covenant with the said Lahore Municipality, so far as the covenants and agreements hereinafter contained are to be performed by the said grantees and their heirs, executors, administrators and assigns, and the said Municipality for and in consideration of the covenants and agreements hereinafter contained and on the part of the said grantees and their heirs, executors, administrators and assigns to be performed, do hereby covenant with the said grantees and their heirs, executors, administrators and assigns so far as the covenants and agreements hereinafter contained are to be performed by the said Lahore Municipality, their successors and assigns, in manner following, that is to say :—

The said Lahore Municipality grant to the said grantees and their heirs, executors, administrators and assigns, all which persons are hereinafter included in the words "the said grantees," the right to construct, maintain and use a tramway or tramways with all necessary sidings, turnouts, connections and lines of whatever nature which may be required to connect the said tramway with the depôts of the said grantees (but in the case of sidings and turnouts only in such places as the said corporation may sanction) on the following routes and between such other places and by such other routes as may be hereafter approved of by the said Municipality :—

Clause 1.—(1st). A line commencing at the junction of Nicholson and Mayo Roads near the Sindh, Punjab and Delhi Railway Workshops, and continued along the road in front of the Railway Station through the Landa Bazar to the Delhi Gate, thence by the circular road on the south side of the City to the end of the Anarkali Bazar near the Lohari Gate.

(2nd). A line, being a continuation of the above, through the Anarkali Bazar past the Museum to the junction of the Church Road near Kapurthala House.

(3rd). A line in continuation leading to Mozang.

(4th). A line commencing at the junction of Mayo and Nicholson Roads continued along the Mayo Road through Shalu-ki-Garhi to Mecan Meer Bazar.

Lines 1 and 2 are delineated on the map or plan hereunto annexed and signed by the parties hereto. The lines shall be single except at crossing stations, where they shall be double.

Clause 2.—The said grantees shall further (subject to clauses 3 and 4) have the exclusive right

of laying, constructing, maintaining and using a tramway or tramways within the limits of the Lahore Municipality on the terms contained in these presents: provided always that if the said grantees shall at any time or times, not being a period less than three months after the construction of the lines 1 and 2 enumerated in clause 1, refuse or neglect for three months to accept any proposal by the said Lahore Municipality for the construction, maintenance and use of any tramway or tramways other than those mentioned in clause 1, which the said Lahore Municipality may consider necessary or desirable, it shall be lawful for the said Lahore Municipality to employ any other person or company for the purposes aforesaid or any of them, and to make such arrangements as they may think proper independently of the said grantees.

Clause 3.—The said grantees shall construct in such manner as to be available for use at least tramways 1 and 2 within two years from the date of obtaining the sanction and approval of the Government of the Punjab, and they shall, before the expiration of the third year, give notice in writing to the said Lahore Municipality of the lines they intend to construct during the next succeeding two years; and failing the observance by the said grantees of the terms of this clause, it shall be lawful for the said Lahore Municipality to withdraw and cancel the concessions and rights granted by these presents to the said grantees as regards the lines remaining to be constructed.

Clause 4.—If the grantees shall, at the expiration of five years from the date of commencement of this contract, have left any one or more lines hereinbefore in clause 1 specified unconstructed, and if the said Lahore Municipality shall not have exercised the rights conferred on them by clause 3, the said Lahore Municipality may call upon the said grantees to construct the line or lines, and if the said grantees do not construct the line or lines within twelve calendar months after receiving such formal notice, then their power granted in this concession shall, so far as relates to that line or lines, cease, and the said Lahore Municipality may make arrangements with other persons for the construction of the same.

Clause 5.—Any tramway or tramways to be constructed under this agreement shall be constructed on the metre gauge of 3 feet 3⅜ inches, or on such other gauge not exceeding 4 feet 8½ inches as may be mutually agreed upon, and especially the rails shall be laid and maintained in such manner that the uppermost surface of the rails shall be on a level with the surface of the road; and before the work of construction is begun the drawings and specifications showing the proposed construction of each tramway shall be submitted to the said Municipality and be approved by them, and the cars and carriages intended to run on the said tramways shall also be such as shall have been approved of by the Municipality. The rail to be used is the ordinary grooved rail of steel weighing 34 pounds per yard.

Clause 6.—If the said Municipality shall hereafter alter the level of any street or road along or across which any tramway by this agreement authorized is laid or authorized to be laid, the grantees shall alter or (as the case may be) lay their rails so that the uppermost surface thereof shall be on a level with the surface of the road so altered: provided always that any such alteration as aforesaid shall be so made as to interfere as little as possible with the safe and convenient working of the said tramways, and in any case so as not to stop or prevent the free use and working thereof.

Clause 7.—The cars and carriages of the said grantees on the tracks of the said tramways shall be worked with such power, animal or mechanical, as the said grantees may think suitable, provided that no steam carriages may be used without the special consent of the Municipality (Commissioners in special general meeting) and the sanction of the Punjab Government, and provided also that the said Municipality (Commissioners in special general meeting) shall have power at all times to make such regulations as to the rate of speed, number of passengers and mode of use of the said tracks as the convenience and safety of the public using the street may require.

Clause 8.—The said grantees shall have power from time to time to fix the rate of fares for carrying persons and goods in the cars or carriages to be run on the said tramway or tramways: provided that the rates of fares shall for any distance not exceed the rate of one anna per mile for the lower class and two annas per mile for the higher or first class for each passenger.

Clause 9.—The said grantees may, for the purpose of constructing and maintaining such tramways under such superintendence as is hereinafter specified, open and break up the soil and metalled way of the several streets, roads and bridges, and thereon lay sleepers and rails, and from time to time repair, alter or remove the same, and may, for the purposes aforesaid, remove and use all earth and materials in such streets, roads and bridges, and the said grantees may, in and on such streets, roads and bridges, do all other acts which they shall from time to time deem necessary for constructing and maintaining street tramways, doing as little damage as may be in the execution of the powers hereby granted, and shall make good all damage done to drains, sewers, water and gas pipes, or to the wires or other materials or things used for any other system of lighting, and whether belonging to the said Municipality or to private individuals, and shall make compensation for any other damage done in the execution of such powers.

Clause 10.—Before the said grantees proceed to open or break up any street, road or bridge, they shall obtain the approval in writing of the said Committee to the tracks or lines of the said tramway being laid down on the said streets, roads or bridges, and the said grantees, before opening or breaking up any street, road or bridge, shall give to the said Committee or their Executive Engineer, or other municipal officer duly appointed for that purpose, notice in writing of their intention to open or break up the same not less than three clear days before beginning such work, except in such cases of emergency arising from defects in any of the rails or other works, and then so soon as is possible after the beginning of the work or the necessity for the same shall have arisen.

Clause 11.—No street, road or bridge shall, except in cases of emergency as aforesaid, be opened or broken up, except under the superintendence of the said Committee or of their Executive Engineer, or of some other municipal officer duly appointed for that purpose, and according to such plans as shall be approved of by him or them: provided

always that, if the said Committee or their Engineer or other such officer as aforesaid fail to attend at the time fixed for the opening of any such street, road or bridge after having had such notice of the said grantees' intention as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the said grantees may perform the work specified in such notice without such superintendence as aforesaid.

Clause 12.—When the said grantees open or break up the roadway or pavement of any street, road or bridge, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground and make good the roadway or pavement so opened or broken up as aforesaid, and carry away the rubbish occasioned thereby, and deposit the same for the use of the said Committee at such place as the Executive Engineer of the said Municipality shall direct, and shall at all times, whilst any such roadway or pavement shall be so opened or broken up, cause the same to be guarded, and shall cause a light sufficient for the warning of passengers to be set up and maintained against or near such roadway or pavement where the same shall be open or broken up every night during which the same shall continue open or broken up.

Clause 13.—If the said grantees open or break up any street, road or bridge without giving such notice as hereinbefore mentioned, or in a manner different from that which shall have been approved of or determined as aforesaid, except in the cases in which the said grantees are hereby authorized to perform such work without any superintendence or notice, or if the said grantees shall make any unnecessary delay in completing any such work or in filling in the ground or reinstating and making good, so far as is consistent with the existence of the said tramway, the roadway or pavement so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such roadway or pavement has been broken up to be guarded and lighted, they shall forfeit to the said Committee a sum not exceeding fifty (50) rupees for every such offence, and they shall forfeit an additional sum not exceeding fifty (50) rupees for each day during which any such delay or neglect as aforesaid shall continue after they shall have received notice thereof.

Clause 14.—The said grantees shall maintain and keep in repair such portion of the streets, roads and bridges as shall be occupied by their tracks or lines, including therein, not only the space between their tracks or lines, but a space eighteen inches on either side thereof, and in consideration of the maintenance of such streets, roads and bridges as aforesaid, and of the yearly rent hereinafter mentioned to be paid by the grantees, the plant, rolling-stock and other vehicles, yards, workshops, engine-sheds and depôts of the said grantees shall be exempt from municipal taxation for a period of five years, except lighting and water-rates for such yards, workshops, engine-sheds and depôts.

Clause 15.—The said grantees shall be liable for any loss, damage or injuries that any person or persons may sustain by reason of any defect or want of repairs in any of the plant, rolling-stock or other properties of the said grantees, or by reason of any carelessness, neglect or misconduct of their agents or servants in the management, construction or use of the tramways or any portion thereof; the sam shall be made good by the said grantees, and in the event of any suit being instituted against the said Committee in respect of any of the matters hereinbefore mentioned, the said grantees shall, within fourteen days from the receipt of a notice thereof from the said Committee, settle the same; but if the said grantees choose to defend such suit, they shall be at liberty to do so upon their undertaking to indemnify the said Committee against all losses, damages and expenses in respect thereof: provided always that, if the said grantees fail to settle such suit or to indemnify the said Committee as is hereinbefore provided, it shall be lawful for the said Committee to settle the same without any consent or concurrence on the part of the said grantees, and the sums which they shall have to pay in making such settlement, together with interest thereon at the rate of 8 per cent. per annum from the date of payment, and with all expenses which they may be put to, shall be recoverable as a debt from the said grantees.

Clause 16.—Nothing in this agreement shall be construed to prevent the said Committee from taking up any of the public streets or roads traversed by the said tramway for the purposes for which the said Committee may lawfully take up the same, and the said grantees shall have no right to claim cost from the said Committee for obstructing the tramway or causing delay in the traffic so long as the delay shall not be unreasonable for the work to be performed.

Clause 17.—If at any time after the opening of any tramway for traffic the said grantees shall discontinue the working of such tramway or any part thereof for the space of six calendar months (such discontinuance not being occasioned by circumstances beyond the control of the said grantees), it shall be lawful for the said Committee, without any previous notice to the said grantees, to remove the tramway or part of the tramway so discontinued, and the said grantees shall pay to the said Committee the cost of such removal and of the making good of the street, road or bridge, and the certificate of the said Committee or of their engineer as to such costs shall be conclusive.

Clause 18.—The provisions of this agreement shall remain and be in force for a term not less than twenty-one (21) years from the date thereof. The said Committee shall have the right of purchasing the said tramways, with the plant, stores, rolling-stock, sheds, depôts and yards, and everything connected therewith, after the expiration of the said twenty-one (21) years, upon declaring its intention so to do within six months after the expiration of the said twenty-one (21) years; the amount to be paid in the event of such purchase shall be the actual *bonâ fide* value at the termination of this agreement, exclusive of any compensation for goodwill, premium on compulsory sale or other consideration whatever, of the tramways and of the work and materials connected therewith, and of the lands and buildings and all the other property of the grantees, such value to be decided by mutual agreement or by arbitration as hereinafter provided.

Clause 19.—The provisions hereinbefore contained shall, so far as applicable, apply to all tramways to be constructed by the said grantees by any route or routes to be hereafter sanctioned by the said Committee, and to the works connected with or incidental to such tramways, it being agreed that in the event of the Municipality failing to declare its intention as above provided to purchase the property of the said grantees, the terms of this contract shall continue in force during the period of six months from the date of the determination of these presents and for a further period of six months, and if the said Committee shall not within that time exercise the option of purchase hereby given, the said Committee and the said grantees shall enter into a fresh agreement.

Clause 20.—The said grantees will, if required by the Municipality, before opening and breaking up the soil and pavement of any street or bridge, deposit in an approved Bank in Lahore, in the name of the said Municipality, the sum of Rs. 1,000 or in their option Promissory Notes of the Government of India or Municipal Bonds of the nominal value of Rs. 1,000, and the same will remain so deposited until the completion by the said grantees of the lines of tramway herein sanctioned for immediate construction. But all interest accruing on the said sum or the said notes shall be credited to the said grantees, and subject as next hereinafter mentioned, be paid to them as the same shall accrue due: provided, nevertheless, that the said Municipality shall be entitled to deduct out of the sum so deposited or the interest accruing on the said sum or notes, or out of the proceeds of sale of the said notes, all moneys to which they may be entitled under any clause or clauses of these presents.

Clause 21.—In consideration of the concession hereby granted, the said grantees will pay to the said Lahore Municipality rents at the rates and under the conditions hereinafter specified; that is to say, for the first two years after the opening of the tramway or tramways no rent will be charged, after the expiration of the first two years, and during the next ensuing year, the rental shall be one-tenth of the annual average profits as shown by the company's books during the preceding two years, this rental to be subject to revision at the end of every two years, and the maximum charge or rental made by the said Municipality shall under no circumstance exceed one-tenth of the net profit divided by the company in every period of two years immediately preceding each adjustment of the charge. The books and accounts shall at all times be open to the inspection of the Municipal Committee, and should any dispute arise as to the exact charge to be made by the said Municipality, then such matter or matters in dispute shall be referred to arbitrators as detailed in clause 25 of this agreement. If the said rent or any part thereof shall not be paid on due date, the said grantees shall be liable to pay interest thereon at the rate of 8 per cent. per annum from the due date until payment.

Clause 22.—From and after the commencement of the 15th year of this contract to the end of the 21st, the said grantees shall not be at liberty to enter upon any fresh arrangements or expenditure which would increase their capital account in connection with this contract without first notifying their intention to the said Municipality and obtaining their approval thereof and sanction thereto in writing.

Clause 23.—The sleepers, rails, materials and implements and other erections placed and erected by the said grantees on the streets, bridges or roads under the powers hereby granted shall be and remain the property of the said grantees, and the said grantees shall have the exclusive use of their tramway or tramways for carriages with flanged wheels or other wheels suitable only to run on the prescribed rail.

Clause 24.—Unless the said grantees shall have commenced the work of laying down the said tramways within twelve months from the date of the execution of these articles of agreement, the said Committee shall be at liberty to cease and determine this contract and to enter into arrangements with any other person or persons for the construction of tramways; it being agreed, however, that these conditions of contract are subject to the sanction of Government, and that, in the event of their being executed prior to such sanction being given, the said 12 months shall date from the day on which notice of such sanction is given to the said grantees: provided also that any delay in commencing the work beyond 12 months shall not have been due to any cause beyond the control of the said grantees.

Clause 25.—If any doubt, difference or dispute shall arise between the said grantees and the said Committee touching the construction of these presents or anything herein contained, or touching or concerning any other matter or thing relating to these presents, then and in every such case such doubt, difference or dispute shall be referred to the arbitration of two persons, one to be chosen by the said grantees and the other by the said Committee within one calendar month after either of them shall have made to the other a requisition to that effect, and should the arbitrators fail to agree they shall refer the question or questions at issue to the decision of an umpire to be chosen by the said arbitrators, and the decision of such arbitrators if they agree, or of such umpire if they disagree, shall be final; and in case either party shall neglect or refuse to appoint an arbitrator within the specified time, the arbitrator appointed by the other party shall make a decision alone, and the decision of such arbitrators, umpire or arbitrator, as the case may be, shall be effectual and binding upon both parties.

Clause 26.—The said grantees are to be at liberty to form a Company or Limited Liability Company for the purpose of constructing, maintaining and working the tramways authorized by or hereafter to be authorized under the terms of this agreement. The words "the said grantees" used in this agreement shall include such Company or Limited Liability Company so formed as aforesaid.

Clause 27.—The words "the said Committee" used in this agreement shall include the present Committee and their successors, and also persons empowered by the said Committee or their successors or by other duly constituted authority to do any act or thing or exercise any powers or authorities which the said Committee are hereinbefore authorized or empowered to do or exercise.

STATEMENT OF OBJECTS AND REASONS.

On the 7th of February, 1885, the Municipal Committee of Lahore entered into an agreement with Messrs. Masson, Robson and Ker, by which it conferred upon them the exclusive right to construct and work public tramways within the limits of the municipality, and arranged with them for the construction and working of certain specified tramways and of such others as might from time to time be determined on.

2. This agreement is very similar to that recently entered into by the Municipal Committee for the town of Rangoon for the construction and maintenance of tramways in that town, and like it requires to be supported and supplemented by legislation. Accordingly, the present Bill, which follows closely the lines of the Rangoon Tramways Act, 1883, has been prepared.

The 28th April, 1885.

C. P. ILBERT.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, MAY 23, 1885.

☞ 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 May, 1885, and was referred to a Select Committee :—

No. 7 OF 1885.

A Bill to amend the Local Authorities Loan Act, 1879.

XI of 1879. WHEREAS it is expedient to amend the Local Authorities Loan Act, 1879; It is hereby enacted as follows :—

Addition to section 8, Act XI of 1879.

1. After clause (*b*) of the proviso to section 8 of the said Act the following shall be added :—

"or

"(*c*) to affect the power conferred on any local authority by any such enactment to charge its funds by guaranteeing the payment of interest on money to be raised for any purpose to which the funds of the local authority may be applied."

STATEMENT OF OBJECTS AND REASONS.

It is proposed that a light railway be constructed in the Tanjore District of the Madras Presidency by a Company, and that the interest on the capital to be raised by the Company for the undertaking be guaranteed by the Local Fund Board of Tanjore.

But section 8 of the Local Authorities Loan Act, 1879, prohibits any local authority from charging its funds except as provided by that Act and the rules made thereunder; and the Act provides, and the rules that may be made under it can provide, for no other means of charging funds than borrowing on their security.

It is considered desirable, therefore, that the Act should be so amended as to enable the local legislature to pass any enactment that may be necessary for authorising a local authority to guarantee the interest on money raised for any purpose to which the funds of the local authority may be applied.

T. C. HOPE.

The 7th May, 1885.

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 May, 1885, and was referred to a Select Committee:—

No. 8 OF 1885.

THE LAHORE TRAMWAYS BILL, 1885.

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   Commencement.
2. Definitions.

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3. Powers to make, maintain and use tramways.

C.—Construction and Maintenance of Tramways and of Streets on which they are laid.

4. Powers to grantees to break up streets and lay rails, &c.
5. Grantees to keep tramways and adjoining part of street in repair.
6. Obligations of grantees when they have broken up street.
7. Reservation of power of Committee and Government over streets.

D.—Rights over Tramways and Streets on which they are laid.

8. Grantees' exclusive right over tramways.
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G.—Powers to make Rules.

20. Powers to make rules.

H.—Miscellaneous.

21. Construction of clauses 17 and 24 of agreement.
22. Exemption from certain municipal taxation.
23. Provisions as to general Acts.

THE SCHEDULE.

A Bill to authorize the making, and to regulate the working, of Street Tramways in Lahore.

WHEREAS the Municipal Committee of Lahore, by an agreement dated the seventh day of February, 1885, a copy whereof is set forth in the schedule annexed to this Act, granted, for the considerations therein expressed, to David Parkes Masson, John Robson and Arthur Milford Ker, their heirs, executors, administrators and assigns, hereinafter called the grantees, the right to construct, maintain and use a tramway or tramways in Lahore upon the terms, subject to the conditions and in the manner mentioned in the said agreement, and the said agreement was made subject to the confirmation and recognition thereof by the Government of the Punjab;

and whereas the Government of the Punjab has confirmed and recognised the said agreement and it is now expedient that effect be given to it, subject to the provisions and limitations hereinafter contained; It is hereby enacted as follows:—

A.—Preliminary.

1. *(1)* This Act may be called the Lahore Tramways Act, 1885; and

Short title.

Commencement.

(2) It shall come into force at once.

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

Definitions.

"Committee" means the Committee established for the Municipality of Lahore under the Punjab Municipal Act, 1884:

XIII of 1884.

"tramway" means a tramway, or any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway: and

[Act XIII of 1884, s. 2.]

"street" means any way, street, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way, and along or across which any tramway authorized by this Act is or is intended to be laid, and includes the surface-soil and sub-soil of any such street, and the footway and drains of any such street, and any bridge, culvert or causeway forming part of any such street.

B.—Powers of grantees generally.

3. Subject to the provisions of this Act, and to the terms and conditions of the said agreement so far as the same are not inconsistent with this Act, the grantees may make, maintain and use any of the tramways for the construction, maintenance and use of which provision is made in the said agreement:

Powers to make, maintain and use tramways.

Provided that any such tramway shall not be opened for public traffic until it has been inspected and certified by the engineer to the Committee to be fit for such traffic.

C.—Construction and Maintenance of Tramways and of Streets on which they are laid.

4. Subject to the terms and conditions of the said agreement, the grantees may, from time to time, for the purpose of constructing, maintaining or renewing any tramway under this Act, open or break up any street, and therein or thereon lay sleepers and rails, and repair, alter or remove the same; and may, for the purposes aforesaid, do in and on any such street all other acts which may, from time to time, be necessary for constructing, maintaining or renewing the tramway:

Power to grantees to break up streets and lay rails, &c.

Provided that they shall not, without the consent of the Committee, open or break up at any one time a greater length than one hundred yards of any street which does not exceed a quarter of a mile in length; and, in the case of any street exceeding a quarter of a mile in length, they shall leave an interval of at least a quarter of a mile between any two places at which they may open or break up the street, and shall not open or break up at any such place a greater length than one hundred yards.

5. The grantees shall, at their own expense, at all times maintain and keep in good condition and repair, in such manner as the Committee from time to time direct, all tramways constructed by them under this Act, and so much of any street as lies between the rails of any such tramway; and in the case of double lines or turnouts or sidings, the portion of the road between the tramways, and in every case so much of the road as extends eighteen inches beyond the rails of and on each side of any such tramway.

Grantees to keep tramways and adjoining part of street in repair.

6. When the grantees have, for the purposes of section 4 or section 5, opened or broken up any portion of a street, they shall be under the following further obligations, namely:—

Obligations of grantees when they have broken up street.

(a) they shall, with all convenient speed, and in all cases within six weeks at the most, unless the Committee otherwise consent in writing, complete the work for which the street has been opened or broken up, fill in the ground and make good the surface, and, to the satisfaction of the Committee, restore the street to as good a condition as that in which it was before it was opened or broken up, and clear away all surplus materials or rubbish occasioned thereby;

(b) they shall, in the meantime, cause the place where the street is opened or broken up to be fenced and watched, and to be properly lighted at night; and

(c) they shall make good all damage done to drains, sewers, water-pipes and gas-pipes, and to the wires or other materials or things used for any system of lighting, and whether belonging to the Committee, to the Government or to private persons, and shall make compensation for any other damage done in the execution of the powers granted to them.

7. *(1)* Nothing in this Act shall prevent the Committee or any Government officers from opening, breaking up, widening, altering, diverting or improving any street traversed by a tramway for the purposes for which they might otherwise under the law for the time being in force lawfully open, break up, widen, alter, divert or improve such street:

Reservation of power of Committee and Government over streets.

Provided that—

(a) they shall cause as little detriment or inconvenience to the grantees as circumstances admit; and

(b) before they commence any work whereby the traffic on the tramway will be interrupted, they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the grantees not less than eighteen hours previous notice of their intention to commence the work, specifying the time at which they will commence it.

(2) The Committee or officers aforesaid or the Secretary of State for India in Council shall not be liable to pay to the grantees any compensation for injury done to the tramway by the execution of any work referred to in sub-section *(1)*, or for loss of traffic occasioned by the reasonable use of any power lawfully exercised in connection with the same.

D.—Rights over Tramways and Streets on which they are laid.

8. The grantees shall, subject to the provisions of this Act and to the terms and conditions of the said agreement, have the exclusive use of their tramways for carriages with flange wheels or other wheels suitable only to run on a grooved rail:

Grantees' exclusive right over tramways.

Provided that nothing in this Act shall affect the right of the public to pass along or across any part of any road along or across which any tramway is laid, whether on or off the tramway, with carriages not having flange wheels or wheels suitable to run on a grooved rail.

9. Notwithstanding anything in this Act or in the said agreement, the grantees shall not acquire any right other than that of user over any street along or across which they lay any tramway.

Grantees to have right of user only.

10. Nothing in this Act shall affect the powers of the Committee or of any Government officers to regulate the passage of any traffic along or across any street along or across which any tramway is laid down, and the Committee or officers aforesaid may exercise their authority as well on as off the tramway, and with respect as well to the traffic of the grantees as to the traffic of other persons.

Power of Committee and Government officers to regulate traffic on streets.

E.—Traffic on Tramways.

11. The grantees may, from time to time, by a notice published in such languages and in such manner as the Local Government may prescribe, fix the rates of fares and charges for carrying passengers and goods in their carriages:

Rates of fares and charges.

Provided that the rates of passenger fares shall not exceed one anna per mile for each passenger in the lower class, and two annas per mile for each passenger in the higher or first class.

12. The fares and charges by this Act authorized shall be paid to such persons, at such places upon or near to the tramways, and in such manner and under such regulations as the grantees may, by a notice published as aforesaid, from time to time prescribe.

Mode of payment of fares and charges.

13. *(1)* No person shall be entitled to carry or to require to be carried on any tramway constructed under this Act any goods of a dangerous or offensive nature.

Carriage of dangerous or offensive goods.

(2) Every person taking such goods with him on any such tramway shall, before entering the carriage, give notice of their nature to the servant of the grantees in charge of the carriage.

(3) Every person sending such goods by any such tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the book-keeper or other servant of the grantees with whom they are left at the time of such sending.

(4) The grantees may refuse to take any parcel which they may suspect to contain goods of a dangerous or offensive nature, or require it to be opened to ascertain the fact.

F.—Offences and Penalties.

14. If the grantees—

Penalty for failure of grantees to comply with certain provisions of Act and agreement.

(a) construct or maintain any tramway, or run any car or carriage thereon, otherwise than in accordance with the said agreement;

(b) open any tramway for traffic before it has been inspected and certified in manner required by section 3;

(c) open or break up any street otherwise than as permitted by this Act, or having opened or broken up a street fail to discharge any of the obligations imposed on them by section 6, clauses *(a)* and *(b)*; or

(d) fail to keep the rails of any tramway and the portions of the street adjoining the same in repair as required by section 5,—

each of them shall (without prejudice to the enforcement of specific performance of the requirements of this Act or of the said agreement or to any other remedy against them), on complaint of the Committee or of any person injuriously affected thereby, be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for each day after the first day during which the offence continues to be committed.

15. Any person who, without lawful excuse (the proof whereof shall lie on him), wilfully obstructs any person acting under the authority of the grantees in the lawful exercise of their powers in constructing, repairing or renewing a tramway, or injures or destroys any mark made for the purpose of setting out the line of the tramway, shall be punished with fine which may extend to fifty rupees.

Penalty for obstructing grantees in the exercise of their powers.

16. Any person who, without lawful excuse (the proof whereof shall lie on him), wilfully does any of the following things, namely:—

Penalty for interfering with tramway.

(a) interferes with, removes or alters any part of a tramway constructed under this Act, or of the works connected therewith;

(b) does anything in such a manner as to obstruct any carriage using any such tramway; or

(c) abets, within the meaning of the Indian Penal Code, the doing of anything mentioned in clause *(a)* or clause *(b)*,—

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

17. Any person taking or sending by any tramway any goods of a dangerous or offensive nature without giving the notice required by section 13, shall be punished with fine which may extend to fifty rupees.

Penalty for taking or sending dangerous or offensive goods without giving notice.

18. If any person travelling or having travelled in any carriage of the grantees avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional fare for the additional distance or attempts to avoid payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit the carriage, he shall be punished with fine which may extend to ten rupees.

Penalty for avoiding payment of proper fare.

19. Any servant of the grantees, and any person called in by him for his assistance, may arrest and take to the nearest police-station any person who is

Power of servant of grantees to arrest persons avoiding payment of fare.

discovered either in or after committing or attempting to commit an offence punishable under section 18 and whose name and residence are refused by him and are unknown to such servant or person; and the police-officer in charge of the police-station, on receiving a complaint that such an offence has been committed, shall adopt such legal measures as may be necessary to cause the accused person to be taken before a Magistrate with the least possible delay.

G.—Powers to make Rules.

20. (*1*) The Committee at a special meeting may, with the sanction of the Local Government, from time to time, make such rules consistent with this Act as to the rate of speed, number of passengers and mode of use of the tramways, and as to the licensing and control of drivers, conductors and other persons having charge of the carriages of the grantees, as the convenience and safety of the public may, in the opinion of the Committee, require.

Powers to make rules.

(*2*) The grantees may, with the like sanction, from time to time, make rules consistent with this Act for preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to them, and

for regulating the travelling in any carriage belonging to them.

(*3*) The authority making any rule under this section may prescribe as a punishment for the breach of it a fine which may extend to twenty rupees.

(*4*) All rules made under this section shall be published in the local official Gazette.

H.—Miscellaneous.

21. For the purposes of clauses 17 and 24 of the agreement set forth in the schedule annexed to this Act, the want of sufficient funds shall not be deemed to be a circumstance beyond the control of the grantees.

Construction of clauses 17 and 24 of agreement.

22. The plant, rolling-stock and other vehicles, yards, workshops, engine-sheds and depôts of the grantees shall, for a period of five years from the passing of this Act, be exempt from all municipal taxation except such lighting-rates and water-tax as may, from time to time, be payable in respect of the yards, workshops, engine-sheds and depôts.

Exemption from certain municipal taxation.

23. Nothing in this Act shall exempt the grantees or any tramway constructed by them under this Act from the provisions of any general enactment relating to tramways now in force or which may hereafter be passed.

Provisions as to general Acts.

THE SCHEDULE.

ARTICLES OF AGREEMENT made this seventh day of February, 1885, between the MUNICIPAL COMMITTEE OF LAHORE, PUNJAB, hereinafter called the Lahore Municipality, of the one part, and D. P. MASSON, JOHN ROBSON and ARTHUR MILFORD KER OF LAHORE, hereinafter called the grantees, of the other part.

WHEREAS the said Lahore Municipality, subject to the confirmation of the Government of the Punjab, and to the recognition of this agreement by the said Government of the Punjab, have agreed to grant to the said grantees the right to construct, maintain and use a tramway or tramways in Lahore upon the terms and conditions hereinafter contained.

2. NOW THESE PRESENTS witness that, in consideration of the covenants hereinafter contained, and on the part of the said Lahore Municipality to be performed, the said grantees for themselves, their heirs, executors and assigns do covenant with the said Lahore Municipality, so far as the covenants and agreements hereinafter contained are to be performed by the said grantees and their heirs, executors, administrators and assigns, and the said Municipality for and in consideration of the covenants and agreements hereinafter contained and on the part of the said grantees and their heirs, executors, administrators and assigns to be performed, do hereby covenant with the said grantees and their heirs, executors, administrators and assigns so far as the covenants and agreements hereinafter contained are to be performed by the said Lahore Municipality, their successors and assigns, in manner following, that is to say:—

The said Lahore Municipality grant to the said grantees and their heirs, executors, administrators and assigns, all which persons are hereinafter included in the words "the said grantees," the right to construct, maintain and use a tramway or tramways with all necessary sidings, turnouts, connections and lines of whatever nature which may be required to connect the said tramway with the depôts of the said grantees (but in the case of sidings and turnouts only in such places as the said corporation may sanction) on the following routes and between such other places and by such other routes as may be hereafter approved of by the said Municipality:—

Clause 1.—(1st). A line commencing at the junction of Nicholson and Mayo Roads near the Sindh, Punjab and Delhi Railway Workshops, and continued along the road in front of the Railway Station through the Landa Bazar to the Delhi Gate, thence by the circular road on the south side of the City to the end of the Anarkali Bazar near the Lohari Gate.

(2nd). A line, being a continuation of the above, through the Anarkali Bazar past the Museum to the junction of the Church Road near Kapurthala House.

(3rd). A line in continuation leading to Mozang.

(4th). A line commencing at the junction of Mayo and Nicholson Roads continued along the Mayo Road through Shalu-ki Garhi to Mecan Meer Bazar.

Lines 1 and 2 are delineated on the map or plan hereunto annexed and signed by the parties hereto. The lines shall be single except at crossing stations, where they shall be double.

Clause 2.—The said grantees shall further (subject to clauses 3 and 4) have the exclusive right

of laying, constructing, maintaining and using a tramway or tramways within the limits of the Lahore Municipality on the terms contained in these presents: provided always that if the said grantees shall at any time or times, not being a period less than three months after the construction of the lines 1 and 2 enumerated in clause 1, refuse or neglect for three months to accept any proposal by the said Lahore Municipality for the construction, maintenance and use of any tramway or tramways other than those mentioned in clause 1, which the said Lahore Municipality may consider necessary or desirable, it shall be lawful for the said Lahore Municipality to employ any other person or company for the purposes aforesaid or any of them, and to make such arrangements as they may think proper independently of the said grantees.

Clause 3.—The said grantees shall construct in such manner as to be available for use at least tramways 1 and 2 within two years from the date of obtaining the sanction and approval of the Government of the Punjab, and they shall, before the expiration of the third year, give notice in writing to the said Lahore Municipality of the lines they intend to construct during the next succeeding two years; and failing the observance by the said grantees of the terms of this clause, it shall be lawful for the said Lahore Municipality to withdraw and cancel the concessions and rights granted by these presents to the said grantees as regards the lines remaining to be constructed.

Clause 4.—If the grantees shall, at the expiration of five years from the date of commencement of this contract, have left any one or more lines hereinbefore in clause 1 specified unconstructed, and if the said Lahore Municipality shall not have exercised the rights conferred on them by clause 3, the said Lahore Municipality may call upon the said grantees to construct the line or lines, and if the said grantees do not construct the line or lines within twelve calendar months after receiving such formal notice, then their power granted in this concession shall, so far as relates to that line or lines, cease, and the said Lahore Municipality may make arrangements with other persons for the construction of the same.

Clause 5.—Any tramway or tramways to be constructed under this agreement shall be constructed on the metre gauge of 3 feet 3⅜ inches, or on such other gauge not exceeding 4 feet 8½ inches as may be mutually agreed upon, and especially the rails shall be laid and maintained in such manner that the uppermost surface of the rails shall be on a level with the surface of the road; and before the work of construction is begun the drawings and specifications showing the proposed construction of each tramway shall be submitted to the said Municipality and be approved by them, and the cars and carriages intended to run on the said tramways shall also be such as shall have been approved of by the Municipality. The rail to be used is the ordinary grooved rail of steel weighing 84 pounds per yard.

Clause 6.—If the said Municipality shall hereafter alter the level of any street or road along or across which any tramway by this agreement authorized is laid or authorized to be laid, the grantees shall alter or (as the case may be) lay their rails so that the uppermost surface thereof shall be on a level with the surface of the road so altered: provided always that any such alteration as aforesaid shall be so made as to interfere as little as possible with the safe and convenient working of the said tramways, and in any case so as not to stop or prevent the free use and working thereof.

Clause 7.—The cars and carriages of the said grantees on the tracks of the said tramways shall be worked with such power, animal or mechanical, as the said grantees may think suitable, provided that no steam carriages may be used without the special consent of the Municipality (Commissioners in special general meeting) and the sanction of the Punjab Government, and provided also that the said Municipality (Commissioners in special general meeting) shall have power at all times to make such regulations as to the rate of speed, number of passengers and mode of use of the said tracks as the convenience and safety of the public using the street may require.

Clause 8.—The said grantees shall have power from time to time to fix the rate of fares for carrying persons and goods in the cars or carriages to be run on the said tramway or tramways: provided that the rates of fares shall for any distance not exceed the rate of one anna per mile for the lower class and two annas per mile for the higher or first class for each passenger.

Clause 9.—The said grantees may, for the purpose of constructing and maintaining such tramways under such superintendence as is hereinafter specified, open and break up the soil and metalled way of the several streets, roads and bridges, and thereon lay sleepers and rails, and from time to time repair, alter or remove the same, and may, for the purposes aforesaid, remove and use all earth and materials in such streets, roads and bridges, and the said grantees may, in and on such streets, roads and bridges, do all other acts which they shall from time to time deem necessary for constructing and maintaining street tramways, doing as little damage as may be in the execution of the powers hereby granted, and shall make good all damage done to drains, sewers, water and gas pipes, or to the wires or other materials or things used for any other system of lighting, and whether belonging to the said Municipality or to private individuals, and shall make compensation for any other damage done in the execution of such powers.

Clause 10.—Before the said grantees proceed to open or break up any street, road or bridge, they shall obtain the approval in writing of the said Committee to the tracks or lines of the said tramway being laid down on the said streets, roads or bridges, and the said grantees, before opening or breaking up any street, road or bridge, shall give to the said Committee or their Executive Engineer, or other municipal officer duly appointed for that purpose, notice in writing of their intention to open or break up the same not less than three clear days before beginning such work, except in such cases of emergency arising from defects in any of the rails or other works, and then so soon as is possible after the beginning of the work or the necessity for the same shall have arisen.

Clause 11.—No street, road or bridge shall, except in cases of emergency as aforesaid, be opened or broken up, except under the superintendence of the said Committee or of their Executive Engineer, or of some other municipal officer duly appointed for that purpose, and according to such plans as shall be approved of by him or them: provided

always that, if the said Committee or their Engineer or other such officer as aforesaid fail to attend at the time fixed for the opening of any such street, road or bridge after having had such notice of the said grantees' intention as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the said grantees may perform the work specified in such notice without such superintendence as aforesaid.

Clause 12.—When the said grantees open or break up the roadway or pavement of any street, road or bridge, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground and make good the roadway or pavement so opened or broken up as aforesaid, and carry away the rubbish occasioned thereby, and deposit the same for the use of the said Committee at such place as the Executive Engineer of the said Municipality shall direct, and shall at all times, whilst any such roadway or pavement shall be so opened or broken up, cause the same to be guarded, and shall cause a light sufficient for the warning of passengers to be set up and maintained against or near such roadway or pavement where the same shall be open or broken up every night during which the same shall continue open or broken up.

Clause 13.—If the said grantees open or break up any street, road or bridge without giving such notice as hereinbefore mentioned, or in a manner different from that which shall have been approved of or determined as aforesaid, except in the cases in which the said grantees are hereby authorized to perform such work without any superintendence or notice, or if the said grantees shall make any unnecessary delay in completing any such work or in filling in the ground or reinstating and making good, so far as is consistent with the existence of the said tramway, the roadway or pavement so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such roadway or pavement has been broken up to be guarded and lighted, they shall forfeit to the said Committee a sum not exceeding fifty (50) rupees for every such offence, and they shall forfeit an additional sum not exceeding fifty (50) rupees for each day during which any such delay or neglect as aforesaid shall continue after they shall have received notice thereof.

Clause 14.—The said grantees shall maintain and keep in repair such portion of the streets, roads and bridges as shall be occupied by their tracks or lines, including therein, not only the space between their tracks or lines, but a space eighteen inches on either side thereof, and in consideration of the maintenance of such streets, roads and bridges as aforesaid, and of the yearly rent hereinafter mentioned to be paid by the grantees, the plant, rolling-stock and other vehicles, yards, workshops, engine-sheds and depôts of the said grantees shall be exempt from municipal taxation for a period of five years, except lighting and water-rates for such yards, workshops, engine-sheds and depôts.

Clause 15.—The said grantees shall be liable for any loss, damage or injuries that any person or persons may sustain by reason of any defect or want of repairs in any of the plant, rolling-stock or other properties of the said grantees, or by reason of any carelessness, neglect or misconduct of their agents or servants in the management, construction or use of the tramways or any portion thereof; the same shall be made good by the said grantees, and in the event of any suit being instituted against the said Committee in respect of any of the matters hereinbefore mentioned, the said grantees shall, within fourteen days from the receipt of a notice thereof from the said Committee, settle the same; but if the said grantees choose to defend such suit, they shall be at liberty to do so upon their undertaking to indemnify the said Committee against all losses, damages and expenses in respect thereof: provided always that, if the said grantees fail to settle such suit or to indemnify the said Committee as is hereinbefore provided, it shall be lawful for the said Committee to settle the same without any consent or concurrence on the part of the said grantees, and the sums which they shall have to pay in making such settlement, together with interest thereon at the rate of 8 per cent. per annum from the date of payment, and with all expenses which they may be put to, shall be recoverable as a debt from the said grantees.

Clause 16.—Nothing in this agreement shall be construed to prevent the said Committee from taking up any of the public streets or roads traversed by the said tramway for the purposes for which the said Committee may lawfully take up the same, and the said grantees shall have no right to claim cost from the said Committee for obstructing the tramway or causing delay in the traffic so long as the delay shall not be unreasonable for the work to be performed.

Clause 17.—If at any time after the opening of any tramway for traffic the said grantees shall discontinue the working of such tramway or any part thereof for the space of six calendar months (such discontinuance not being occasioned by circumstances beyond the control of the said grantees), it shall be lawful for the said Committee, without any previous notice to the said grantees, to remove the tramway or part of the tramway so discontinued, and the said grantees shall pay to the said Committee the cost of such removal and of the making good of the street, road or bridge, and the certificate of the said Committee or of their engineer as to such costs shall be conclusive.

Clause 18.—The provisions of this agreement shall remain and be in force for a term not less than twenty-one (21) years from the date thereof. The said Committee shall have the right of purchasing the said tramways, with the plant, stores, rolling-stock, sheds, depôts and yards, and everything connected therewith, after the expiration of the said twenty-one (21) years, upon declaring its intention so to do within six months after the expiration of the said twenty-one (21) years; the amount to be paid in the event of such purchase shall be the actual *bonâ fide* value at the termination of this agreement, exclusive of any compensation for goodwill, premium on compulsory sale or other consideration whatever, of the tramways and of the work and materials connected therewith, and of the lands and buildings and all the other property of the grantees, such value to be decided by mutual agreement or by arbitration as hereinafter provided.

Clause 19.—The provisions hereinbefore contained shall, so far as applicable, apply to all tramways to be constructed by the said grantees by any route or routes to be hereafter sanctioned by the said Committee, and to the works connected with or incidental to such tramways, it being agreed that in the event of the Municipality failing to declare its intention as above provided to purchase the property of the said grantees, the terms of this contract shall continue in force during the period of six months from the date of the determination of these presents and for a further period of six months, and if the said Committee shall not within that time exercise the option of purchase hereby given, the said Committee and the said grantees shall enter into a fresh agreement.

Clause 20.—The said grantees will, if required by the Municipality, before opening and breaking up the soil and pavement of any street or bridge, deposit in an approved Bank in Lahore, in the name of the said Municipality, the sum of Rs. 1,000 or in their option Promissory Notes of the Government of India or Municipal Bonds of the nominal value of Rs. 1,000, and the same will remain so deposited until the completion by the said grantees of the lines of tramway herein sanctioned for immediate construction. But all interest accruing on the said sum or the said notes shall be credited to the said grantees, and subject as next hereinafter mentioned, be paid to them as the same shall accrue due: provided, nevertheless, that the said Municipality shall be entitled to deduct out of the sum so deposited or the interest accruing on the said sum or notes, or out of the proceeds of sale of the said notes, all moneys to which they may be entitled under any clause or clauses of these presents.

Clause 21.—In consideration of the concession hereby granted, the said grantees will pay to the said Lahore Municipality rents at the rates and under the conditions hereinafter specified; that is to say, for the first two years after the opening of the tramway or tramways no rent will be charged, after the expiration of the first two years, and during the next ensuing year, the rental shall be one-tenth of the annual average profits as shown by the company's books during the preceding two years, this rental to be subject to revision at the end of every two years, and the maximum charge or rental made by the said Municipality shall under no circumstance exceed one-tenth of the net profit divided by the company in every period of two years immediately preceding each adjustment of the charge. The books and accounts shall at all times be open to the inspection of the Municipal Committee, and should any dispute arise as to the exact charge to be made by the said Municipality, then such matter or matters in dispute shall be referred to arbitrators as detailed in clause 25 of this agreement. If the said rent or any part thereof shall not be paid on due date, the said grantees shall be liable to pay interest thereon at the rate of 8 per cent. per annum from the due date until payment.

Clause 22.—From and after the commencement of the 15th year of this contract to the end of the 21st, the said grantees shall not be at liberty to enter upon any fresh arrangements or expenditure which would increase their capital account in connection with this contract without first notifying their intention to the said Municipality and obtaining their approval thereof and sanction thereto in writing.

Clause 23.—The sleepers, rails, materials and implements and other erections placed and erected by the said grantees on the streets, bridges or roads under the powers hereby granted shall be and remain the property of the said grantees, and the said grantees shall have the exclusive use of their tramway or tramways for carriages with flanged wheels or other wheels suitable only to run on the prescribed rail.

Clause 24.—Unless the said grantees shall have commenced the work of laying down the said tramways within twelve months from the date of the execution of these articles of agreement, the said Committee shall be at liberty to cease and determine this contract and to enter into arrangements with any other person or persons for the construction of tramways; it being agreed, however, that these conditions of contract are subject to the sanction of Government, and that, in the event of their being executed prior to such sanction being given, the said 12 months shall date from the day on which notice of such sanction is given to the said grantees: provided also that any delay in commencing the work beyond 12 months shall not have been due to any cause beyond the control of the said grantees.

Clause 25.—If any doubt, difference or dispute shall arise between the said grantees and the said Committee touching the construction of these presents or anything herein contained, or touching or concerning any other matter or thing relating to these presents, then and in every such case such doubt, difference or dispute shall be referred to the arbitration of two persons, one to be chosen by the said grantees and the other by the said Committee within one calendar month after either of them shall have made to the other a requisition to that effect, and should the arbitrators fail to agree they shall refer the question or questions at issue to the decision of an umpire to be chosen by the said arbitrators, and the decision of such arbitrators if they agree, or of such umpire if they disagree, shall be final; and in case either party shall neglect or refuse to appoint an arbitrator within the specified time, the arbitrator appointed by the other party shall make a decision alone, and the decision of such arbitrators, umpire or arbitrator, as the case may be, shall be effectual and binding upon both parties.

Clause 26.—The said grantees are to be at liberty to form a Company or Limited Liability Company for the purpose of constructing, maintaining and working the tramways authorized by or hereafter to be authorized under the terms of this agreement. The words "the said grantees" used in this agreement shall include such Company or Limited Liability Company so formed as aforesaid.

Clause 27.—The words "the said Committee" used in this agreement shall include the present Committee and their successors, and also persons empowered by the said Committee or their successors or by other duly constituted authority to do any act or thing or exercise any powers or authorities which the said Committee are hereinbefore authorized or empowered to do or exercise.

STATEMENT OF OBJECTS AND REASONS.

ON the 7th of February, 1885, the Municipal Committee of Lahore entered into an agreement with Messrs. Masson, Robson and Ker, by which it conferred upon them the exclusive right to construct and work public tramways within the limits of the municipality, and arranged with them for the construction and working of certain specified tramways and of such others as might from time to time be determined on.

2. This agreement is very similar to that recently entered into by the Municipal Committee for the town of Rangoon for the construction and maintenance of tramways in that town, and like it requires to be supported and supplemented by legislation. Accordingly, the present Bill, which follows closely the lines of the Rangoon Tramways Act, 1883, has been prepared.

The 28th April, 1885.

C. P. ILBERT.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, MAY 30, 1885.

☞ 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 May, 1885, and was referred to a Select Committee :—

No. 7 OF 1885.

A Bill to amend the Local Authorities Loan Act, 1879.

XI of 1879.

WHEREAS it is expedient to amend the Local Authorities Loan Act, 1879; It is hereby enacted as follows :—

Addition to section 8, Act XI of 1879.

1. After clause (*b*) of the proviso to section 8 of the said Act the following shall be added :—

"or

"(*c*) to affect the power conferred on any local authority by any such enactment to charge its funds by guaranteeing the payment of interest on money to be raised for any purpose to which the funds of the local authority may be applied."

STATEMENT OF OBJECTS AND REASONS.

IT is proposed that a light railway be constructed in the Tanjore District of the Madras Presidency by a Company, and that the interest on the capital to be raised by the Company for the undertaking be guaranteed by the Local Fund Board of Tanjore.

But section 8 of the Local Authorities Loan Act, 1879, prohibits any local authority from charging its funds except as provided by that Act and the rules made thereunder ; and the Act provides, and the rules that may be made under it can provide, for no other means of charging funds than borrowing on their security.

It is considered desirable, therefore, that the Act should be so amended as to enable the local legislature to pass any enactment that may be necessary for authorising a local authority to guarantee the interest on money raised for any purpose to which the funds of the local authority may be applied.

T. C. HOPE.

The 7th May, 1885.

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 14th May, 1885, and was referred to a Select Committee:—

No. 8 OF 1885.

THE LAHORE TRAMWAYS BILL, 1885.

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20. Powers to make rules.

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21. Construction of clauses 17 and 24 of agreement.
22. Exemption from certain municipal taxation.
23. Provisions as to general Acts.

THE SCHEDULE.

A Bill to authorize the making, and to regulate the working, of Street Tramways in Lahore.

WHEREAS the Municipal Committee of Lahore, by an agreement dated the seventh day of February, 1885, a copy whereof is set forth in the schedule annexed to this Act, granted, for the considerations therein expressed, to David Parkes Masson, John Robson and Arthur Milford Ker, their heirs, executors, administrators and assigns, hereinafter called the grantees, the right to construct, maintain and use a tramway or tramways in Lahore upon the terms, subject to the conditions and in the manner mentioned in the said agreement, and the said agreement was made subject to the confirmation and recognition thereof by the Government of the Punjab;

and whereas the Government of the Punjab has confirmed and recognised the said agreement and it is now expedient that effect be given to it, subject to the provisions and limitations hereinafter contained; It is hereby enacted as follows:—

A.—Preliminary.

1. *(1)* This Act may be called the Lahore Tramways Act, 1885; and

Short title.

The Lahore Tramways Bill, 1885.—(Sections 2-8.)

Commencement.

(2) It shall come into force at once.

Definitions.

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

"Committee" means the Committee established for the Municipality of Lahore under the Punjab Municipal Act, 1884:

XIII of 1884.

"tramway" means a tramway, or any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway: and

[Act XIII of 1884, s. 2.]

"street" means any way, street, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way, and along or across which any tramway authorized by this Act is or is intended to be laid, and includes the surface-soil and sub-soil of any such street, and the footway and drains of any such street, and any bridge, culvert or causeway forming part of any such street.

B.—Powers of grantees generally.

Powers to make, maintain and use tramways.

3. Subject to the provisions of this Act, and to the terms and conditions of the said agreement so far as the same are not inconsistent with this Act, the grantees may make, maintain and use any of the tramways for the construction, maintenance and use of which provision is made in the said agreement:

Provided that any such tramway shall not be opened for public traffic until it has been inspected and certified by the engineer to the Committee to be fit for such traffic.

C.—Construction and Maintenance of Tramways and of Streets on which they are laid.

Power to grantees to break up streets and lay rails, &c.

4. Subject to the terms and conditions of the said agreement, the grantees may, from time to time, for the purpose of constructing, maintaining or renewing any tramway under this Act, open or break up any street, and therein or thereon lay sleepers and rails, and repair, alter or remove the same; and may, for the purposes aforesaid, do in and on any such street all other acts which may, from time to time, be necessary for constructing, maintaining or renewing the tramway:

Provided that they shall not, without the consent of the Committee, open or break up at any one time a greater length than one hundred yards of any street which does not exceed a quarter of a mile in length; and, in the case of any street exceeding a quarter of a mile in length, they shall leave an interval of at least a quarter of a mile between any two places at which they may open or break up the street, and shall not open or break up at any such place a greater length than one hundred yards.

Grantees to keep tramways and adjoining part of street in repair.

5. The grantees shall, at their own expense, at all times maintain and keep in good condition and repair, in such manner as the Committee from time to time direct, all tramways constructed by them under this Act, and so much of any street as lies between the rails of any such tramway; and in the case of double lines or turnouts or sidings, the portion of the road between the tramways, and in every case so much of the road as extends eighteen inches beyond the rails of and on each side of any such tramway.

Obligations of grantees when they have broken up street.

6. When the grantees have, for the purposes of section 4 or section 5, opened or broken up any portion of a street, they shall be under the following further obligations, namely:—

(*a*) they shall, with all convenient speed, and in all cases within six weeks at the most, unless the Committee otherwise consent in writing, complete the work for which the street has been opened or broken up, fill in the ground and make good the surface, and, to the satisfaction of the Committee, restore the street to as good a condition as that in which it was before it was opened or broken up, and clear away all surplus materials or rubbish occasioned thereby;

(*b*) they shall, in the meantime, cause the place where the street is opened or broken up to be fenced and watched, and to be properly lighted at night; and

(*c*) they shall make good all damage done to drains, sewers, water-pipes and gas-pipes, and to the wires or other materials or things used for any system of lighting, and whether belonging to the Committee, to the Government or to private persons, and shall make compensation for any other damage done in the execution of the powers granted to them.

Reservation of power of Committee and Government over streets.

7. *(1)* Nothing in this Act shall prevent the Committee or any Government officers from opening, breaking up, widening, altering, diverting or improving any street traversed by a tramway for the purposes for which they might otherwise under the law for the time being in force lawfully open, break up, widen, alter, divert or improve such street:

Provided that—

(*a*) they shall cause as little detriment or inconvenience to the grantees as circumstances admit; and

(*b*) before they commence any work whereby the traffic on the tramway will be interrupted, they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the grantees not less than eighteen hours previous notice of their intention to commence the work, specifying the time at which they will commence it.

(2) The Committee or officers aforesaid or the Secretary of State for India in Council shall not be liable to pay to the grantees any compensation for injury done to the tramway by the execution of any work referred to in sub-section *(1)*, or for loss of traffic occasioned by the reasonable use of any power lawfully exercised in connection with the same.

D.—Rights over Tramways and Streets on which they are laid.

Grantees' exclusive right over tramways.

8. The grantees shall, subject to the provisions of this Act and to the terms and conditions of the said agreement, have the exclusive use of their tramways for carriages with flange wheels or other wheels suitable only to run on a grooved rail:

The Lahore Tramways Bill, 1885.—(Sections 9-19.)

Provided that nothing in this Act shall affect the right of the public to pass along or across any part of any road along or across which any tramway is laid, whether on or off the tramway, with carriages not having flange wheels or wheels suitable to run on a grooved rail.

Grantees to have right of user only.

9. Notwithstanding anything in this Act or in the said agreement, the grantees shall not acquire any right other than that of user over any street along or across which they lay any tramway.

Power of Committee and Government officers to regulate traffic on streets.

10. Nothing in this Act shall affect the powers of the Committee or of any Government officers to regulate the passage of any traffic along or across any street along or across which any tramway is laid down, and the Committee or officers aforesaid may exercise their authority as well on as off the tramway, and with respect as well to the traffic of the grantees as to the traffic of other persons.

E.—Traffic on Tramways.

Rates of fares and charges.

11. The grantees may, from time to time, by a notice published in such languages and in such manner as the Local Government may prescribe, fix the rates of fares and charges for carrying passengers and goods in their carriages:

Provided that the rates of passenger fares shall not exceed one anna per mile for each passenger in the lower class, and two annas per mile for each passenger in the higher or first class.

Mode of payment of fares and charges.

12. The fares and charges by this Act authorized shall be paid to such persons, at such places upon or near to the tramways, and in such manner and under such regulations as the grantees may, by a notice published as aforesaid, from time to time prescribe.

Carriage of dangerous or offensive goods.

13. *(1)* No person shall be entitled to carry or to require to be carried on any tramway constructed under this Act any goods of a dangerous or offensive nature.

(2) Every person taking such goods with him on any such tramway shall, before entering the carriage, give notice of their nature to the servant of the grantees in charge of the carriage.

(3) Every person sending such goods by any such tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the book-keeper or other servant of the grantees with whom they are left at the time of such sending.

(4) The grantees may refuse to take any parcel which they may suspect to contain goods of a dangerous or offensive nature, or require it to be opened to ascertain the fact.

F.—Offences and Penalties.

Penalty for failure of grantees to comply with certain provisions of Act and agreement.

14. If the grantees—

(*a*) construct or maintain any tramway, or run any car or carriage thereon, otherwise than in accordance with the said agreement;

(*b*) open any tramway for traffic before it has been inspected and certified in manner required by section 3;

(*c*) open or break up any street otherwise than as permitted by this Act, or having opened or broken up a street fail to discharge any of the obligations imposed on them by section 6, clauses (*a*) and (*b*); or

(*d*) fail to keep the rails of any tramway and the portions of the street adjoining the same in repair as required by section 5,—

each of them shall (without prejudice to the enforcement of specific performance of the requirements of this Act or of the said agreement or to any other remedy against them), on complaint of the Committee or of any person injuriously affected thereby, be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for each day after the first day during which the offence continues to be committed.

Penalty for obstructing grantees in the exercise of their powers.

15. Any person who, without lawful excuse (the proof whereof shall lie on him), wilfully obstructs any person acting under the authority of the grantees in the lawful exercise of their powers in constructing, repairing or renewing a tramway, or injures or destroys any mark made for the purpose of setting out the line of the tramway, shall be punished with fine which may extend to fifty rupees.

Penalty for interfering with tramway.

16. Any person who, without lawful excuse (the proof whereof shall lie on him), wilfully does any of the following things, namely:—

(*a*) interferes with, removes or alters any part of a tramway constructed under this Act, or of the works connected therewith;

(*b*) does anything in such a manner as to obstruct any carriage using any such tramway; or

(*c*) abets, within the meaning of the Indian Penal Code, the doing of anything mentioned in clause (*a*) or clause (*b*),—

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

Penalty for taking or sending dangerous or offensive goods without giving notice.

17. Any person taking or sending by any tramway any goods of a dangerous or offensive nature without giving the notice required by section 13, shall be punished with fine which may extend to fifty rupees.

Penalty for avoiding payment of proper fare.

18. If any person travelling or having travelled in any carriage of the grantees avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional fare for the additional distance or attempts to avoid payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit the carriage, he shall be punished with fine which may extend to ten rupees.

Power of servant of grantees to arrest persons avoiding payment of fare.

19. Any servant of the grantees, and any person called in by him for his assistance, may arrest and take to the nearest police-station any person who is

discovered either in or after committing or attempting to commit an offence punishable under section 18 and whose name and residence are refused by him and are unknown to such servant or person; and the police-officer in charge of the police-station, on receiving a complaint that such an offence has been committed, shall adopt such legal measures as may be necessary to cause the accused person to be taken before a Magistrate with the least possible delay.

G.—Powers to make Rules.

20. (*1*) The Committee at a special meeting may, with the sanction of the Local Government, from time to time, make such rules consistent with this Act as to the rate of speed, number of passengers and mode of use of the tramways, and as to the licensing and control of drivers, conductors and other persons having charge of the carriages of the grantees, as the convenience and safety of the public may, in the opinion of the Committee, require.

Powers to make rules.

(*2*) The grantees may, with the like sanction, from time to time, make rules consistent with this Act for preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to them, and

for regulating the travelling in any carriage belonging to them.

(*3*) The authority making any rule under this section may prescribe as a punishment for the breach of it a fine which may extend to twenty rupees.

(*4*) All rules made under this section shall be published in the local official Gazette.

H.—Miscellaneous.

21. For the purposes of clauses 17 and 24 of the agreement set forth in the schedule annexed to this Act, the want of sufficient funds shall not be deemed to be a circumstance beyond the control of the grantees.

Construction of clauses 17 and 24 of agreement.

22. The plant, rolling-stock and other vehicles, yards, workshops, engine-sheds and depôts of the grantees shall, for a period of five years from the passing of this Act, be exempt from all municipal taxation except such lighting-rates and water-tax as may, from time to time, be payable in respect of the yards, workshops, engine-sheds and depôts.

Exemption from certain municipal taxation.

23. Nothing in this Act shall exempt the grantees or any tramway constructed by them under this Act from the provisions of any general enactment relating to tramways now in force or which may hereafter be passed.

Provisions as to general Acts.

THE SCHEDULE.

ARTICLES OF AGREEMENT made this seventh day of February, 1885, between the MUNICIPAL COMMITTEE OF LAHORE, PUNJAB, hereinafter called the Lahore Municipality, of the one part, and D. P. MASSON, JOHN ROBSON and ARTHUR MILFORD KER OF LAHORE, hereinafter called the grantees, of the other part.

WHEREAS the said Lahore Municipality, subject to the confirmation of the Government of the Punjab, and to the recognition of this agreement by the said Government of the Punjab, have agreed to grant to the said grantees the right to construct, maintain and use a tramway or tramways in Lahore upon the terms and conditions hereinafter contained.

2. NOW THESE PRESENTS witness that, in consideration of the covenants hereinafter contained, and on the part of the said Lahore Municipality to be performed, the said grantees for themselves, their heirs, executors and assigns do covenant with the said Lahore Municipality, so far as the covenants and agreements hereinafter contained are to be performed by the said grantees and their heirs, executors, administrators and assigns, and the said Municipality for and in consideration of the covenants and agreements hereinafter contained and on the part of the said grantees and their heirs, executors, administrators and assigns to be performed, do hereby covenant with the said grantees and their heirs, executors, administrators and assigns so far as the covenants and agreements hereinafter contained are to be performed by the said Lahore Municipality, their successors and assigns, in manner following, that is to say :—

The said Lahore Municipality grant to the said grantees and their heirs, executors, administrators and assigns, all which persons are hereinafter included in the words "the said grantees," the right to construct, maintain and use a tramway or tramways with all necessary sidings, turnouts, connections and lines of whatever nature which may be required to connect the said tramway with the depôts of the said grantees (but in the case of sidings and turnouts only in such places as the said corporation may sanction) on the following routes and between such other places and by such other routes as may be hereafter approved of by the said Municipality :—

Clause 1.—(1st). A line commencing at the junction of Nicholson and Mayo Roads near the Sindh, Punjab and Delhi Railway Workshops, and continued along the road in front of the Railway Station through the Landa Bazar to the Delhi Gate, thence by the circular road on the south side of the City to the end of the Anarkali Bazar near the Lohari Gate.

(2nd). A line, being a continuation of the above, through the Anarkali Bazar past the Museum to the junction of the Church Road near Kapurthala House.

(3rd). A line in continuation leading to Mozang.

(4th). A line commencing at the junction of Mayo and Nicholson Roads continued along the Mayo Road through Shalu-ki-Garhi to Mecan Meer Bazar.

Lines 1 and 2 are delineated on the map or plan hereunto annexed and signed by the parties hereto. The lines shall be single except at crossing stations, where they shall be double.

Clause 2.—The said grantees shall further (subject to clauses 3 and 4) have the exclusive right

of laying, constructing, maintaining and using a tramway or tramways within the limits of the Lahore Municipality on the terms contained in these presents: provided always that if the said grantees shall at any time or times, not being a period less than three months after the construction of the lines 1 and 2 enumerated in clause 1, refuse or neglect for three months to accept any proposal by the said Lahore Municipality for the construction, maintenance and use of any tramway or tramways other than those mentioned in clause 1, which the said Lahore Municipality may consider necessary or desirable, it shall be lawful for the said Lahore Municipality to employ any other person or company for the purposes aforesaid or any of them, and to make such arrangements as they may think proper independently of the said grantees.

Clause 3.—The said grantees shall construct in such manner as to be available for use at least tramways 1 and 2 within two years from the date of obtaining the sanction and approval of the Government of the Punjab, and they shall, before the expiration of the third year, give notice in writing to the said Lahore Municipality of the lines they intend to construct during the next succeeding two years; and failing the observance by the said grantees of the terms of this clause, it shall be lawful for the said Lahore Municipality to withdraw and cancel the concessions and rights granted by these presents to the said grantees as regards the lines remaining to be constructed.

Clause 4.—If the grantees shall, at the expiration of five years from the date of commencement of this contract, have left any one or more lines hereinbefore in clause 1 specified unconstructed, and if the said Lahore Municipality shall not have exercised the rights conferred on them by clause 3, the said Lahore Municipality may call upon the said grantees to construct the line or lines, and if the said grantees do not construct the line or lines within twelve calendar months after receiving such formal notice, then their power granted in this concession shall, so far as relates to that line or lines, cease, and the said Lahore Municipality may make arrangements with other persons for the construction of the same.

Clause 5.—Any tramway or tramways to be constructed under this agreement shall be constructed on the metre gauge of 3 feet 3⅜ inches, or on such other gauge not exceeding 4 feet 8½ inches as may be mutually agreed upon, and especially the rails shall be laid and maintained in such manner that the uppermost surface of the rails shall be on a level with the surface of the road; and before the work of construction is begun the drawings and specifications showing the proposed construction of each tramway shall be submitted to the said Municipality and be approved by them, and the cars and carriages intended to run on the said tramways shall also be such as shall have been approved of by the Municipality. The rail to be used is the ordinary grooved rail of steel weighing 34 pounds per yard.

Clause 6.—If the said Municipality shall hereafter alter the level of any street or road along or across which any tramway by this agreement authorized is laid or authorized to be laid, the grantees shall alter or (as the case may be) lay their rails so that the uppermost surface thereof shall be on a level with the surface of the road so altered: provided always that any such alteration as aforesaid shall be so made as to interfere as little as possible with the safe and convenient working of the said tramways, and in any case so as not to stop or prevent the free use and working thereof.

Clause 7.—The cars and carriages of the said grantees on the tracks of the said tramways shall be worked with such power, animal or mechanical, as the said grantees may think suitable, provided that no steam carriages may be used without the special consent of the Municipality (Commissioners in special general meeting) and the sanction of the Punjab Government, and provided also that the said Municipality (Commissioners in special general meeting) shall have power at all times to make such regulations as to the rate of speed, number of passengers and mode of use of the said tracks as the convenience and safety of the public using the street may require.

Clause 8.—The said grantees shall have power from time to time to fix the rate of fares for carrying persons and goods in the cars or carriages to be run on the said tramway or tramways: provided that the rates of fares shall for any distance not exceed the rate of one anna per mile for the lower class and two annas per mile for the higher or first class for each passenger.

Clause 9.—The said grantees may, for the purpose of constructing and maintaining such tramways under such superintendence as is hereinafter specified, open and break up the soil and metalled way of the several streets, roads and bridges, and thereon lay sleepers and rails, and from time to time repair, alter or remove the same, and may, for the purposes aforesaid, remove and use all earth and materials in such streets, roads and bridges, and the said grantees may, in and on such streets, roads and bridges, do all other acts which they shall from time to time deem necessary for constructing and maintaining street tramways, doing as little damage as may be in the execution of the powers hereby granted, and shall make good all damage done to drains, sewers, water and gas pipes, or to the wires or other materials or things used for any other system of lighting, and whether belonging to the said Municipality or to private individuals, and shall make compensation for any other damage done in the execution of such powers.

Clause 10.—Before the said grantees proceed to open or break up any street, road or bridge, they shall obtain the approval in writing of the said Committee to the tracks or lines of the said tramway being laid down on the said streets, roads or bridges, and the said grantees, before opening or breaking up any street, road or bridge, shall give to the said Committee or their Executive Engineer, or other municipal officer duly appointed for that purpose, notice in writing of their intention to open or break up the same not less than three clear days before beginning such work, except in such cases of emergency arising from defects in any of the rails or other works, and then so soon as is possible after the beginning of the work or the necessity for the same shall have arisen.

Clause 11.—No street, road or bridge shall, except in cases of emergency as aforesaid, be opened or broken up, except under the superintendence of the said Committee or of their Executive Engineer, or of some other municipal officer duly appointed for that purpose, and according to such plans as shall be approved of by him or them: provided

always that, if the said Committee or their Engineer or other such officer as aforesaid fail to attend at the time fixed for the opening of any such street, road or bridge after having had such notice of the said grantees' intention as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the said grantees may perform the work specified in such notice without such superintendence as aforesaid.

Clause 12.—When the said grantees open or break up the roadway or pavement of any street, road or bridge, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground and make good the roadway or pavement so opened or broken up as aforesaid, and carry away the rubbish occasioned thereby, and deposit the same for the use of the said Committee at such place as the Executive Engineer of the said Municipality shall direct, and shall at all times, whilst any such roadway or pavement shall be so opened or broken up, cause the same to be guarded, and shall cause a light sufficient for the warning of passengers to be set up and maintained against or near such roadway or pavement where the same shall be open or broken up every night during which the same shall continue open or broken up.

Clause 13.—If the said grantees open or break up any street, road or bridge without giving such notice as hereinbefore mentioned, or in a manner different from that which shall have been approved of or determined as aforesaid, except in the cases in which the said grantees are hereby authorized to perform such work without any superintendence or notice, or if the said grantees shall make any unnecessary delay in completing any such work or in filling in the ground or reinstating and making good, so far as is consistent with the existence of the said tramway, the roadway or pavement so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such roadway or pavement has been broken up to be guarded and lighted, they shall forfeit to the said Committee a sum not exceeding fifty (50) rupees for every such offence, and they shall forfeit an additional sum not exceeding fifty (50) rupees for each day during which any such delay or neglect as aforesaid shall continue after they shall have received notice thereof.

Clause 14.—The said grantees shall maintain and keep in repair such portion of the streets, roads and bridges as shall be occupied by their tracks or lines, including therein, not only the space between their tracks or lines, but a space eighteen inches on either side thereof, and in consideration of the maintenance of such streets, roads and bridges as aforesaid, and of the yearly rent hereinafter mentioned to be paid by the grantees, the plant, rolling-stock and other vehicles, yards, workshops, engine-sheds and depôts of the said grantees shall be exempt from municipal taxation for a period of five years, except lighting and water-rates for such yards, workshops, engine-sheds and depôts.

Clause 15.—The said grantees shall be liable for any loss, damage or injuries that any person or persons may sustain by reason of any defect or want of repairs in any of the plant, rolling-stock or other properties of the said grantees, or by reason of any carelessness, neglect or misconduct of their agents or servants in the management, construction or use of the tramways or any portion thereof; the same shall be made good by the said grantees, and in the event of any suit being instituted against the said Committee in respect of any of the matters hereinbefore mentioned, the said grantees shall, within fourteen days from the receipt of a notice thereof from the said Committee, settle the same; but if the said grantees choose to defend such suit, they shall be at liberty to do so upon their undertaking to indemnify the said Committee against all losses, damages and expenses in respect thereof: provided always that, if the said grantees fail to settle such suit or to indemnify the said Committee as is hereinbefore provided, it shall be lawful for the said Committee to settle the same without any consent or concurrence on the part of the said grantees, and the sums which they shall have to pay in making such settlement, together with interest thereon at the rate of 8 per cent. per annum from the date of payment, and with all expenses which they may be put to, shall be recoverable as a debt from the said grantees.

Clause 16.—Nothing in this agreement shall be construed to prevent the said Committee from taking up any of the public streets or roads traversed by the said tramway for the purposes for which the said Committee may lawfully take up the same, and the said grantees shall have no right to claim cost from the said Committee for obstructing the tramway or causing delay in the traffic so long as the delay shall not be unreasonable for the work to be performed.

Clause 17.—If at any time after the opening of any tramway for traffic the said grantees shall discontinue the working of such tramway or any part thereof for the space of six calendar months (such discontinuance not being occasioned by circumstances beyond the control of the said grantees), it shall be lawful for the said Committee, without any previous notice to the said grantees, to remove the tramway or part of the tramway so discontinued, and the said grantees shall pay to the said Committee the cost of such removal and of the making good of the street, road or bridge, and the certificate of the said Committee or of their engineer as to such costs shall be conclusive.

Clause 18.—The provisions of this agreement shall remain and be in force for a term not less than twenty-one (21) years from the date thereof. The said Committee shall have the right of purchasing the said tramways, with the plant, stores, rolling-stock, sheds, depôts and yards, and everything connected therewith, after the expiration of the said twenty-one (21) years, upon declaring its intention so to do within six months after the expiration of the said twenty-one (21) years; the amount to be paid in the event of such purchase shall be the actual *bonâ fide* value at the termination of this agreement, exclusive of any compensation for goodwill, premium on compulsory sale or other consideration whatever, of the tramways and of the work and materials connected therewith, and of the lands and buildings and all the other property of the grantees, such value to be decided by mutual agreement or by arbitration as hereinafter provided.

Clause 19.—The provisions hereinbefore contained shall, so far as applicable, apply to all tramways to be constructed by the said grantees by any route or routes to be hereafter sanctioned by the said Committee, and to the works connected with or incidental to such tramways, it being agreed that in the event of the Municipality failing to declare its intention as above provided to purchase the property of the said grantees, the terms of this contract shall continue in force during the period of six months from the date of the determination of these presents and for a further period of six months, and if the said Committee shall not within that time exercise the option of purchase hereby given, the said Committee and the said grantees shall enter into a fresh agreement.

Clause 20.—The said grantees will, if required by the Municipality, before opening and breaking up the soil and pavement of any street or bridge, deposit in an approved Bank in Lahore, in the name of the said Municipality, the sum of Rs. 1,000 or in their option Promissory Notes of the Government of India or Municipal Bonds of the nominal value of Rs. 1,000, and the same will remain so deposited until the completion by the said grantees of the lines of tramway herein sanctioned for immediate construction. But all interest accruing on the said sum or the said notes shall be credited to the said grantees, and subject as next hereinafter mentioned, be paid to them as the same shall accrue due: provided, nevertheless, that the said Municipality shall be entitled to deduct out of the sum so deposited or the interest accruing on the said sum or notes, or out of the proceeds of sale of the said notes, all moneys to which they may be entitled under any clause or clauses of these presents.

Clause 21.—In consideration of the concession hereby granted, the said grantees will pay to the said Lahore Municipality rents at the rates and under the conditions hereinafter specified; that is to say, for the first two years after the opening of the tramway or tramways no rent will be charged, after the expiration of the first two years, and during the next ensuing year, the rental shall be one-tenth of the annual average profits as shown by the company's books during the preceding two years, this rental to be subject to revision at the end of every two years, and the maximum charge or rental made by the said Municipality shall under no circumstance exceed one-tenth of the net profit divided by the company in every period of two years immediately preceding each adjustment of the charge. The books and accounts shall at all times be open to the inspection of the Municipal Committee, and should any dispute arise as to the exact charge to be made by the said Municipality, then such matter or matters in dispute shall be referred to arbitrators as detailed in clause 25 of this agreement. If the said rent or any part thereof shall not be paid on due date, the said grantees shall be liable to pay interest thereon at the rate of 8 per cent. per annum from the due date until payment.

Clause 22.—From and after the commencement of the 15th year of this contract to the end of the [illegible], the said grantees shall not be at liberty to [illegible] upon any fresh arrangements or expenditure which would increase their capital account in connection with this contract without first notifying their intention to the said Municipality and obtaining their approval thereof and sanction thereto in writing.

Clause 23.—The sleepers, rails, materials and implements and other erections placed and erected by the said grantees on the streets, bridges or roads under the powers hereby granted shall be and remain the property of the said grantees, and the said grantees shall have the exclusive use of their tramway or tramways for carriages with flanged wheels or other wheels suitable only to run on the prescribed rail.

Clause 24.—Unless the said grantees shall have commenced the work of laying down the said tramways within twelve months from the date of the execution of these articles of agreement, the said Committee shall be at liberty to cease and determine this contract and to enter into arrangements with any other person or persons for the construction of tramways; it being agreed, however, that these conditions of contract are subject to the sanction of Government, and that, in the event of their being executed prior to such sanction being given, the said 12 months shall date from the day on which notice of such sanction is given to the said grantees: provided also that any delay in commencing the work beyond 12 months shall not have been due to any cause beyond the control of the said grantees.

Clause 25.—If any doubt, difference or dispute shall arise between the said grantees and the said Committee touching the construction of these presents or anything herein contained, or touching or concerning any other matter or thing relating to these presents, then and in every such case such doubt, difference or dispute shall be referred to the arbitration of two persons, one to be chosen by the said grantees and the other by the said Committee within one calendar month after either of them shall have made to the other a requisition to that effect, and should the arbitrators fail to agree they shall refer the question or questions at issue to the decision of an umpire to be chosen by the said arbitrators, and the decision of such arbitrators if they agree, or of such umpire if they disagree, shall be final; and in case either party shall neglect or refuse to appoint an arbitrator within the specified time, the arbitrator appointed by the other party shall make a decision alone, and the decision of such arbitrators, umpire or arbitrator, as the case may be, shall be effectual and binding upon both parties.

Clause 26.—The said grantees are to be at liberty to form a Company or Limited Liability Company for the purpose of constructing, maintaining and working the tramways authorized by or hereafter to be authorized under the terms of this agreement. The words "the said grantees" used in this agreement shall include such Company or Limited Liability Company so formed as aforesaid.

Clause 27.—The words "the said Committee" used in this agreement shall include the present Committee and their successors, and also persons empowered by the said Committee or their successors or by other duly constituted authority to do any act or thing or exercise any powers or authorities which the said Committee are hereinbefore authorized or empowered to do or exercise.

STATEMENT OF OBJECTS AND REASONS.

ON the 7th of February, 1885, the Municipal Committee of Lahore entered into an agreement with Messrs. Masson, Robson and Ker, by which it conferred upon them the exclusive right to construct and work public tramways within the limits of the municipality, and arranged with them for the construction and working of certain specified tramways and of such others as might from time to time be determined on.

2. This agreement is very similar to that recently entered into by the Municipal Committee for the town of Rangoon for the construction and maintenance of tramways in that town, and like it requires to be supported and supplemented by legislation. Accordingly, the present Bill, which follows closely the lines of the Rangoon Tramways Act, 1883, has been prepared.

The 28th April, 1885.

C. P. ILBERT.

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 27th May, 1885, and was referred to a Select Committee :—

No. 9 OF 1885.

A Bill to amend the Madras Civil Courts Act, 1873.

WHEREAS it is expedient to amend the Madras Civil Courts Act, 1873; It is hereby enacted as follows :— III of 1873.

1. *(1)* This Act may be called the Madras Civil Courts Act, 1885; and *(2)* it shall come into force at once. Short title and commencement.

2. To section 11 of the Madras Civil Courts Act, 1873, the following shall be added, namely :— Addition to section 11 of Act III of 1873. III of 1873.

"Provided that where more than one District Munsif is appointed to any local area, the District Judge may assign to each such District Munsif the local limits of his particular jurisdiction within such area."

3. For section 28 of the said Act the following section shall be substituted :— Substitution of new section for section 28 of the same Act.

"28. The Local Government may confer, within such local limits as it thinks fit, upon any District Judge, Subordinate Judge or District Munsif, the jurisdiction of a Judge of a Court of Small Causes under Act XI of 1865 for the trial of suits cognizable by such Courts up to such value, not exceeding five hundred rupees, as it thinks fit, and may withdraw any jurisdiction so conferred."

STATEMENT OF OBJECTS AND REASONS.

THE Government of Madras, on the recommendation of the High Court, has proposed that the Madras Civil Courts Act, 1873, should be so amended as to *(a)* enable the Government to confer upon District Judges and District Munsifs the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the value of five hundred rupees, and *(b)* remove the doubt whether more than one Munsif can be appointed to exercise jurisdiction in the same local area.

The object of this Bill is to give effect to those proposals.

C. P. ILBERT.

The 14th May, 1885.

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 27th May, 1885, and was referred to a Select Committee:—

No. 10 OF 1885.

THE CENTRAL PROVINCES GOVERNMENT WARDS BILL, 1885.

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26. Withdrawal of superintendence of the Court of Wards.
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29. Exercise of discretion not to be questioned in Civil Court.
30. Power for Chief Commissioner to make rules.

A Bill to make better provision for the Superintendence of Government Wards in the Central Provinces.

WHEREAS it is expedient to make better provision for the superintendence of Government wards in the Central Provinces; It is hereby enacted as follows:—

Short title, extent and commencement.

1. *(1)* This Act may be called the Central Provinces Government Wards Act, 1885.

(2) It extends to the territories for the time being administered by the Chief Commissioner of the Central Provinces; and

(3) It shall come into force at once.

Repeal.

2. Bengal Regulations LII of 1803 *(for establishing a Court of Wards in the Provinces ceded by the Nawáb Vizier to the Honourable the English East India Company)* and VI of 1822 *(to establish a Court of Wards for Benares, and to define and explain certain of the rules regarding the powers and jurisdiction of the several Courts of Wards)*, and section 14 of Act XL of 1858 *(for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal)* shall, so far as they are in force in the whole or any part of the territories to which this Act extends, be repealed.

Definitions.

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

(1) "Government ward" means any person of whose property, or of whose person and property,

The Central Provinces Government Wards Bill, 1885.—(Sections 4-15.)

the Court of Wards may, for the time being, have the superintendence under this Act:

[New]. (2) "Landholder" means a málguzár as defined in the Central Provinces Land-revenue Act, XVIII of 1881. 1881, and the zamíndár of any zamíndári specified in Part VI of the first schedule of the XIV of 1874. Scheduled Districts Act, 1874, and includes a muáfidár, jagírdár, ubaridár or other assignee of land-revenue: and

[New.] (3) "Land" includes the rights of a landholder in respect of the land of which he is the málguzár or zamíndár or the muáfidár, jagírdár, ubaridár or other assignee of land-revenue.

[Cf. Act IV of 1872, s. 34. New.] **4.** The Deputy Commissioner shall be the Court of Wards for the limits of his district.

Deputy Commissioner to be the Court of Wards.

[New.] **5.** Every landholder shall be under the jurisdiction of the Court of Wards.

Landholders to be under jurisdiction of the Court of Wards.

[Bill, s. 203, para. 1.] **6.** The Court of Wards may, with the previous sanction of the Chief Commissioner, assume the superintendence of the property of any landholder owning land within the local limits of its jurisdiction who is disqualified to manage his own property.

Superintendence by Court of Wards of property of disqualified landholder.

[Bill, s. 204.] **7.** (1) The following persons shall, for the purposes of the last foregoing section, be deemed to be disqualified to manage their own property, namely:—

Cases in which landholders to be deemed disqualified.

(a) minors;

(b) persons adjudged by a competent Civil Court to be of unsound mind and incapable of managing their affairs; and

(c) persons declared by the Chief Commissioner to be incapable of managing their own property—

(i) owing to any physical defect or infirmity,

(ii) owing to their having been convicted of a non-bailable offence, and being unfitted by vice or bad character,

(iii) owing to their being females, or

(iv) on their own application.

(2) Every declaration made by the Chief Commissioner under clause (c) of this section shall be final, and shall not be questioned in any Civil Court.

[New.] **8.** When the Court of Wards assumes the superintendence of the property of a landholder who is a minor or has been adjudged by a competent Civil Court to be of unsound mind and incapable of managing his affairs, it may, with the previous sanction of the Chief Commissioner, assume the superintendence of his person also.

Superintendence by Court of Wards of person of disqualified landholder.

[New.] **9.** Where a landholder owns land within the local limits of the jurisdiction of two or more Courts of Wards, such one only of the Courts as the Chief Commissioner may in this behalf determine shall assume the superintendence of the property, or of the person and property, of the landholder.

Superintendence where disqualified landholder owns land within jurisdiction of two Courts of Wards.

[Bill, s. 205.] **10.** When the Court of Wards has, with the sanction of the Chief Commissioner, assumed the superintendence of the property of any person, or of his person and property, its authority shall not be contested in any Civil Court on the ground that he was or is not a landholder or was or is not a minor.

Superintendence of Court of Wards not challengeable on ground that ward is not a landholder or minor.

[New. Cf. Bill, s. 207.] **11.** Subject to the rules made under this Act, the Court of Wards may appoint, suspend and remove a manager of the property of any Government ward under its superintendence, and may delegate to the manager all or any of its functions in relation to any property under this Act.

Appointment, &c., of managers by the Court of Wards.

[New. Cf. Act XIX of 1873, s. 206, cls. (a), (e) & (f), & Act XVII of 1876, s. 177, cls. (a), (e) & (f).] **12.** Every manager appointed by the Court of Wards shall—

Remuneration and responsibility of managers.

(a) give such security as the Court thinks fit duly to account for what he receives in respect of the rents and profits of the property under his management;

(b) be entitled to such allowance as the Court thinks fit for his care and pains in the execution of his duties; and

(c) be responsible for any loss occasioned to the property under his management by his wilful default or gross negligence.

[Bill, s. 206.] **13.** The Court of Wards may appoint, control and remove guardians for the care of the persons of Government wards whose persons are, for the time being, under its superintendence:

Power for the Court of Wards to appoint guardians of certain Government wards.

Provided that nothing in this section shall be held to authorize the appointment of a guardian for the care of the person of—

(a) a married female whose husband is not a minor, or

(b) any Government ward who has a guardian appointed by will.

[Cf. Bengal Act IX of 1879, s. 14.] **14.** Subject to the provisions of this Act and of the rules made under this Act, the Court of Wards—

General powers of the Court of Wards.

(a) may, of itself or through the manager (if any) appointed by it under this Act, do all such things requisite for the proper care and management of any property, of which it assumes the superintendence under this Act, as the owner of the property, if not disqualified, might do for its care and management; and

(b) may, of itself or through the guardian (if any) appointed by it under this Act, do in respect of the person of any Government ward, whose person is, for the time being, under its superintendence, all such things as might lawfully be done by the legal guardian of the ward.

[Bill, s. 208. Cf. Bengal Act IX of 1879, s. 21.] **15.** The Court of Wards may pass such orders as to it seems fit in respect of the custody and residence of all Government wards whose persons are, for the time being, under its superintendence, and, when they are minors, in respect of their education.

Custody, education and residence of certain Government wards.

The Central Provinces Government Wards Bill, 1885.—(Sections 16-29.)

[Act VIII of 1879, s. 21.] **16.** The Court of Wards may, from time to time, determine what sums shall be allowed in respect of the expenses of any Government ward and of his family and dependents.

Allowance for Government ward and his family.

[New. Cf. Act XIX of 1873, s. 202, & Act XVII of 1876, s. 171.] **17.** The Court of Wards, or the manager (if any) appointed by it under this Act, shall manage the property of every Government ward under its or his superintendence diligently and faithfully for the benefit of the Government ward, and shall in every respect act to the best of its or his judgment for the Government ward's interest as if the property were its or his own.

Duties of the Court of Wards or manager.

[See Bill, s. 207, recast.] **18.** The Court of Wards may let the whole or any part of the property of any Government ward under its superintendence, and may, with the previous sanction of the Chief Commissioner, mortgage, sell or exchange the whole or any part of such property, and may do all such other acts as it may judge to be best for the benefit of the property and the advantage of the Government ward.

Powers of the Court of Wards as to property of Government wards.

[Cf. Ben. Act IX of 1879, s. 51. Cf. Bill, s. 208.] **19.** In every suit brought by or against a Government ward the manager of the ward's property, or if there is no manager, the Court of Wards having the superintendence of the ward's property, shall be named as next friend or guardian for the suit, as the case may be.

Manager or Court of Wards to be next friend or guardian in suits by or against Government ward.

[Cf. Ben. Act IX of 1879, s. 53.] **20.** If, in any suit brought by or against a Government ward, any Civil Court decrees any costs against the ward's next friend or guardian for the suit, the Court of Wards shall cause the costs to be paid out of any property of the Government ward which may, for the time being, be in its hands.

Payment of costs.

[Cf. Ben. Act IX of 1879, s. 54.] **21.** Every process which may be issued out of any Civil Court against any Government ward shall be served on the ward's next friend or guardian for the suit.

Processes against Government ward to be served on next friend or guardian.

[Cf. Ben. Act IX of 1879, s. 55.] **22.** No suit shall be brought on behalf of any Government ward unless it is authorized by some order of the Court of Wards:

Authority of the Court of Wards required in case of suits brought on behalf of Government wards.

Provided as follows:—

(1) a manager may authorize a plaint to be filed in order to prevent a suit from being barred by the law of limitation, but the suit shall not afterwards be proceeded with except under the sanction of the Court of Wards;

(2) a suit for arrears of rent may be brought on behalf of a Government ward if authorized by an order of the manager of the property on which the rents are due.

23. (1) A Government ward shall be incompetent to transfer or create any charge on, or interest in, his property or any part thereof, or to enter into any contract which may involve him in pecuniary liability.

Disabilities of a Government ward.

(2) Nothing in this section shall be deemed to affect the capacity of a Government ward to enter into a contract of marriage: Provided that he shall not incur, in connection therewith, any pecuniary liability, except such as, having regard to the personal law to which he is subject and to his rank and circumstances, the Court of Wards may, in writing, declare to be reasonable.

[Cf. Ben. Act IX of 1879, s. 61.] **24.** No adoption by any Government ward, and no written or verbal permission to adopt given by any Government ward, shall be valid without the consent of the Chief Commissioner obtained either previously or subsequently to the adoption or to the giving of the permission on application made to him through the Court of Wards.

Consent of Chief Commissioner necessary to adoptions by Government wards.

[Cf. Ben. Act IX of 1879, s. 13.] **25.** Whenever, on the death of any Government ward, the succession to his property or any part thereof is disputed, the Court of Wards may either direct that the property or part thereof be made over to any person claiming the property, or may retain the superintendence of the property until one of the claimants has established his claim to the same in a competent Civil Court.

Procedure when succession to Government ward's property is disputed.

[Bill, s. 210. cf. Bengal Act IX of 1879, s. 8.] **26.** (1) The Court of Wards may, with the sanction of the Chief Commissioner, at any time withdraw its superintendence from the person or property, or both, of a Government ward, and shall withdraw its superintendence as soon as—

Withdrawal of superintendence of the Court of Wards.

(a) in the case of a person disqualified under clause (a) of section 7, he attains his majority;

(b) in the case of a person disqualified under clause (b) of that section, he ceases to be of unsound mind and incapable of managing his affairs; and

(c) in the case of a person disqualified under sub-clause (i) of clause (c) of that section, his physical defect or infirmity is removed or ceases.

(2) When any question arises whether the superintendence of the Court of Wards should be withdrawn from any person or property, or both, under clause (a), or from any property under clause (c), of this section, the decision of the Chief Commissioner thereon shall be final and shall not be questioned in any Civil Court.

[New. Cf. Ben. Act IX of 1879, s. 67.] **27.** An appeal shall lie from every order of the Court of Wards under this Act to the Commissioner of the division, and from every order of the Commissioner to the Chief Commissioner.

Appeals.

[New. Cf. Bengal Act IX of 1879, s. 68.] **28.** All orders or proceedings of the Court of Wards and of the Commissioner of the division under this Act shall be subject to the supervision and control of the Chief Commissioner; and the Chief Commissioner may, if he thinks fit, revise, modify or reverse any such order or proceeding, whether an appeal is presented against any such order or proceeding or not.

Control of Chief Commissioner.

[New.] **29.** The exercise of any discretion conferred on a Court of Wards, a Commissioner of a division or the Chief Commissioner by this Act, shall not be called in question in any Civil Court.

Exercise of discretion not to be questioned in Civil Court.

The Central Provinces Government Wards Bill, 1885.—(Section 30.)

[Bill, s. 211.]

30. (*1*) The Chief Commissioner may, from time to time, make rules consistent with this Act to—

Power for Chief Commissioner to make rules.

(*a*) prescribe the matters to which regard should be had in appointing or removing guardians and managers, and in fixing their remuneration;

(*b*) regulate the amount of security to be given by managers;

(*c*) limit the functions which the Court of Wards may delegate to a manager;

(*d*) prescribe the cases in which proposals or arrangements connected with the administration of the properties of Government wards shall be reported for the sanction of the Chief Commissioner or for that of the Commissioner of the division;

(*e*) prescribe the accounts and other returns which, and the periods and form at and in which, they shall be rendered by managers to the Court of Wards and by the Court of Wards to the Commissioner of the division;

(*f*) regulate the custody of securities and title-deeds belonging to the estate or property of a Government ward; [[Cf. Bengal Act IX of 1879, s. 70, cl. (*d*).]

(*g*) regulate the procedure in inquiries by the Court of Wards and in appeals from orders of the Court of Wards or the Commissioner of the division respectively under this Act; [Cf. Bengal Act IX of 1879, s. 70, cl. (*e*).]

(*h*) confer upon the Court of Wards for the purposes of this Act any of the powers exercised by a Civil Court in the trial of suits;

(*i*) prescribe the mode in which powers delegated to managers are to be notified for the information of persons concerned; and

(*j*) generally prescribe the manner in which the powers and duties of the Court of Wards under this Act shall be exercised and performed.

(*2*) All rules made under this section shall be published in the local official Gazette, and shall thereupon have the force of law.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to make better provision for the superintendence of Government wards in the Central Provinces. At present the law on this subject in the Central Provinces is in a very uncertain and unsatisfactory state. It has been ruled by the Judicial Commissioner that nothing calling itself a Court of Wards can be regarded as assuredly having legal existence in the Nágpur district. This ruling affects all the southern districts of the provinces. Again, it has lately been discovered that there is no satisfactory ground for holding that the Bengal Regulations regarding the Court of Wards have been extended to the Nimár district; and even in the districts forming the old Saugor and Nerbudda territories to the north of the provinces, where these Regulations are deemed to be in force, the law is not on a satisfactory basis. There are doubts as to the powers possessed by the Courts; and there are many points on which it would be well for the Chief Commissioner to issue clear and definite instructions if the power to do so were legally assured.

2. As the Chief Commissioner has now at his command, in the lately formed Agricultural Department, machinery for the better supervision of estates belonging to Government wards throughout the provinces, he has urged that legislation on this subject should not be further delayed. He has further suggested that it should take the form of a chapter on the subject which was contained in the Central Provinces Land-revenue Bill as originally drafted, but which was omitted from that Bill before it became law on the ground that it was not expedient to complicate the measure by the addition of provisions not clearly and closely connected with its subject-matter. The present Bill has, therefore, been prepared. It is based upon the draft chapter to which the Chief Commissioner refers. That chapter followed generally the lines of the Punjab Laws Act, 1872, sections 34 to 38, as amended by Act XII of 1878, the North-Western Provinces Land-revenue Act, 1873, sections 193 to 206, as amended by Act VIII of 1879, and the Oudh Land-revenue Act, 1876, sections 161 to 177, which deal with Courts of Wards; but the present Bill, while adopting these provisions so far as they go, contains also provisions taken from the Bengal Court of Wards Act (Bengal Act IX of 1879), which, though they appear to be required, were not embodied in the Chief Commissioner's draft.

3. The Bill repeals (section 2) the old Bengal Regulations LII of 1803 and VI of 1822 (relating to Courts of Wards), which are still deemed to be in force in the districts forming the old Saugor and Nerbudda territories. It also repeals section 14 of the Minors Act of 1858, that section having reference to the law as contained in section 4 of the Regulation, LII of 1803, which this Bill repeals. In the Central Provinces it will be, as in the North-Western Provinces it is, competent to the Court of Wards to administer, so far as the personal law to which he is subject permits, the interest of a disqualified person who is merely a co-owner in an estate with other persons who are not disqualified. In this respect the law in the Central Provinces will, like that in the North-Western Provinces, differ from that in force in the Punjab, Oudh and elsewhere.

4. Section 4 constitutes the Deputy Commissioner the Court of Wards. It seems necessary to do this, instead of simply conferring the powers which the Bill confers on the Court of Wards on the Deputy Commissioner in that capacity, because there are references to Courts of Wards in certain enactments applying to the Central Provinces which would have no application were the term not retained.

5. Section 5 declares every landholder to be under the jurisdiction of the Court of Wards (see section 3, Act IX, 1875); and the term "landholder" is so defined in section 3 as to include all persons of the landed classes who are of sufficient importance to make it socially and politically desirable to take special measures for their protection.

6. Under section 6 the Court of Wards may assume the superintendence of the property of any disqualified landholder, and under section 8 may assume the superintendence of his person also if he be a minor or of unsound mind.

7. Section 7 defines the cases in which landholders are to be deemed disqualified. These are similar to those prescribed in other Acts of this nature.

8. Where a disqualified landholder owns land within the jurisdiction of two Courts of Wards, the Chief Commissioner is empowered by section 9 to determine which Court shall assume superintendence.

9. Section 10 declares that, when once the Court of Wards has assumed the superintendence of the property of any person, or of his person and property, its authority shall not be questioned on the ground that the person was or is not a landholder, or was or is not a minor. This provision is new, but, as there will be titles dependent on the power of the Court, it appears to be desirable to prevent its action in taking charge of an estate from being questioned on either of these grounds.

10. Sections 11 and 12, which are new, deal with the appointment, remuneration and responsibility of managers, to whom the Court of Wards may, subject to rules to be made by the Chief Commissioner, delegate its functions in relation to the property of wards under the Act.

11. Section 13 empowers the Court of Wards to appoint guardians for the care of the persons of Government wards who are minors or of unsound mind, and of whose persons the Court of Wards has assumed superintendence; but it excepts the cases of married wards whose husbands are not minors and wards for whom testamentary guardians have been appointed. In the opinion of the Government of India, testamentary guardians should not be interfered with except by the Civil Court.

12. Section 14, which is taken from the Bengal Court of Wards Act, 1879, defines the general powers of the Court of Wards with regard to the property of Government wards, and with regard to the persons of such of them as are minors or persons of unsound mind of whose persons the Court has assumed the superintendence.

13. Section 15 is copied from the Bengal Act, and empowers the Court to provide for the custody and residence of Government wards who are minors or of unsound mind and whose persons are under its superintendence, and for the education of such of them as are minors.

14. Section 16 follows section 200 of the North-Western Provinces Land-revenue Act, 1873, as amended by section 21, Act VIII, 1879.

15. By section 17, which is new and corresponds with provisions in force in the North-Western Provinces and Oudh, the duty of managing a ward's property diligently and faithfully and for the benefit of the Government ward is expressly laid down.

16. By section 18 the Court of Wards is empowered to let a ward's property, and, with the sanction of the Chief Commissioner, to mortgage, sell or exchange it.

17. Sections 19, 20, 21 and 22 are taken from the Bengal Court of Wards Act, 1879, and prescribe the procedure which must be followed in the case of suits by or against Government wards, providing, respectively, that the manager or Court of Wards shall be a Government ward's next friend or guardian in suits by or against him (section 19), for the payment of costs decreed against the next friend or guardian out of the Government ward's property (section 20), that processes against a Government ward shall be served on his next friend or guardian (section 21), and that the authority of the Court of Wards shall as a rule be required in the case of suits brought on behalf of a Government ward (section 22).

18. Section 23 declares that a Government ward shall be incompetent to transfer or create any charge on, or interest in, his property or any part thereof, or to enter into any contract which may involve him in pecuniary liability, except for the purpose of making, with the sanction of the Court of Wards, a suitable settlement on his marriage.

19. Sections 24 and 25, which are both taken from the Bengal Court of Wards Act, 1879, respectively declare that the consent of the Chief Commissioner is necessary to adoptions by Government wards, and prescribe the procedure to be followed by the Court of Wards when the succession to any Government ward's property is disputed.

20. Under section 26 the Court of Wards is empowered, with the sanction of the Chief Commissioner, to withdraw its superintendence at any time from the person or property, or both, of a Government ward: and the Court is required to withdraw its superintendence when a person who has been made a ward on account of his being a minor or of unsound mind, or

labouring under some physical defect or infirmity, attains his majority, or ceases to be of unsound mind, or becomes free from the defect or infirmity, as the case may be.

21. Section 27 provides for appeals, section 28 for the control of the Chief Commissioner, and section 29 prohibits the exercise of any discretion conferred on a Court of Wards, a Commissioner of a division or the Chief Commissioner being called in question in any Civil Court, whilst section 30 gives the Chief Commissioner power to make rules for all matters connected with the working of the Act.

C. P. ILBERT.

The 18th May, 1885.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, JUNE 6, 1885.

☞ 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 27th May, 1885, and was referred to a Select Committee :—

No. 9 OF 1885.

A Bill to amend the Madras Civil Courts Act, 1873.

WHEREAS it is expedient to amend the Madras III of 1873. Civil Courts Act, 1873; It is hereby enacted as follows :—

1. *(1)* This Act may be called the Madras Civil Courts Act, 1885; and

Short title and commencement.

(2) It shall come into force at once.

2. To section 11 of the Madras Civil Courts Act, 1873, the following shall be added, namely :— III of 1873.

Addition to section 11 of Act III of 1873.

"Provided that where more than one District Munsif is appointed to any local area, the District Judge may assign to each such District Munsif the local limits of his particular jurisdiction within such area."

3. For section 28 of the said Act the following section shall be substituted :—

Substitution of new section for section 28 of the same Act.

"28. The Local Government may confer, within such local limits as it thinks fit, upon any District Judge, Subordinate Judge or District Munsif, the jurisdiction of a Judge of a Court of Small Causes under Act XI of 1865 for the trial of suits cognizable by such Courts up to such value, not exceeding five hundred rupees, as it thinks fit, and may withdraw any jurisdiction so conferred."

STATEMENT OF OBJECTS AND REASONS.

THE Government of Madras, on the recommendation of the High Court, has proposed that the Madras Civil Courts Act, 1873, should be so amended as to *(a)* enable the Government to confer upon District Judges and District Munsifs the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the value of five hundred rupees, and *(b)* remove the doubt whether more than one Munsif can be appointed to exercise jurisdiction in the same local area.

The object of this Bill is to give effect to those proposals.

C. P. ILBERT.

The 14th May, 1885.

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 27th May, 1885, and was referred to a Select Committee:—

No. 10 OF 1885.

THE CENTRAL PROVINCES GOVERNMENT WARDS BILL, 1885.

CONTENTS.

SECTIONS.

1. Short title, extent and commencement.
2. Repeal.
3. Definitions.
4. Deputy Commissioner to be the Court of Wards.
5. Landholders to be under jurisdiction of the Court of Wards.
6. Superintendence by Court of Wards of property of disqualified landholder.
7. Cases in which landholders to be deemed disqualified.
8. Superintendence by Court of Wards of person of disqualified landholder.
9. Superintendence where disqualified landholder owns land within jurisdiction of two Courts of Wards.
10. Superintendence of Court of Wards not challengeable on ground that ward is not a landholder or minor.
11. Appointment, &c., of managers by the Court of Wards.
12. Remuneration and responsibility of managers.
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16. Allowance for Government ward and his family.
17. Duties of the Court of Wards or manager.
18. Powers of the Court of Wards as to property of Government wards.
19. Manager or Court of Wards to be next friend or guardian in suits by or against Government ward.

SECTIONS.

20. Payment of costs.
21. Processes against Government ward to be served on next friend or guardian.
22. Authority of the Court of Wards required in case of suits brought on behalf of Government wards.
23. Disabilities of a Government ward.
24. Consent of Chief Commissioner necessary to adoptions by Government wards.
25. Procedure when succession to Government ward's property is disputed.
26. Withdrawal of superintendence of the Court of Wards.
27. Appeals.
28. Control of Chief Commissioner.
29. Exercise of discretion not to be questioned in Civil Court.
30. Power for Chief Commissioner to make rules.

A Bill to make better provision for the Superintendence of Government Wards in the Central Provinces.

WHEREAS it is expedient to make better provision for the superintendence of Government wards in the Central Provinces; It is hereby enacted as follows:—

Short title, extent and commencement.

1. *(1)* This Act may be called the Central Provinces Government Wards Act, 1885.

(2) It extends to the territories for the time being administered by the Chief Commissioner of the Central Provinces; and

(3) It shall come into force at once.

Repeal.

2. Bengal Regulations LII of 1803 *(for establishing a Court of Wards in the Provinces ceded by the Nawáb Vizier to the Honourable the English East India Company)* and VI of 1822 *(to establish a Court of Wards for Benares, and to define and explain certain of the rules regarding the powers and jurisdiction of the several Courts of Wards)*, and section 14 of Act XL of 1858 *(for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal)* shall, so far as they are in force in the whole or any part of the territories to which this Act extends, be repealed.

Definitions.

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

(1) "Government ward" means any person whose property, or of whose person and prop[illegible]

The Central Provinces Government Wards Bill, 1885.—(Sections 4-15.)

the Court of Wards may, for the time being, have the superintendence under this Act:

[New]. (2) "Landholder" means a málguzár as defined in the Central Provinces Land-revenue Act, 1881, and the zamíndár of any zamíndári specified in Part VI of the first schedule of the Scheduled Districts Act, 1874, and includes a muáfidár, jagírdár, ubaridár or other assignee of land-revenue: and

XVIII of 1881.

XIV of 1874.

[New.] (3) "Land" includes the rights of a landholder in respect of the land of which he is the málguzár or zamíndár or the muáfidár, jagírdár, ubaridár or other assignee of land-revenue.

[Cf. Act IV of 1872, s. 34. New.]

4. The Deputy Commissioner shall be the Court of Wards for the limits of his district.

Deputy Commissioner to be the Court of Wards.

[New.]

5. Every landholder shall be under the jurisdiction of the Court of Wards.

Landholders to be under jurisdiction of the Court of Wards.

[Bill, s. 203, para. 1.]

6. The Court of Wards may, with the previous sanction of the Chief Commissioner, assume the superintendence of the property of any landholder owning land within the local limits of its jurisdiction who is disqualified to manage his own property.

Superintendence by Court of Wards of property of disqualified landholder.

[Bill, s. 204.]

7. (1) The following persons shall, for the purposes of the last foregoing section, be deemed to be disqualified to manage their own property, namely:—

Cases in which landholders to be deemed disqualified.

(a) minors;

(b) persons adjudged by a competent Civil Court to be of unsound mind and incapable of managing their affairs; and

(c) persons declared by the Chief Commissioner to be incapable of managing their own property—

(i) owing to any physical defect or infirmity,

(ii) owing to their having been convicted of a non-bailable offence, and being unfitted by vice or bad character,

(iii) owing to their being females, or

(iv) on their own application.

(2) Every declaration made by the Chief Commissioner under clause (c) of this section shall be final, and shall not be questioned in any Civil Court.

[New.]

8. When the Court of Wards assumes the superintendence of the property of a landholder who is a minor or has been adjudged by a competent Civil Court to be of unsound mind and incapable of managing his affairs, it may, with the previous sanction of the Chief Commissioner, assume the superintendence of his person also.

Superintendence by Court of Wards of person of disqualified landholder.

[New.]

9. Where a landholder owns land within the local limits of the jurisdiction of two or more Courts of Wards, such one only of the Courts as the Chief Commissioner may in this behalf determine shall assume the superintendence of the property, or of the person and property, of the landholder.

Superintendence where disqualified landholder owns land within jurisdiction of two Courts of Wards.

[Bill, s. 205.]

10. When the Court of Wards has, with the sanction of the Chief Commissioner, assumed the superintendence of the property of any person, or of his person and property, its authority shall not be contested in any Civil Court on the ground that he was or is not a landholder or was or is not a minor.

Superintendence of Court of Wards not challengeable on ground that ward is not a landholder or minor.

[New. Cf. Bill, s. 207.]

11. Subject to the rules made under this Act, the Court of Wards may appoint, suspend and remove a manager of the property of any Government ward under its superintendence, and may delegate to the manager all or any of its functions in relation to any property under this Act.

Appointment, &c., of managers by the Court of Wards.

[New. Cf. Act XIX of 1873, s. 206, cls. (a), (e) & (f), & Act XVII of 1876, s. 177, cls. (a), (c) & (f).]

12. Every manager appointed by the Court of Wards shall—

Remuneration and responsibility of managers.

(a) give such security as the Court thinks fit duly to account for what he receives in respect of the rents and profits of the property under his management;

(b) be entitled to such allowance as the Court thinks fit for his care and pains in the execution of his duties; and

(c) be responsible for any loss occasioned to the property under his management by his wilful default or gross negligence.

[Bill, s. 206.]

13. The Court of Wards may appoint, control and remove guardians for the care of the persons of Government wards whose persons are, for the time being, under its superintendence:

Power for the Court of Wards to appoint guardians of certain Government wards.

Provided that nothing in this section shall be held to authorize the appointment of a guardian for the care of the person of—

(a) a married female whose husband is not a minor, or

(b) any Government ward who has a guardian appointed by will.

[Cf. Bengal Act IX of 1879, s. 14.]

14. Subject to the provisions of this Act and of the rules made under this Act, the Court of Wards—

General powers of the Court of Wards.

(a) may, of itself or through the manager (if any) appointed by it under this Act, do all such things requisite for the proper care and management of any property, of which it assumes the superintendence under this Act, as the owner of the property, if not disqualified, might do for its care and management; and

(b) may, of itself or through the guardian (if any) appointed by it under this Act, do in respect of the person of any Government ward, whose person is, for the time being, under its superintendence, all such things as might lawfully be done by the legal guardian of the ward.

[Bill, s. 206. Cf. Bengal Act IX of 1879, s. 21.]

15. The Court of Wards may pass such orders as to it seems fit in respect of the custody and residence of all Government wards whose persons are, for the time being, under its superintendence, and, when they are minors, in respect of their education.

Custody, education and residence of certain Government wards.

The Central Provinces Government Wards Bill, 1885.—(Sections 16-29.)

[Act VIII of 1879, s. 21.]

16. The Court of Wards may, from time to time, determine what sums shall be allowed in respect of the expenses of any Government ward and of his family and dependents.

Allowance for Government ward and his family.

[New. Cf. Act XIX of 1873, s. 202, Act XVII of 1876, s. 171.]

17. The Court of Wards, or the manager (if any) appointed by it under this Act, shall manage the property of every Government ward under its or his superintendence diligently and faithfully for the benefit of the Government ward, and shall in every respect act to the best of its or his judgment for the Government ward's interest as if the property were its or his own.

Duties of the Court of Wards or manager.

[See Bill, s. 207, recast.]

18. The Court of Wards may let the whole or any part of the property of any Government ward under its superintendence, and may, with the previous sanction of the Chief Commissioner, mortgage, sell or exchange the whole or any part of such property, and may do all such other acts as it may judge to be best for the benefit of the property and the advantage of the Government ward.

Powers of the Court of Wards as to property of Government wards.

[Cf. Ben. Act IX of 1879, s. 51. Cf Bill, s. 208.]

19. In every suit brought by or against a Government ward the manager of the ward's property, or if there is no manager, the Court of Wards having the superintendence of the ward's property, shall be named as next friend or guardian for the suit, as the case may be.

Manager or Court of Wards to be next friend or guardian in suits by or against Government ward.

[Cf. Ben. Act IX of 1879, s. 53.]

20. If, in any suit brought by or against a Government ward, any Civil Court decrees any costs against the ward's next friend or guardian for the suit, the Court of Wards shall cause the costs to be paid out of any property of the Government ward which may, for the time being, be in its hands.

Payment of costs.

[Cf. Ben. Act IX of 1879, s. 54.]

21. Every process which may be issued out of any Civil Court against any Government ward shall be served on the ward's next friend or guardian for the suit.

Processes against Government ward to be served on next friend or guardian.

[Cf. Ben. Act IX of 1879, s. 55.]

22. No suit shall be brought on behalf of any Government ward unless it is authorized by some order of the Court of Wards:

Authority of the Court of Wards required in case of suits brought on behalf of Government wards.

Provided as follows:—

(1) a manager may authorize a plaint to be filed in order to prevent a suit from being barred by the law of limitation, but the suit shall not afterwards be proceeded with except under the sanction of the Court of Wards;

(2) a suit for arrears of rent may be brought on behalf of a Government ward if authorized by an order of the manager of the property on which the rents are due.

23. (1) A Government ward shall be incompetent to transfer or create any charge on, or interest in, his property or any part thereof, or to enter into any contract which may involve him in pecuniary liability.

Disabilities of a Government ward.

(2) Nothing in this section shall be deemed to affect the capacity of a Government ward to enter into a contract of marriage: Provided that he shall not incur, in connection therewith, any pecuniary liability, except such as, having regard to the personal law to which he is subject and to his rank and circumstances, the Court of Wards may, in writing, declare to be reasonable.

[Cf. Ben. Act IX of 1879, s. 61.]

24. No adoption by any Government ward, and no written or verbal permission to adopt given by any Government ward, shall be valid without the consent of the Chief Commissioner obtained either previously or subsequently to the adoption or to the giving of the permission on application made to him through the Court of Wards.

Consent of Chief Commissioner necessary to adoptions by Government wards.

[Cf. Ben. Act IX of 1879, s. 13.]

25. Whenever, on the death of any Government ward, the succession to his property or any part thereof is disputed, the Court of Wards may either direct that the property or part thereof be made over to any person claiming the property, or may retain the superintendence of the property until one of the claimants has established his claim to the same in a competent Civil Court.

Procedure when succession to Government ward's property is disputed.

[Bill, s. 210. cf. Bengal Act IX of 1879, s. 8.]

26. (1) The Court of Wards may, with the sanction of the Chief Commissioner, at any time withdraw its superintendence from the person or property, or both, of a Government ward, and shall withdraw its superintendence as soon as—

Withdrawal of superintendence of the Court of Wards.

(a) in the case of a person disqualified under clause (a) of section 7, he attains his majority;

(b) in the case of a person disqualified under clause (b) of that section, he ceases to be of unsound mind and incapable of managing his affairs; and

(c) in the case of a person disqualified under sub-clause (i) of clause (c) of that section, his physical defect or infirmity is removed or ceases.

(2) When any question arises whether the superintendence of the Court of Wards should be withdrawn from any person or property, or both, under clause (a), or from any property under clause (c), of this section, the decision of the Chief Commissioner thereon shall be final and shall not be questioned in any Civil Court.

[New. Cf. Ben. Act IX of 1879, s. 67.]

27. An appeal shall lie from every order of the Court of Wards under this Act to the Commissioner of the division, and from every order of the Commissioner to the Chief Commissioner.

Appeals.

[New. Cf. Bengal Act IX of 1879, s. 68.]

28. All orders or proceedings of the Court of Wards and of the Commissioner of the division under this Act shall be subject to the supervision and control of the Chief Commissioner; and the Chief Commissioner may, if he thinks fit, revise, modify or reverse any such order or proceeding, whether an appeal is presented against any such order or proceeding or not.

Control of Chief Commissioner.

[New.]

29. The exercise of any discretion conferred on a Court of Wards, a Commissioner of a division or the Chief Commissioner by this Act, shall not be called in question in any Civil Court.

Exercise of discretion not to be questioned in Civil Court.

The Central Provinces Government Wards Bill, 1885.—(Section 30.)

[Bill, s. 211.] **30.** (*1*) The Chief Commissioner may, from time to time, make rules consistent with this Act to—

Power for Chief Commissioner to make rules.

(*a*) prescribe the matters to which regard should be had in appointing or removing guardians and managers, and in fixing their remuneration;

(*b*) regulate the amount of security to be given by managers;

(*c*) limit the functions which the Court of Wards may delegate to a manager;

(*d*) prescribe the cases in which proposals or arrangements connected with the administration of the properties of Government wards shall be reported for the sanction of the Chief Commissioner or for that of the Commissioner of the division;

(*e*) prescribe the accounts and other returns which, and the periods and form at and in which, they shall be rendered by managers to the Court of Wards and by the Court of Wards to the Commissioner of the division;

(*f*) regulate the custody of securities and title-deeds belonging to the estate or property of a Government ward; [Cf. Bengal Act IX of 1879, s. 70, cl. (*d*).]

(*g*) regulate the procedure in inquiries by the Court of Wards and in appeals from orders of the Court of Wards or the Commissioner of the division respectively under this Act; [Cf. Bengal Act IX of 1879, s. 70, cl. (*e*).]

(*h*) confer upon the Court of Wards for the purposes of this Act any of the powers exercised by a Civil Court in the trial of suits;

(*i*) prescribe the mode in which powers delegated to managers are to be notified for the information of persons concerned; and

(*j*) generally prescribe the manner in which the powers and duties of the Court of Wards under this Act shall be exercised and performed.

(*2*) All rules made under this section shall be published in the local official Gazette, and shall thereupon have the force of law.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to make better provision for the superintendence of Government wards in the Central Provinces. At present the law on this subject in the Central Provinces is in a very uncertain and unsatisfactory state. It has been ruled by the Judicial Commissioner that nothing calling itself a Court of Wards can be regarded as assuredly having legal existence in the Nágpur district. This ruling affects all the southern districts of the provinces. Again, it has lately been discovered that there is no satisfactory ground for holding that the Bengal Regulations regarding the Court of Wards have been extended to the Nimár district; and even in the districts forming the old Saugor and Nerbudda territories to the north of the provinces, where these Regulations are deemed to be in force, the law is not on a satisfactory basis. There are doubts as to the powers possessed by the Courts; and there are many points on which it would be well for the Chief Commissioner to issue clear and definite instructions if the power to do so were legally assured.

2. As the Chief Commissioner has now at his command, in the lately formed Agricultural Department, machinery for the better supervision of estates belonging to Government wards throughout the provinces, he has urged that legislation on this subject should not be further delayed. He has further suggested that it should take the form of a chapter on the subject which was contained in the Central Provinces Land-revenue Bill as originally drafted, but which was omitted from that Bill before it became law on the ground that it was not expedient to complicate the measure by the addition of provisions not clearly and closely connected with its subject-matter. The present Bill has, therefore, been prepared. It is based upon the draft chapter to which the Chief Commissioner refers. That chapter followed generally the lines of the Punjab Laws Act, 1872, sections 34 to 38, as amended by Act XII of 1878, the North-Western Provinces Land-revenue Act, 1873, sections 193 to 206, as amended by Act VIII of 1879, and the Oudh Land-revenue Act, 1876, sections 161 to 177, which deal with Courts of Wards; but the present Bill, while adopting these provisions so far as they go, contains also provisions taken from the Bengal Court of Wards Act (Bengal Act IX of 1879), which, though they appear to be required, were not embodied in the Chief Commissioner's draft.

3. The Bill repeals (section 2) the old Bengal Regulations LII of 1803 and VI of 1822 (relating to Courts of Wards), which are still deemed to be in force in the districts forming the old Saugor and Nerbudda territories. It also repeals section 14 of the Minors Act of 1858, that section having reference to the law as contained in section 4 of the Regulation, LII of 1803, which this Bill repeals. In the Central Provinces it will be, as in the North-Western Provinces it is, competent to the Court of Wards to administer, so far as the personal law to which he is subject permits, the interest of a disqualified person who is merely a co-owner in an estate with other persons who are not disqualified. In this respect the law in the Central Provinces will, like that in the North-Western Provinces, differ from that in force in the Punjab, Oudh and elsewhere.

4. Section 4 constitutes the Deputy Commissioner the Court of Wards. It seems necessary to do this, instead of simply conferring the powers which the Bill confers on the Court of Wards on the Deputy Commissioner in that capacity, because there are references to Courts of Wards in certain enactments applying to the Central Provinces which would have no application were the term not retained.

5. Section 5 declares every landholder to be under the jurisdiction of the Court of Wards (see section 3, Act IX, 1875); and the term "landholder" is so defined in section 3 as to include all persons of the landed classes who are of sufficient importance to make it socially and politically desirable to take special measures for their protection.

6. Under section 6 the Court of Wards may assume the superintendence of the property of any disqualified landholder, and under section 8 may assume the superintendence of his person also if he be a minor or of unsound mind.

7. Section 7 defines the cases in which landholders are to be deemed disqualified. These are similar to those prescribed in other Acts of this nature.

8. Where a disqualified landholder owns land within the jurisdiction of two Courts of Wards, the Chief Commissioner is empowered by section 9 to determine which Court shall assume superintendence.

9. Section 10 declares that, when once the Court of Wards has assumed the superintendence of the property of any person, or of his person and property, its authority shall not be questioned on the ground that the person was or is not a landholder, or was or is not a minor. This provision is new, but, as there will be titles dependent on the power of the Court, it appears to be desirable to prevent its action in taking charge of an estate from being questioned on either of these grounds.

10. Sections 11 and 12, which are new, deal with the appointment, remuneration and responsibility of managers, to whom the Court of Wards may, subject to rules to be made by the Chief Commissioner, delegate its functions in relation to the property of wards under the Act.

11. Section 13 empowers the Court of Wards to appoint guardians for the care of the persons of Government wards who are minors or of unsound mind, and of whose persons the Court of Wards has assumed superintendence; but it excepts the cases of married wards whose husbands are not minors and wards for whom testamentary guardians have been appointed. In the opinion of the Government of India, testamentary guardians should not be interfered with except by the Civil Court.

12. Section 14, which is taken from the Bengal Court of Wards Act, 1879, defines the general powers of the Court of Wards with regard to the property of Government wards, and with regard to the persons of such of them as are minors or persons of unsound mind of whose persons the Court has assumed the superintendence.

13. Section 15 is copied from the Bengal Act, and empowers the Court to provide for the custody and residence of Government wards who are minors or of unsound mind and whose persons are under its superintendence, and for the education of such of them as are minors.

14. Section 16 follows section 200 of the North-Western Provinces Land-revenue Act, 1873, as amended by section 21, Act VIII, 1879.

15. By section 17, which is new and corresponds with provisions in force in the North-Western Provinces and Oudh, the duty of managing a ward's property diligently and faithfully and for the benefit of the Government ward is expressly laid down.

16. By section 18 the Court of Wards is empowered to let a ward's property, and, with the sanction of the Chief Commissioner, to mortgage, sell or exchange it.

17. Sections 19, 20, 21 and 22 are taken from the Bengal Court of Wards Act, 1879, and prescribe the procedure which must be followed in the case of suits by or against Government wards, providing, respectively, that the manager or Court of Wards shall be a Government ward's next friend or guardian in suits by or against him (section 19), for the payment of costs decreed against the next friend or guardian out of the Government ward's property (section 20), that processes against a Government ward shall be served on his next friend or guardian (section 21), and that the authority of the Court of Wards shall as a rule be required in the case of suits brought on behalf of a Government ward (section 22).

18. Section 23 declares that a Government ward shall be incompetent to transfer or create any charge on, or interest in, his property or any part thereof, or to enter into any contract which may involve him in pecuniary liability, except for the purpose of making, with the sanction of the Court of Wards, a suitable settlement on his marriage.

19. Sections 24 and 25, which are both taken from the Bengal Court of Wards Act, 1879, respectively declare that the consent of the Chief Commissioner is necessary to adoptions by Government wards, and prescribe the procedure to be followed by the Court of Wards when the succession to any Government ward's property is disputed.

20. Under section 26 the Court of Wards is empowered, with the sanction of the Chief Commissioner, to withdraw its superintendence at any time from the person or property, or both, of a Government ward: and the Court is required to withdraw its superintendence when a person who has been made a ward on account of his being a minor or of unsound mind, or

labouring under some physical defect or infirmity, attains his majority, or ceases to be of unsound mind, or becomes free from the defect or infirmity, as the case may be.

21. Section 27 provides for appeals, section 28 for the control of the Chief Commissioner, and section 29 prohibits the exercise of any discretion conferred on a Court of Wards, a Commissioner of a division or the Chief Commissioner being called in question in any Civil Court, whilst section 30 gives the Chief Commissioner power to make rules for all matters connected with the working of the Act.

C. P. ILBERT.

The 18th May, 1885.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, JUNE 13, 1885.

☞ 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 17th May, 1885, and was referred to a Select Committee :—

No. 9 OF 1885.

A Bill to amend the Madras Civil Courts Act, 1873.

WHEREAS it is expedient to amend the Madras Civil Courts Act, 1873; It is hereby enacted as follows :— III of 1873.

1. *(1)* This Act may be called the Madras Civil Courts Act, 1885; and

Short title and commencement.

(2) It shall come into force at once.

2. To section 11 of the Madras Civil Courts Act, 1873, the following shall be added, namely :— III of 1873.

Addition to section 11 of Act III of 1873.

"Provided that where more than one District Munsif is appointed to any local area, the District Judge may assign to each such District Munsif the local limits of his particular jurisdiction within such area."

3. For section 28 of the said Act the following section shall be substituted :—

Substitution of new section for section 28 of the same Act.

"28. The Local Government may confer, within such local limits as it thinks fit, upon any District Judge, Subordinate Judge or District Munsif, the jurisdiction of a Judge of a Court of Small Causes under Act XI of 1865 for the trial of suits cognizable by such Courts up to such value, not exceeding five hundred rupees, as it thinks fit, and may withdraw any jurisdiction so conferred."

STATEMENT OF OBJECTS AND REASONS.

THE Government of Madras, on the recommendation of the High Court, has proposed that the Madras Civil Courts Act, 1873, should be so amended as to *(a)* enable the Government to confer upon District Judges and District Munsifs the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the value of five hundred rupees, and *(b)* remove the doubt whether more than one Munsif can be appointed to exercise jurisdiction in the same local area.

The object of this Bill is to give effect to those proposals.

C. P. ILBERT.

The 14th May, 1885.

D. FITZPATRICK,
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17. Duties of the Court of Wards or manager.
18. Powers of the Court of Wards as to property of Government wards.
19. Manager or Court of Wards to be next friend or guardian in suits by or against Government ward.
SECTIONS.
20. Payment of costs.
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22. Authority of the Court of Wards required in case of suits brought on behalf of Government wards.
23. Disabilities of a Government ward.
24. Consent of Chief Commissioner necessary to adoptions by Government wards.
25. Procedure when succession to Government ward's property is disputed.
26. Withdrawal of superintendence of the Court of Wards.
27. Appeals.
28. Control of Chief Commissioner.
29. Exercise of discretion not to be questioned in Civil Court.
30. Power for Chief Commissioner to make rules.

A Bill to make better provision for the Superintendence of Government Wards in the Central Provinces.

WHEREAS it is expedient to make better provision for the superintendence of Government wards in the Central Provinces; It is hereby enacted as follows:—

Short title, extent and commencement.

1. *(1)* This Act may be called the Central Provinces Government Wards Act, 1885.

(2) It extends to the territories for the time being administered by the Chief Commissioner of the Central Provinces; and

(3) It shall come into force at once.

Repeal.

2. Bengal Regulations LII of 1803 *(for establishing a Court of Wards in the Provinces ceded by the Nawáb Vizier to the Honourable the English East India Company)* and VI of 1822 *(to establish a Court of Wards for Benares, and to define and explain certain of the rules regarding the powers and jurisdiction of the several Courts of Wards)*, and section 14 of Act XL of 1858 *(for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal)* shall, so far as they are in force in the whole or any part of the territories to which this Act extends, be repealed.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,— [Bill, para. 1

(*1*) "Government ward" means any person of whose property, or of whose person and property,

The Central Provinces Government Wards Bill, 1885.—(Sections 4-15.)

the Court of Wards may, for the time being, have the superintendence under this Act:

[New]. (2) "Landholder" means a málguzár as defined in the Central Provinces Land-revenue Act, XVIII of 1881. 1881, and the zamíndár of any zamíndári specified in Part VI of the first schedule of the XIV of 1874. Scheduled Districts Act, 1874, and includes a muáfidár, jagírdár, ubaridár or other assignee of land-revenue: and

[New.] (3) "Land" includes the rights of a landholder in respect of the land of which he is the málguzár or zamíndár or the muáfidár, jagírdár, ubaridár or other assignee of land-revenue.

[Cf. Act IV of 1872, s. 34. New.] **4.** The Deputy Commissioner shall be the Court of Wards for the limits of his district.

Deputy Commissioner to be the Court of Wards.

[New.] **5.** Every landholder shall be under the jurisdiction of the Court of Wards.

Landholders to be under jurisdiction of the Court of Wards.

[Bill, s. 203, cls. 1.] **6.** The Court of Wards may, with the previous sanction of the Chief Commissioner, assume the superintendence of the property of any landholder owning land within the local limits of its jurisdiction who is disqualified to manage his own property.

Superintendence by Court of Wards of property of disqualified landholder.

[Bill, s. 204.] **7.** (1) The following persons shall, for the purposes of the last foregoing section, be deemed to be disqualified to manage their own property, namely:—

Cases in which landholders to be deemed disqualified.

(a) minors;

(b) persons adjudged by a competent Civil Court to be of unsound mind and incapable of managing their affairs; and

(c) persons declared by the Chief Commissioner to be incapable of managing their own property—

(i) owing to any physical defect or infirmity,

(ii) owing to their having been convicted of a non-bailable offence, and being unfitted by vice or bad character,

(iii) owing to their being females, or

(iv) on their own application.

(2) Every declaration made by the Chief Commissioner under clause (c) of this section shall be final, and shall not be questioned in any Civil Court.

8. When the Court of Wards assumes the superintendence of the property of a landholder who is a minor or has been adjudged by a competent Civil Court to be of unsound mind and incapable of managing his affairs, it may, with the previous sanction of the Chief Commissioner, assume the superintendence of his person also.

Superintendence by Court of Wards of person of disqualified landholder.

9. Where a landholder owns land within the local limits of the jurisdiction of two or more Courts of Wards, such one only of the Courts as the Chief Commissioner may in this behalf determine shall assume the superintendence of the property, or of the person and property, of the landholder.

Superintendence where disqualified landholder owns land within jurisdiction of two Courts of Wards.

[Bill, s. 205.] **10.** When the Court of Wards has, with the sanction of the Chief Commissioner, assumed the superintendence of the property of any person, or of his person and property, its authority shall not be contested in any Civil Court on the ground that he was or is not a landholder or was or is not a minor.

Superintendence of Court of Wards not challengeable on ground that ward is not a landholder or minor.

[New. Cf. Bill, s. 207.] **11.** Subject to the rules made under this Act, the Court of Wards may appoint, suspend and remove a manager of the property of any Government ward under its superintendence, and may delegate to the manager all or any of its functions in relation to any property under this Act.

Appointment, &c., of managers by the Court of Wards.

[New. Cf. Act XIX of 1873, s. 206, cls. (a), (e) & (f), & Act XVII of 1876, s. 177, cls. (a), (e) & (f).] **12.** Every manager appointed by the Court of Wards shall:—

Remuneration and responsibility of managers.

(a) give such security as the Court thinks fit duly to account for what he receives in respect of the rents and profits of the property under his management;

(b) be entitled to such allowance as the Court thinks fit for his care and pains in the execution of his duties; and

(c) be responsible for any loss occasioned to the property under his management by his wilful default or gross negligence.

[Bill, s. 206.] **13.** The Court of Wards may appoint, control and remove guardians for the care of the persons of Government wards whose persons are, for the time being, under its superintendence:

Power for the Court of Wards to appoint guardians of certain Government wards.

Provided that nothing in this section shall be held to authorize the appointment of a guardian for the care of the person of—

(a) a married female whose husband is not a minor, or

(b) any Government ward who has a guardian appointed by will.

[Cf. Bengal Act IX of 1879, s. 14.] **14.** Subject to the provisions of this Act and of the rules made under this Act, the Court of Wards—

General powers of the Court of Wards.

(a) may, of itself or through the manager (if any) appointed by it under this Act, do all such things requisite for the proper care and management of any property, of which it assumes the superintendence under this Act, as the owner of the property, if not disqualified, might do for its care and management; and

(b) may, of itself or through the guardian (if any) appointed by it under this Act, do in respect of the person of any Government ward, whose person is, for the time being, under its superintendence, all such things as might lawfully be done by the legal guardian of the ward.

[Bill, s. 206. Cf. Bengal Act IX of 1879, s. 21.] **15.** The Court of Wards may pass such orders as to it seems fit in respect of the custody and residence of all Government wards whose persons are, for the time being, under its superintendence, and, when they are minors, in respect of their education.

Custody, education and residence of certain Government wards.

The Central Provinces Government Wards Bill, 1885.—(Sections 16-29.)

[Act VIII of 1879, s. 21.] **16.** The Court of Wards may, from time to time, determine what sums shall be allowed in respect of the expenses of any Government ward and of his family and dependents.

Allowance for Government ward and his family.

[New. Cf. Act XIX of 1873, s. 202, & Act XVII of 1876, s. 171.] **17.** The Court of Wards, or the manager (if any) appointed by it under this Act, shall manage the property of every Government ward under its or his superintendence diligently and faithfully for the benefit of the Government ward, and shall in every respect act to the best of its or his judgment for the Government ward's interest as if the property were its or his own.

Duties of the Court of Wards or manager.

[See Bill, s. 207, recast.] **18.** The Court of Wards may let the whole or any part of the property of any Government ward under its superintendence, and may, with the previous sanction of the Chief Commissioner, mortgage, sell or exchange the whole or any part of such property, and may do all such other acts as it may judge to be best for the benefit of the property and the advantage of the Government ward.

Powers of the Court of Wards as to property of Government wards.

[Cf. Ben. Act IX of 1879, s. 51. Cf. Bill, s. 208.] **19.** In every suit brought by or against a Government ward the manager of the ward's property, or if there is no manager, the Court of Wards having the superintendence of the ward's property, shall be named as next friend or guardian for the suit, as the case may be.

Manager or Court of Wards to be next friend or guardian in suits by or against Government ward.

[Cf. Ben. Act IX of 1879, s. 53.] **20.** If, in any suit brought by or against a Government ward, any Civil Court decrees any costs against the ward's next friend or guardian for the suit, the Court of Wards shall cause the costs to be paid out of any property of the Government ward which may, for the time being, be in its hands.

Payment of costs.

[Cf. Ben. Act IX of 1879, s. 54.] **21.** Every process which may be issued out of any Civil Court against any Government ward shall be served on the ward's next friend or guardian for the suit.

Processes against Government ward to be served on next friend or guardian.

[Cf. Ben. Act IX of 1879, s. 55.] **22.** No suit shall be brought on behalf of any Government ward unless it is authorized by some order of the Court of Wards:

Authority of the Court of Wards required in case of suits brought on behalf of Government wards.

Provided as follows:—

(1) a manager may authorize a plaint to be filed in order to prevent a suit from being barred by the law of limitation, but the suit shall not afterwards be proceeded with except under the sanction of the Court of Wards;

(2) a suit for arrears of rent may be brought on behalf of a Government ward if authorized by an order of the manager of the property on which the rents are due.

23. (1) A Government ward shall be incompetent to transfer or create any charge on, or interest in, his property or any part thereof, or to enter into any contract which may involve him in pecuniary liability.

Disabilities of a Government ward.

(2) Nothing in this section shall be deemed to affect the capacity of a Government ward to enter into a contract of marriage: Provided that he shall not incur, in connection therewith, any pecuniary liability, except such as, having regard to the personal law to which he is subject and to his rank and circumstances, the Court of Wards may, in writing, declare to be reasonable.

[Cf. Ben. Act IX of 1879, s. 61.] **24.** No adoption by any Government ward, and no written or verbal permission to adopt given by any Government ward, shall be valid without the consent of the Chief Commissioner obtained either previously or subsequently to the adoption or to the giving of the permission on application made to him through the Court of Wards.

Consent of Chief Commissioner necessary to adoptions by Government wards.

[Cf. Ben. Act IX of 1879, s. 13.] **25.** Whenever, on the death of any Government ward, the succession to his property or any part thereof is disputed, the Court of Wards may either direct that the property or part thereof be made over to any person claiming the property, or may retain the superintendence of the property until one of the claimants has established his claim to the same in a competent Civil Court.

Procedure when succession to Government ward's property is disputed.

[Bill, s. 210. cf. Bengal Act IX of 1879, s. 8.] **26.** (1) The Court of Wards may, with the sanction of the Chief Commissioner, at any time withdraw its superintendence from the person or property, or both, of a Government ward, and shall withdraw its superintendence as soon as—

Withdrawal of superintendence of the Court of Wards.

(a) in the case of a person disqualified under clause (a) of section 7, he attains his majority;

(b) in the case of a person disqualified under clause (b) of that section, he ceases to be of unsound mind and incapable of managing his affairs; and

(c) in the case of a person disqualified under sub-clause (i) of clause (c) of that section, his physical defect or infirmity is removed or ceases.

(2) When any question arises whether the superintendence of the Court of Wards should be withdrawn from any person or property, or both, under clause (a), or from any property under clause (c), of this section, the decision of the Chief Commissioner thereon shall be final and shall not be questioned in any Civil Court.

[New. Cf. Ben. Act IX of 1879, s. 67.] **27.** An appeal shall lie from every order of the Court of Wards under this Act to the Commissioner of the division, and from every order of the Commissioner to the Chief Commissioner.

Appeals.

[New. Cf. Bengal Act IX of 1879, s. 68.] **28.** All orders or proceedings of the Court of Wards and of the Commissioner of the division under this Act shall be subject to the supervision and control of the Chief Commissioner; and the Chief Commissioner may, if he thinks fit, revise, modify or reverse any such order or proceeding, whether an appeal is presented against any such order or proceeding or not.

Control of Chief Commissioner.

[New.] **29.** The exercise of any discretion conferred on a Court of Wards, a Commissioner of a division or the Chief Commissioner by this Act, shall not be called in question in any Civil Court.

Exercise of discretion not to be questioned in Civil Court.

The Central Provinces Government Wards Bill, 1885.—(Section 30.)

[Bill, s. 211.]

30. (*1*) The Chief Commissioner may, from time to time, make rules consistent with this Act to—

Power for Chief Commissioner to make rules.

(*a*) prescribe the matters to which regard should be had in appointing or removing guardians and managers, and in fixing their remuneration;

(*b*) regulate the amount of security to be given by managers;

(*c*) limit the functions which the Court of Wards may delegate to a manager;

(*d*) prescribe the cases in which proposals or arrangements connected with the administration of the properties of Government wards shall be reported for the sanction of the Chief Commissioner or for that of the Commissioner of the division;

(*e*) prescribe the accounts and other returns which, and the periods and form at and in which, they shall be rendered by managers to the Court of Wards and by the Court of Wards to the Commissioner of the division;

(*f*) regulate the custody of securities and title-deeds belonging to the estate or property of a Government ward; [Cf. Bengal Act IX of 1879, s. 70, cl. (*d*).]

(*g*) regulate the procedure in inquiries by the Court of Wards and in appeals from orders of the Court of Wards or the Commissioner of the division respectively under this Act; [Cf. Bengal Act IX of 1879, s. 70, cl. (*e*).]

(*h*) confer upon the Court of Wards for the purposes of this Act any of the powers exercised by a Civil Court in the trial of suits;

(*i*) prescribe the mode in which powers delegated to managers are to be notified for the information of persons concerned; and

(*j*) generally prescribe the manner in which the powers and duties of the Court of Wards under this Act shall be exercised and performed.

(*2*) All rules made under this section shall be published in the local official Gazette, and shall thereupon have the force of law.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to make better provision for the superintendence of Government wards in the Central Provinces. At present the law on this subject in the Central Provinces is in a very uncertain and unsatisfactory state. It has been ruled by the Judicial Commissioner that nothing calling itself a Court of Wards can be regarded as assuredly having legal existence in the Nágpur district. This ruling affects all the southern districts of the provinces. Again, it has lately been discovered that there is no satisfactory ground for holding that the Bengal Regulations regarding the Court of Wards have been extended to the Nimár district; and even in the districts forming the old Saugor and Nerbudda territories to the north of the provinces, where these Regulations are deemed to be in force, the law is not on a satisfactory basis. There are doubts as to the powers possessed by the Courts; and there are many points on which it would be well for the Chief Commissioner to issue clear and definite instructions if the power to do so were legally assured.

2. As the Chief Commissioner has now at his command, in the lately formed Agricultural Department, machinery for the better supervision of estates belonging to Government wards throughout the provinces, he has urged that legislation on this subject should not be further delayed. He has further suggested that it should take the form of a chapter on the subject which was contained in the Central Provinces Land-revenue Bill as originally drafted, but which was omitted from that Bill before it became law on the ground that it was not expedient to complicate the measure by the addition of provisions not clearly and closely connected with its subject-matter. The present Bill has, therefore, been prepared. It is based upon the draft chapter to which the Chief Commissioner refers. That chapter followed generally the lines of the Punjab Laws Act, 1872, sections 34 to 38, as amended by Act XII of 1878, the North-Western Provinces Land-revenue Act, 1873, sections 193 to 206, as amended by Act VIII of 1879, and the Oudh Land-revenue Act, 1876, sections 161 to 177, which deal with Courts of Wards; but the present Bill, while adopting these provisions so far as they go, contains also provisions taken from the Bengal Court of Wards Act (Bengal Act IX of 1879), which, though they appear to be required, were not embodied in the Chief Commissioner's draft.

3. The Bill repeals (section 2) the old Bengal Regulations LII of 1803 and VI of 1822 (relating to Courts of Wards), which are still deemed to be in force in the districts forming the old Saugor and Nerbudda territories. It also repeals section 14 of the Minors Act of 1858, that section having reference to the law as contained in section 4 of the Regulation, LII of 1803, which this Bill repeals. In the Central Provinces it will be, as in the North-Western Provinces it is, competent to the Court of Wards to administer, so far as the personal law to which he is subject permits, the interest of a disqualified person who is merely a co-owner in an estate with other persons who are not disqualified. In this respect the law in the Central Provinces will, like that in the North-Western Provinces, differ from that in force in the Punjab, Oudh and elsewhere.

4. Section 4 constitutes the Deputy Commissioner the Court of Wards. It seems necessary to do this, instead of simply conferring the powers which the Bill confers on the Court of Wards on the Deputy Commissioner in that capacity, because there are references to Courts of Wards in certain enactments applying to the Central Provinces which would have no application were the term not retained.

5. Section 5 declares every landholder to be under the jurisdiction of the Court of Wards (see section 3, Act IX, 1875); and the term "landholder" is so defined in section 3 as to include all persons of the landed classes who are of sufficient importance to make it socially and politically desirable to take special measures for their protection.

6. Under section 6 the Court of Wards may assume the superintendence of the property of any disqualified landholder, and under section 8 may assume the superintendence of his person also if he be a minor or of unsound mind.

7. Section 7 defines the cases in which landholders are to be deemed disqualified. These are similar to those prescribed in other Acts of this nature.

8. Where a disqualified landholder owns land within the jurisdiction of two Courts of Wards, the Chief Commissioner is empowered by section 9 to determine which Court shall assume superintendence.

9. Section 10 declares that, when once the Court of Wards has assumed the superintendence of the property of any person, or of his person and property, its authority shall not be questioned on the ground that the person was or is not a landholder, or was or is not a minor. This provision is new, but, as there will be titles dependent on the power of the Court, it appears to be desirable to prevent its action in taking charge of an estate from being questioned on either of these grounds.

10. Sections 11 and 12, which are new, deal with the appointment, remuneration and responsibility of managers, to whom the Court of Wards may, subject to rules to be made by the Chief Commissioner, delegate its functions in relation to the property of wards under the Act.

11. Section 13 empowers the Court of Wards to appoint guardians for the care of the persons of Government wards who are minors or of unsound mind, and of whose persons the Court of Wards has assumed superintendence; but it excepts the cases of married wards whose husbands are not minors and wards for whom testamentary guardians have been appointed. In the opinion of the Government of India, testamentary guardians should not be interfered with except by the Civil Court.

12. Section 14, which is taken from the Bengal Court of Wards Act, 1879, defines the general powers of the Court of Wards with regard to the property of Government wards, and with regard to the persons of such of them as are minors or persons of unsound mind of whose persons the Court has assumed the superintendence.

13. Section 15 is copied from the Bengal Act, and empowers the Court to provide for the custody and residence of Government wards who are minors or of unsound mind and whose persons are under its superintendence, and for the education of such of them as are minors.

14. Section 16 follows section 200 of the North-Western Provinces Land-revenue Act, 1873, as amended by section 21, Act VIII, 1879.

15. By section 17, which is new and corresponds with provisions in force in the North-Western Provinces and Oudh, the duty of managing a ward's property diligently and faithfully and for the benefit of the Government ward is expressly laid down.

16. By section 18 the Court of Wards is empowered to let a ward's property, and, with the sanction of the Chief Commissioner, to mortgage, sell or exchange it.

17. Sections 19, 20, 21 and 22 are taken from the Bengal Court of Wards Act, 1879, and prescribe the procedure which must be followed in the case of suits by or against Government wards, providing, respectively, that the manager or Court of Wards shall be a Government ward's next friend or guardian in suits by or against him (section 19), for the payment of costs decreed against the next friend or guardian out of the Government ward's property (section 20), that processes against a Government ward shall be served on his next friend or guardian (section 21), and that the authority of the Court of Wards shall as a rule be required in the case of suits brought on behalf of a Government ward (section 22).

18. Section 23 declares that a Government ward shall be incompetent to transfer or create any charge on, or interest in, his property or any part thereof, or to enter into any contract which may involve him in pecuniary liability, except for the purpose of making, with the sanction of the Court of Wards, a suitable settlement on his marriage.

19. Sections 24 and 25, which are both taken from the Bengal Court of Wards Act, 1879, respectively declare that the consent of the Chief Commissioner is necessary to adoptions by Government wards, and prescribe the procedure to be followed by the Court of Wards when the succession to any Government ward's property is disputed.

20. Under section 26 the Court of Wards is empowered, with the sanction of the Chief Commissioner, to withdraw its superintendence at any time from the person or property, or both, of a Government ward: and the Court is required to withdraw its superintendence when a person who has been made a ward on account of his being a minor or of unsound mind, or

labouring under some physical defect or infirmity, attains his majority, or ceases to be of unsound mind, or becomes free from the defect or infirmity, as the case may be.

21. Section 27 provides for appeals, section 28 for the control of the Chief Commissioner, and section 29 prohibits the exercise of any discretion conferred on a Court of Wards, a Commissioner of a division or the Chief Commissioner being called in question in any Civil Court, whilst section 30 gives the Chief Commissioner power to make rules for all matters connected with the working of the Act.

C. P. ILBERT.

The 18th May, 1885.

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 10th June, 1885, and was referred to a Select Committee :—

No. 11 OF 1885.

A Bill to amend the Indian Registration Act, 1877.

III of 1877. WHEREAS it is expedient to amend the Indian Registration Act, 1877, in manner hereinafter appearing; It is hereby enacted as follows :—

Short title and commencement. 1. *(1)* This Act may be called the Indian Registration Act, 1885; and

(2) It shall come into force at once.

III of 1877. Amendment of sections 17 and 50 of Act III of 1877. 2. *(1)* After clause *(f)* of section 17 of the Indian Registration Act, 1877, the following clause shall be inserted, that is to say :—

"*(ff)* any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures, or".

(2) In the second paragraph of section 50 of the same Act, "*(ff)*" shall be inserted between "*(f)*" and "*(g)*".

Amendment of sections 17, 30, 58 and 89 of same Act. 3. *(1)* After clause *(l)* of section 17 of the same Act the following clause shall be added, that is to say :—

"*(m)* orders granting loans under the Agriculturists' Loans Act, 1884, and instruments for securing the repayment of loans made under that Act."

(2) In the second paragraph of section 50, for the word and letter "and *(l)*" the letters and word "*(l)* and *(m)*" shall be substituted.

(3) In section 58 of the same Act, for the words "or a copy of a certificate under the Land Improvement Act, 1871, sent by the Collector to be registered," or, where the Land Improvement Loans Act, 1883, is in force, for the words "or a copy of an order under the Land Improvement Loans Act, 1883, sent by the Collector to be registered," there shall be substituted the following words, namely :— XXVI of 1871. XIX of 1883. XIX of 1883.

"or a copy sent to a registering officer under section 89".

(4) After the second paragraph of section 89 of the same Act the following paragraph shall be inserted, that is to say :—

"Every officer granting a loan under the Agriculturists' Loans Act, 1884, shall send a copy of any instrument whereby immoveable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No. 1."

Amendment of sections 90 and 91 of same Act. 4. *(1)* After clause *(d)* of section 90 of the same Act the following clause shall be inserted, that is to say :—

"*(e)* notices given under section 74, or section 76, of the Bombay Land-revenue Code, 1879, of relinquishment of occupancy by occupants, or of alienated land to holders of such land".

(2) In section 91, for the word and letter "*(c)*" the letters and word "*(c)* and *(e)*" shall be substituted.

(3) The said Act shall be construed as if the amendments made in it by this section had been made at the time the Act came into force.

STATEMENT OF OBJECTS AND REASONS.

THE objects of this Bill are three:—

(*1*) to except mortgage-debentures secured by a registered trust-deed from those provisions of the Indian Registration Act, 1877, which either require that such debentures shall be registered, or, where their registration is optional and they are not registered, give precedence over them, as regards the property on which they are secured, to any registered instrument relating to the same property;

(*2*) to place instruments whereby immoveable property is mortgaged as security for the repayment of loans under the Agriculturists' Loans Act, 1884, on the same footing, in regard to registration, as certificates or orders granting loans, and instruments of collateral security, under the Land Improvement Act, 1871, or, where the Land Improvement Loans Act, 1883, is in force, under that Act;

(*3*) to exempt from registration notices given under sections 74 and 76 of the Bombay Land-revenue Code, 1879, of relinquishment of occupancy by occupants and of alienated land by holders of such land.

2. As regards the first matter, it was represented to the Government of India in 1884 that the heavy expense and trouble entailed on the issue of mortgage-debentures by the joint operation of the Stamp Act and Registration Act practically prevented their being issued. The stamp-duty payable on such debentures has since been remitted, and it seems to the Government of India that, if the trust-deed by which such debentures are secured is registered, the debentures, provided they do not implicate any property beyond that comprised in the trust-deed, and do no more than give effect to the arrangement made by the trust-deed, may well be exempted from registration.

3. The second amendment proposed calls for no explanation. The third seems to be justified on the ground that there is, apart from the Registration Act, a complete official record of the surrenders in question, and that to require in addition that they should be registered under that Act would entail unnecessary trouble and expense on all concerned.

The 29th May, 1885.

C. P. ILBERT.

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 10th June, 1885, and was referred to a Select Committee:—

No. 12 OF 1885.

A Bill to amend the Burma Courts Act, 1875, and section 360 of the Code of Civil Procedure.

WHEREAS it is expedient to amend the Burma XVII of 1875. Courts Act, 1875, and section 360 of the Code of XIV of 1882. Civil Procedure; It is hereby enacted as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Burma Courts Act, 1885; and

(*2*) It shall come into force at once.

Power to vest in local officers insolvency jurisdiction vested in Recorder in Moulmein, Akyab and Bassein.

2. (*1*) The Chief Commissioner of British Burma may, from time to time, by order notified in the official Gazette, direct that, from a date to be therein specified, the jurisdiction vested in the Recorder within the towns of Moulmein, Akyab and Bassein by section 66 of the Burma XVII of 1875. Courts Act, 1875, shall be vested, as regards each or any of those towns, as follows:—

(*a*) in the Civil Judge of Moulmein within the town of Moulmein;

(*b*) in the Deputy Commissioner of Akyab within the town of Akyab;

(*c*) in the Deputy Commissioner of Bassein within the town of Bassein.

(*2*) While any such order is in force, the said [illegible] shall, with respect to any town to which the order applies, have effect as if it referred to the officer in whom the jurisdiction is so vested instead of to the Recorder, and all cases pending at the date of the order shall be disposed of accordingly.

(*3*) Provided that nothing in this section shall prevent the Recorder from entertaining and disposing of in his own Court any case, whether pending at the date of the order or subsequently instituted, which, by reason of its importance or otherwise, may, in his opinion, be more conveniently so disposed of.

(*4*) The Chief Commissioner may, by order notified as aforesaid, cancel any order made under sub-section (*1*) as to all or any of the towns to which the order applies, but not so as to affect any proceedings pending at the date of the cancelling order.

Partial repeal of section 360 of Code of Civil Procedure.

3. The last paragraph of section 360 of the Code of Civil Procedure is [illegible] hereby repealed.

Power to transfer cases from Court of Recorder to Court of Judicial Commissioner.

4. (*1*) The Chief Commissioner may, from time to time, transfer to the Court of the Judicial Commissioner any particular cases or particular classes of cases which may be pending in the Court of the Recorder.

(*2*) In the disposal of such cases the Judicial Commissioner shall administer the same law, follow the same procedure, exercise the same powers and use the same seal as would be administered, followed, exercised and used by the Recorder in like cases.

(*3*) Section 84 of the Burma Courts Act, 1875, shall apply to the Court of the Judicial Commissioner when disposing of such cases.

(*4*) All decrees, orders and sentences made or passed in such cases by the Judicial Commissioner shall, for the purposes of the law relating to appeals, references and revision, be deemed to be made or passed by the Recorder.

STATEMENT OF OBJECTS AND REASONS.

WITHIN the towns of Moulmein, Akyab and Bassein the Recorder of Rangoon has the same jurisdiction with respect to insolvent debtors and their creditors as is exercisable with respect to insolvent debtors and their creditors by the High Court in Calcutta. As visits to those towns for the disposal of insolvency cases arising there occupy time which, owing to the increasing business of his Court, the Recorder can ill afford to spare, and as the cases themselves are often of great importance or difficulty, the Chief Commissioner has proposed, at the instance of [illegible], that such insolvency jurisdiction as the Recorder of Rangoon possesses in Moulmein, Akyab and Bassein should, temporarily at least, be transferred to the Chief Civil Judges of those towns. The main object of this Bill (section 2) is to give effect to that proposal.

2. It is also proposed (section 3) to repeal the last paragraph of section 360 of the Code of Civil Procedure, which provides that nothing in Chapter XX (relating to insolvent judgment-debtors) shall apply in certain cases to any Court having jurisdiction in the towns of Rangoon, Moulmein, Akyab and Bassein. The Recorder of Rangoon states that this provision sometimes causes great hardship in the excepted cases, because under section 13 of the Statute 11 & 12 Vic., cap. 21, which regulates procedure in those cases, an interim order cannot be made for the protection of an insolvent from arrest until he has filed his schedule, and the preparation of the schedule may occupy some time.

3. By section 4 it is proposed to enable the Chief Commissioner to transfer cases from the Court of the Recorder to that of the Judicial Commissioner at times when there is special pressure of business in the former Court.

C. P. ILBERT.

The 27th May, 1885.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, JUNE 20, 1885.

☞ 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 10th June, 1885, and was referred to a Select Committee :—

No. 11 OF 1885.

A Bill to amend the Indian Registration Act, 1877.

WHEREAS it is expedient to amend the Indian Registration Act, 1877, in manner hereinafter appearing; It is hereby enacted as follows :— III of 1877.

Short title and commencement.

1. *(1)* This Act may be called the Indian Registration Act, 1885; and

(2) It shall come into force at once.

Amendment of sections 17 and 50 of Act III of 1877.

2. *(1)* After clause *(f)* of section 17 of the Indian Registration Act, 1877, the following clause shall be inserted, that is to say :— III of 1877.

"*(ff)* any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures, or ".

(2) In the second paragraph of section 50 of the same Act, "*(ff)*" shall be inserted between "*(f)*" and "*(g)*".

Amendment of sections 17, 50, 58 and 89 of same Act.

3. *(1)* After clause *(l)* of section 17 of the same Act the following clause shall be added, that is to say :—

"*(m)* orders granting loans under the Agriculturists' Loans Act, 1884, and instruments for securing the repayment of loans made under that Act." XII of 1884.

(2) In the second paragraph of section 50, for the word and letter "and *(l)*" the letters and word "*(l)* and *(m)*" shall be substituted.

(3) In section 58 of the same Act, for the words "or a copy of a certificate under the Land Improvement Act, 1871, sent by the Collector to be registered," or, where the Land Improvement Loans Act, 1883, is in force, for the words "or a copy of an order under the Land Improvement Loans Act, 1883, sent by the Collector to be registered," there shall be substituted the following words, namely :— XXVI of 1871. XIX of 1883. XIX of 1883.

"or a copy sent to a registering officer under section 89".

(4) After the second paragraph of section 89 of the same Act the following paragraph shall be inserted, that is to say :—

"Every officer granting a loan under the Agriculturists' Loans Act, 1884, shall send a copy of any instrument whereby immoveable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No. 1." XII of 1884.

Amendment of sections 90 and 91 of same Act.

4. *(1)* After clause *(d)* of section 90 of the same Act the following clause shall be inserted, that is to say :—

"*(e)* notices given under section 74, or section 76, of the Bombay Land-revenue Code, 1879, of relinquishment of occupancy by occupants, or of alienated land by holders of such land". Bom. Act V of 1879.

(2) In section 91, for the word and letter "and *(c)*" the letters and word "*(c)* and *(e)*" shall be substituted.

(3) The said Act shall be construed as if the amendments made in it by this section had been made at the time the Act came into force.

5 *a*

STATEMENT OF OBJECTS AND REASONS.

THE objects of this Bill are three:—

(*1*) to except mortgage-debentures secured by a registered trust-deed from those provisions of the Indian Registration Act, 1877, which either require that such debentures shall be registered, or, where their registration is optional and they are not registered, give precedence over them, as regards the property on which they are secured, to any registered instrument relating to the same property;

(*2*) to place instruments whereby immoveable property is mortgaged as security for the repayment of loans under the Agriculturists' Loans Act, 1884, on the same footing, in regard to registration, as certificates or orders granting loans, and instruments of collateral security, under the Land Improvement Act, 1871, or, where the Land Improvement Loans Act, 1883, is in force, under that Act;

(*3*) to exempt from registration notices given under sections 74 and 76 of the Bombay Land-revenue Code, 1879, of relinquishment of occupancy by occupants and of alienated land by holders of such land.

2. As regards the first matter, it was represented to the Government of India in 1884 that the heavy expense and trouble entailed on the issue of mortgage-debentures by the joint operation of the Stamp Act and Registration Act practically prevented their being issued. The stamp-duty payable on such debentures has since been remitted, and it seems to the Government of India that, if the trust-deed by which such debentures are secured is registered, the debentures, provided they do not implicate any property beyond that comprised in the trust-deed, and do no more than give effect to the arrangement made by the trust-deed, may well be exempted from registration.

3. The second amendment proposed calls for no explanation. The third seems to be justified on the ground that there is, apart from the Registration Act, a complete official record of the surrenders in question, and that to require in addition that they should be registered under that Act would entail unnecessary trouble and expense on all concerned.

The 29th May, 1885.

C. P. ILBERT.

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 10th June, 1885, and was referred to a Select Committee:—

No. 12 OF 1885.

A Bill to amend the Burma Courts Act, 1875, and section 360 of the Code of Civil Procedure.

WHEREAS it is expedient to amend the Burma XVII of 1875. Courts Act, 1875, and section 360 of the Code of XIV of 1882. Civil Procedure; It is hereby enacted as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Burma Courts Act, 1885; and

(*2*) It shall come into force at once.

Power to vest in local officers insolvency jurisdiction vested in Recorder in Moulmein, Akyab and Bassein.

2. (*1*) The Chief Commissioner of British Burma may, from time to time, by order notified in the official Gazette, direct that, from a date to be therein specified, the jurisdiction vested in the Recorder within the towns of Moulmein, Akyab and Bassein by section 66 of the Burma XVII of 1875. Courts Act, 1875, shall be vested, as regards each or any of those towns, as follows:—

(*a*) in the Civil Judge of Moulmein within the town of Moulmein;

(*b*) in the Deputy Commissioner of Akyab within the town of Akyab;

(*c*) in the Deputy Commissioner of Bassein within the town of Bassein.

(*2*) While any such order is in force, the said section 66 shall, with respect to any town to which the order applies, have effect as if it referred to the officer in whom the jurisdiction is so vested instead of to the Recorder, and all cases pending at the date of the order shall be disposed of accordingly.

(*3*) Provided that nothing in this section shall prevent the Recorder from entertaining and disposing of in his own Court any case, whether pending at the date of the order or subsequently instituted, which, by reason of its importance or otherwise, may, in his opinion, be more conveniently so disposed of.

(*4*) The Chief Commissioner may, by order notified as aforesaid, cancel any order made under subsection (*1*) as to all or any of the towns to which the order applies, but not so as to affect any proceedings pending at the date of the cancelling order.

Partial repeal of section 360 of Code of Civil Procedure.

3. The last paragraph of section 360 of the Code of Civil Procedure is XIV of 1882. hereby repealed.

Power to transfer cases from Court of Recorder to Court of Judicial Commissioner.

4. (*1*) The Chief Commissioner may, from time to time, transfer to the Court of the Judicial Commissioner any particular cases or particular classes of cases that may be pending in the Court of the Recorder.

(*2*) In the disposal of such cases the Judicial Commissioner shall administer the same law, follow the same procedure, exercise the same powers and use the same seal as would be administered, followed, exercised and used by the Recorder in like cases.

(*3*) Section 84 of the Burma Courts Act, 1875, XVII of 1875. shall apply to the Court of the Judicial Commissioner when disposing of such cases.

(*4*) All decrees, orders and sentences made or passed in such cases by the Judicial Commissioner shall, for the purposes of the law relating to appeals, references and revision, be deemed to be made or passed by the Recorder.

STATEMENT OF OBJECTS AND REASONS.

WITHIN the towns of Moulmein, Akyab and Bassein the Recorder of Rangoon has the same jurisdiction with respect to insolvent debtors and their creditors as is exercisable with respect to insolvent debtors and their creditors by the High Court in Calcutta. As visits to those towns for the disposal of insolvency cases arising there occupy time which, owing to the increasing business of his Court, the Recorder can ill afford to spare, and as the cases themselves are not of great importance or difficulty, the Chief Commissioner has proposed, at the instance of the Recorder, that such insolvency jurisdiction as the Recorder of Rangoon possesses in Moulmein, Akyab and Bassein should, temporarily at least, be transferred to the Chief Civil Judges of those towns. The main object of this Bill (section 2) is to give effect to that proposal.

2. It is also proposed (section 3) to repeal the last paragraph of section 360 of the Code of Civil Procedure, which provides that nothing in Chapter XX (relating to insolvent judgment-debtors) shall apply in certain cases to any Court having jurisdiction in the towns of Rangoon, Moulmein, Akyab and Bassein. The Recorder of Rangoon states that this provision sometimes causes great hardship in the excepted cases, because under section 13 of the Statute 11 & 12 Vic., cap. 21, which regulates procedure in those cases, an interim order cannot be made for the protection of an insolvent from arrest until he has filed his schedule, and the preparation of the schedule may occupy some time.

3. By section 4 it is proposed to enable the Chief Commissioner to transfer cases from the Court of the Recorder to that of the Judicial Commissioner at times when there is special pressure of business in the former Court.

The 27th May, 1885.

C. P. ILBERT.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, JUNE 27, 1885.

☞ 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 10th June, 1885, and was referred to a Select Committee :—

No. 11 OF 1885.

A Bill to amend the Indian Registration Act, 1877.

III of 1877. WHEREAS it is expedient to amend the Indian Registration Act, 1877, in manner hereinafter appearing; It is hereby enacted as follows :—

Short title and commencement.

1. *(1)* This Act may be called the Indian Registration Act, 1885; and

(2) It shall come into force at once.

III of 1877. Amendment of sections 17 and 50 of Act III of 1877.

2. *(1)* After clause *(f)* of section 17 of the Indian Registration Act, 1877, the following clause shall be inserted, that is to say :—

"*(ff)* any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures, or".

(2) In the second paragraph of section 50 of the same Act, "*(ff)*" shall be inserted between "*(f)*" and "*(g)*".

Amendment of sections 17, 50, 58 and 89 of same Act.

3. *(1)* After clause *(l)* of section 17 of the same Act the following clause shall be added, that is to say :—

"*(m)* orders granting loans under the Agriculturists' Loans Act, 1884, and instruments for securing the repayment of loans made under that Act."

(2) In the second paragraph of section 50, for the word and letter "and *(l)*" the letters and word "*(l)* and *(m)*" shall be substituted.

(3) In section 58 of the same Act, for the words "or a copy of a certificate under the Land Improvement Act, 1871, sent by the Collector to be registered," or, where the Land Improvement Loans Act, 1883, is in force, for the words "or a copy of an order under the Land Improvement Loans Act, 1883, sent by the Collector to be registered," there shall be substituted the following words, namely :— XXVI of 1871. XIX of 1883. XIX of 1883.

"or a copy sent to a registering officer under section 89".

(4) After the second paragraph of section 89 of the same Act the following paragraph shall be inserted, that is to say :—

"Every officer granting a loan under the Agriculturists' Loans Act, 1884, shall send a copy of any instrument whereby immoveable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No. 1." XII of 1884.

Amendment of sections 90 and 91 of same Act.

4. *(1)* After clause *(d)* of section 90 of the same Act the following clause shall be inserted, that is to say :—

"*(e)* notices given under section 74, or section 76, of the Bombay Land-revenue Code, 1879, of relinquishment of occupancy by occupants, or of alienated land by holders of such land". Bom. Act V of 1879.

(2) In section 91, for the word and letter "and *(c)*" the letters and word "*(c)* and *(e)*" shall be substituted.

(3) The said Act shall be construed as if the amendments made in it by this section had been made at the time the Act came into force.

STATEMENT OF OBJECTS AND REASONS.

THE objects of this Bill are three:—

(*1*) to except mortgage-debentures secured by a registered trust-deed from those provisions of the Indian Registration Act, 1877, which either require that such debentures shall be registered, or, where their registration is optional and they are not registered, give precedence over them, as regards the property on which they are secured, to any registered instrument relating to the same property;

(*2*) to place instruments whereby immoveable property is mortgaged as security for the repayment of loans under the Agriculturists' Loans Act, 1884, on the same footing, in regard to registration, as certificates or orders granting loans, and instruments of collateral security, under the Land Improvement Act, 1871, or, where the Land Improvement Loans Act, 1883, is in force, under that Act;

(*3*) to exempt from registration notices given under sections 74 and 76 of the Bombay Land-revenue Code, 1879, of relinquishment of occupancy by occupants and of alienated land by holders of such land.

2. As regards the first matter, it was represented to the Government of India in 1884 that the heavy expense and trouble entailed on the issue of mortgage-debentures by the joint operation of the Stamp Act and Registration Act practically prevented their being issued. The stamp-duty payable on such debentures has since been remitted, and it seems to the Government of India that, if the trust-deed by which such debentures are secured is registered, the debentures, provided they do not implicate any property beyond that comprised in the trust-deed, and do no more than give effect to the arrangement made by the trust-deed, may well be exempted from registration.

3. The second amendment proposed calls for no explanation. The third seems to be justified on the ground that there is, apart from the Registration Act, a complete official record of the surrenders in question, and that to require in addition that they should be registered under that Act would entail unnecessary trouble and expense on all concerned.

The 29th May, 1885.

C. P. ILBERT.

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 10th June, 1885, and was referred to a Select Committee:—

No. 12 OF 1885.

A Bill to amend the Burma Courts Act, 1875, and section 360 of the Code of Civil Procedure.

WHEREAS it is expedient to amend the Burma XVII of 1875. Courts Act, 1875, and section 360 of the Code of XIV of 1882. Civil Procedure; It is hereby enacted as follows:—

Short title and commencement. 1. (*1*) This Act may be called the Burma Courts Act, 1885; and

(*2*) It shall come into force at once.

Power to vest in local officers insolvency jurisdiction vested in Recorder in Moulmein, Akyab and Bassein. 2. (*1*) The Chief Commissioner of British Burma may, from time to time, by order notified in the official Gazette, direct that, from a date to be therein specified, the jurisdiction vested in the Recorder within the towns of Moulmein, Akyab and Bassein by section 66 of the Burma XVII of 1875. Courts Act, 1875, shall be vested, as regards each or any of those towns, as follows:—

(*a*) in the Civil Judge of Moulmein within the town of Moulmein;

(*b*) in the Deputy Commissioner of Akyab within the town of Akyab;

(*c*) in the Deputy Commissioner of Bassein within the town of Bassein.

(*2*) While any such order is in force, the said section 66 shall, with respect to any town to which the order applies, have effect as if it referred to the officer in whom the jurisdiction is so vested instead of to the Recorder, and all cases pending at the date of the order shall be disposed of accordingly.

(*3*) Provided that nothing in this section shall prevent the Recorder from entertaining and disposing of in his own Court any case, whether pending at the date of the order or subsequently instituted, which, by reason of its importance or otherwise, may, in his opinion, be more conveniently so disposed of.

(*4*) The Chief Commissioner may, by order notified as aforesaid, cancel any order made under subsection (*1*) as to all or any of the towns to which the order applies, but not so as to affect any proceedings pending at the date of the cancelling order.

Partial repeal of section 360 of Code of Civil Procedure. 3. The last paragraph of section 360 of the Code of Civil Procedure is hereby repealed. XIV of 1882.

Power to transfer cases from Court of Recorder to Court of Judicial Commissioner. 4. (*1*) The Chief Commissioner may, from time to time, transfer to the Court of the Judicial Commissioner any particular cases or particular classes of cases that may be pending in the Court of the Recorder.

(*2*) In the disposal of such cases the Judicial Commissioner shall administer the same law, follow the same procedure, exercise the same powers and use the same seal as would be administered, followed, exercised and used by the Recorder in like cases.

(*3*) Section 84 of the Burma Courts Act, 1875, XVII of 1875. shall apply to the Court of the Judicial Commissioner when disposing of such cases.

(*4*) All decrees, orders and sentences made or passed in such cases by the Judicial Commissioner shall, for the purposes of the law relating to appeals, references and revision, be deemed to be made or passed by the Recorder.

STATEMENT OF OBJECTS AND REASONS.

WITHIN the towns of Moulmein, Akyab and Bassein the Recorder of Rangoon has the same jurisdiction with respect to insolvent debtors and their creditors as is exercisable with respect to insolvent debtors and their creditors by the High Court in Calcutta. As visits to those towns for the disposal of insolvency cases arising there occupy time which, owing to the increasing business of his Court, the Recorder can ill afford to spare, and as the cases themselves are not of great importance or difficulty, the Chief Commissioner has proposed, at the instance of the Recorder, that such insolvency jurisdiction as the Recorder of Rangoon possesses in Moulmein, Akyab and Bassein should, temporarily at least, be transferred to the Chief Civil Judges of those towns. The main object of this Bill (section 2) is to give effect to that proposal.

2. It is also proposed (section 3) to repeal the last paragraph of section 360 of the Code of Civil Procedure, which provides that nothing in Chapter XX (relating to insolvent judgment-debtors) shall apply in certain cases to any Court having jurisdiction in the towns of Rangoon, Moulmein, Akyab and Bassein. The Recorder of Rangoon states that this provision sometimes causes great hardship in the excepted cases, because under section 13 of the Statute 11 & 12 Vic., cap. 21, which regulates procedure in those cases, an interim order cannot be made for the protection of an insolvent from arrest until he has filed his schedule, and the preparation of the schedule may occupy some time.

3. By section 4 it is proposed to enable the Chief Commissioner to transfer cases from the Court of the Recorder to that of the Judicial Commissioner at times when there is special pressure of business in the former Court.

The 27th May, 1885.

C. P. ILBERT.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, JULY 25, 1885.

☞ **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 22nd July, 1885, and was referred to a Select Committee:—

No. 13 OF 1885.

A Bill to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871; It is hereby enacted as follows:—

Code of Criminal Procedure, 1882.

Amendment of section 31 of the Code of Criminal Procedure.

1. In the last paragraph of section 31 of the Code of Criminal Procedure, 1882, for the words "any sentence of imprisonment for a term exceeding three years" the words "any sentence of transportation or imprisonment for a term exceeding four years" shall be substituted.

Substitution of new section for section 34.

2. For section 34 of the same Code the following shall be substituted, namely:—

"34. The Court of a District Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of transportation or imprisonment for a term exceeding four years shall be subject to confirmation by the Sessions Judge."

Amendment of section 88.

3. In section 88 of the same Code, after the words "District Magistrate" the words "or Chief Presidency Magistrate" shall be inserted.

Amendment of section 110.

4. In section 110 of the same Code, for the words "Sub-divisional Magistrate or Magistrate of the first class" the words "or Sub-divisional Magistrate or a Magistrate of the first class" shall be substituted.

Amendment of section 173.

5. In section 173 of the same Code, the following shall be substituted for the second paragraph, namely:—

"Where a superior officer of Police has been appointed under section 158, the report shall, if the accused has been released on his bond under section 169, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation."

Amendment of section 266.

6. In section 266 of the same Code, for the word and figures "section 307" the words and figures "sections 276 and 307" shall be substituted.

Amendment of section 401.

7. *(1)* For the third paragraph of section 401 of the same Code the following shall be substituted, namely:—

"If any condition on which a sentence has been suspended or remitted by the Governor-General in Council or the Local Government is not fulfilled, the Governor-General in Council or the Local Government, as the case may be, may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any Police-officer without warrant and remanded to undergo the unexpired portion of the sentence."

(2) After the third paragraph of the same section the following shall be inserted, namely:—

"The condition on which a sentence is suspended or remitted under this section may be one to be performed by the person in whose favour the sentence is suspended or remitted, or one independent of his will."

New section to follow section 475.

8. After section 475 of the same Code the following shall be inserted, namely:—

"475A. The Governor-General in Council may direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail or other place of safe custody, shall be removed from the place where he is confined to any lunatic asylum, jail or other place of safe custody in British India."

Power of Governor-General in Council to order removal of criminal lunatics from one province to another.

9. In section 510 of the same Code, for the words "the Chemical Examiner or Assistant Chemical Examiner to Government" the words "a Chemical Examiner to Government" shall be substituted.

Amendment of section 510.

New section to follow section 541.

10. After section 541 of the same Code the following shall be inserted, namely:—

"541A. *(1)* If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

"*(2)* When a person is removed to a criminal jail under sub-section *(1)*, he shall, on being released therefrom, be sent back to the civil jail, unless either—

"(*a*) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure; or

XIV of 1882.

"(*b*) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure."

XIV of 1882.

11. In Schedule II of the same Code, between the two lines of entries against section 211 of the Indian Penal Code the following shall be inserted, namely:—

Correction of omission in Schedule II.

XLV of 1860.

Column 2.	Column 3.	Column 4.	Column 5.	Column 6.	Column 7.	Column 8.
"If offence charged be punishable with imprisonment for seven years.	Ditto	Ditto	Ditto	Ditto	*Imprisonment* of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class."

12. In the part of Schedule III of the same Code entitled "IV, Ordinary Powers of a Sub-divisional Magistrate," the following shall be inserted after the second article, namely:—

Correction of omission in Schedule III.

"*(24)* Power to require security for good behaviour, section 110."

Bombay District Police Act, 1867.

13. The last nine words of section 23 of the Bombay District Police Act, 1867, are hereby repealed.

Amendment of Bombay District Police Act.

Bom. VII of 1867.

Indian Penal Code.

14. *(1)* For section 225A of the Indian Penal Code, the following shall be substituted, namely:—

Substitution of new section for section 225A of the Indian Penal Code, and repeal of section 651 of the Code of Civil Procedure.

XLV of 1860.

"225A. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

Resistance or obstruction to lawful apprehension in cases not otherwise provided for.

(2) Section 651 of the Code of Civil Procedure is hereby repealed.

XIV of 1882.

Prisoners' Act, 1871.

15. For section 30 of the Prisoners' Act, 1871, the following shall be substituted, namely:—

Substitution of new section for section 30 of the Prisoners' Act.

V of 1871.

"30. When any person is, or has been, sentenced to imprisonment by any Court, or, in default of giving security for keeping the peace or maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, the Local Government, or (subject to its orders and under its control) the Inspector General of Jails, may order his removal during the period for which he has been sentenced to imprisonment or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment within the territories subject to the same Local Government."

Removal from one jail to another in territories under Local Government.

X of 1882.

16. After the second paragraph of section 31 of the same Act the following shall be inserted, namely:—

Addition to section 31.

"In any case in which the Local Government is competent under this section to order the removal of a prisoner to a lunatic asylum or other fit place of safe custody within the territories subject to its administration, the Governor General in Council may order his removal to any lunatic asylum or other fit place of safe custody in any part of British India, and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed by order of the Local Government shall, so far as they can be made applicable, apply to a prisoner removed by order of the Governor-General in Council."

17. For section 32 of the same Act the following shall be substituted, namely:—

Substitution of new section for section 32.

"32. When any person is, or has been, sentenced to imprisonment by any Court, or, in default of giving security for maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, the Governor-General in Council may order his removal during the period for which he has been sentenced to imprisonment or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment in British India."

Removal of prisoners from territories under one Local Government to territories under another.

X of 1882.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to correct certain minor defects in the criminal law which have been brought to the notice of the Government of India during the three years which have elapsed since the Code of Criminal Procedure, 1882, was passed.

The following are the reasons for each of the proposed amendments.

Section 1.—An Assistant Sessions Judge may pass a substantive sentence of transportation for any term not exceeding seven years under section 121A or section 124A of the Indian Penal Code, or a substituted sentence of transportation for a term not less than seven years under section 59 of that Code. But only sentences of imprisonment for a term exceeding three years are declared subject to confirmation by the Sessions Judge. The omission to require that certain sentences of transportation as well as of imprisonment should be subject to confirmation was clearly an oversight. It is now proposed to correct the omission, and, in accordance with the opinion of the Hon'ble the Chief Justice and Judges of the Bombay High Court, to extend to four years the term of transportation or imprisonment which an Assistant Sessions Judge may award without the sentence being subject to confirmation. Under section 35 of the Code a first class Magistrate can pass an aggregate sentence of imprisonment for four years which is subject only to appeal.

Section 2.—A District Magistrate specially empowered under section 30 may, under the provisions of section 59 of the Indian Penal Code, pass a sentence of transportation for seven years, instead of awarding sentence of imprisonment (9 Sutherland's Weekly Reporter, Criminal Rulings, 6). Such a substituted sentence of transportation should be subject to confirmation by the Sessions Judge.

As section 34 now stands, an aggregate sentence of imprisonment for four years passed by a District Magistrate specially empowered under section 30 is subject to the confirmation of the Sessions Judge, while such a sentence passed by one of his subordinates exercising the powers of a first class Magistrate is subject only to appeal. It seems desirable, therefore, as recommended by the Bombay High Court in the case of Assistant Sessions Judges, to extend to four years the term of imprisonment which a District Magistrate may award under section 34 without the sentence being subject to confirmation.

The difference between the powers of the Assistant Sessions Judge and those of a Magistrate specially empowered under section 30 being thus very trifling, it has been thought best to put the latter on precisely the same footing as the former, and section 34 has accordingly been re-cast.

Section 3.—This section is intended to correct an oversight in the drafting of section 88. Section 10 of the Code confines the term "District Magistrate" to the Magistrate of a district outside a Presidency-town.

Sections 4 and 12.—The object of these sections is to make it clearer than section 110 and Schedule III now do that Sub-divisional Magistrates have power, without being specially empowered by the Local Government in that behalf, to require security for good behaviour from habitual offenders.

Section 5.—This section will restore the practice that obtained while the Code of 1872 was in force. Under that Code police-reports under section 125 were submitted through the superior officer of police appointed under section 117, but those under section 127 were submitted direct to the Magistrate.

Section 6.—This section will remove a doubt which has been expressed as to whether High Courts other than those referred to in section 266 can make rules under the Code regarding the manner in which jurors shall be chosen by lot.

Section 7.—It would seem that the only sort of condition on which suspension or remission of sentence may now be granted under section 401 is a potestative condition, that is to say, a condition to be performed by the convict and dependent on his will. This limitation may prove inconvenient, and sometimes prevent the release of convicts who might otherwise be set at large.

Section 8.—The object of this section is to give the Governor-General in Council the same powers in regard to the removal of persons confined under Chapter XXXIV of the Code as he possesses under section 32 of the Prisoners' Act, 1871, in the case of persons under sentence of imprisonment. It is desirable that, by whatever Local Government criminal lunatics may have been ordered to be confined, they should be confined wherever the most suitable accommodation has been provided for the custody of such persons.

Section 9.—This section is suggested by I. L. R. 10 Cal. 1026. The effect of it will be that a Local Government may appoint as many Chemical Examiners as it thinks fit. All must be gazetted as "Chemical Examiners" and must sign as such; but they can, for departmental purposes, be graded or distinguished from one another in such manner as the Local Government desires.

Section 10.—The power of a Criminal Court to order the transfer from the civil jail to the criminal jail of a civil prisoner against whom a criminal charge is made having been questioned in the Bombay Presidency, the Local Government asked the High Court whether that Court could make a rule conferring the power. In reply the Hon'ble the Chief Justice and Judges stated that they were very doubtful whether they had authority to make any valid rule on the subject, and advised that, if the conferment of the power was deemed necessary, recourse should be had to legislation.

It appears to the Government of Bombay and to the Government of India that the power should be conferred, and the object of this section is to confer it.

At the same time, in order that the rights given to decree-holders by the existing law may not be interfered with, it has been provided that the prisoner shall ordinarily be sent back to the civil jail when his detention under the orders of the Criminal Court has ceased.

Section 11.—Under the Code of 1872 the offence, under section 211 of the Indian Penal Code, of making a false charge of an offence with intent to injure, was triable by the Court of Session exclusively when the offence charged was punishable with imprisonment for seven years or upwards. While the Bill which became the Code of 1882 was under consideration, the Select Committee determined, on the suggestion of a Sessions Judge, that Magistrates of the first class should be empowered to deal with cases under section 211 when the offence charged was punishable with imprisonment for seven years, cases where the offence charged was punishable with imprisonment for a term exceeding seven years continuing to be exclusively triable by the Court of Session. The entry in the second column of Schedule II, in the second line of entries against section 211, was altered accordingly; but the additional entries which it is proposed by section 11 of this Bill to insert in Schedule II will make still clearer the alteration which the Select Committee intended to effect.

Section 13.—The last nine words of section 24, Act V of 1861, were repealed by Schedule I of the Code of 1882. Through an oversight the same words in section 23, Bombay Act VII of 1867, remained unrepealed and are still in force (I. L. R. 8 Bombay 534). It is now proposed to repeal them.

Section 14.—It is proposed by this section to substitute for section 225A of the Indian Penal Code a section that will cover not only the case there provided for, but the cases which section 651 of the Code of Civil Procedure was intended to meet, and others, such as those referred to in I. L. R. 8 Cal. 331 and 7 All. 67, for which no provision has hitherto been made.

Section 15.—The exigencies of prison administration occasionally necessitate the transfer from one jail to another within the same province of persons who have been imprisoned in default of giving security for keeping the peace or maintaining good behaviour.

Section 30 of the Prisoners' Act only provides for the transfer of persons *sentenced* to imprisonment. "Sentence" seems to imply an antecedent conviction for an offence, and persons who are imprisoned for default in furnishing security are not persons who have been so convicted.

Section 16.—The object of this section, as of section 8, is to empower the Governor-General in Council to send prisoners of unsound mind to the part of India where persons in their condition are likely to be best cared for.

Section 17.—It occasionally happens that members of criminal tribes, while on marauding expeditions in other provinces than that in which they have their homes, are arrested, ordered to give security for good behaviour, and imprisoned in default of giving it. In such cases it seems proper that the prisoners should ordinarily be sent back to the district from which they came, instead of being released in a district which may be hundreds of miles distant from their homes and where dishonesty might be their only possible means of subsistence.

The 13th July, 1885.

C. P. ILBERT.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, AUGUST 1, 1885.

☞ 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 22nd July, 1885, and was referred to a Select Committee :—

No. 13 of 1885.

A Bill to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871.

X of 1882. Bom. VII of 1867. XLV of 1860. V of 1871.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871; It is hereby enacted as follows :—

Code of Criminal Procedure, 1882.

1. In the last paragraph of section 31 of the Code of Criminal Procedure, 1882, for the words "any sentence of imprisonment for a term exceeding three years" the words "any sentence of transportation or imprisonment for a term exceeding four years" shall be substituted.

Amendment of section 31 of the Code of Criminal Procedure.

X of 1882.

2. For section 34 of the same Code the following shall be substituted, namely :—

Substitution of new section for section 34.

"34. The Court of a District Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of transportation or imprisonment for a term exceeding four years shall be subject to confirmation by the Sessions Judge."

3. In section 88 of the same Code, after the words "District Magistrate" the words "or Chief Presidency Magistrate" shall be inserted.

Amendment of section 88.

4. In section 110 of the same Code, for the words "Sub-divisional Magistrate or Magistrate of the first class" the words "or Sub-divisional Magistrate or a Magistrate of the first class" shall be substituted.

Amendment of section 110.

5. In section 173 of the same Code, the following shall be substituted for the second paragraph, namely :—

Amendment of section 173.

"Where a superior officer of Police has been appointed under section 158, the report shall, if the accused has been released on his bond under section 169, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation."

6. In section 266 of the same Code, for the word and figures "section 307" the words and figures "sections 276 and 307" shall be substituted.

Amendment of section 266.

7. *(1)* For the third paragraph of section 401 of the same Code the following shall be substituted, namely :—

Amendment of section 401.

"If any condition on which a sentence has been suspended or remitted by the Governor-General in Council or the Local Government is not fulfilled, the Governor-General in Council or the Local Government, as the case may be, may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any Police-officer without warrant and remanded to undergo the unexpired portion of the sentence."

(2) After the third paragraph of the same section the following shall be inserted, namely:—

"The condition on which a sentence is suspended or remitted under this section may be one to be performed by the person in whose favour the sentence is suspended or remitted, or one independent of his will."

New section to follow section 175.

8. After section 475 of the same Code the following shall be inserted, namely:—

"475A. The Governor-General in Council may direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail or other place of safe custody, shall be removed from the place where he is confined to any lunatic asylum, jail or other place of safe custody in British India."

Power of Governor-General in Council to order removal of criminal lunatics from one province to another.

9. In section 510 of the same Code, for the words "the Chemical Examiner or Assistant Chemical Examiner to Government" the words "a Chemical Examiner to Government" shall be substituted.

Amendment of section 510.

New section to follow section 541.

10. After section 541 of the same Code the following shall be inserted, namely:—

"541A. (1) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

"(2) Wher a person is removed to a criminal jail under sub-section (1), he shall, on being released therefrom, be sent back to the civil jail, unless either—

"(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure; or

XIV of 1882.

"(b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure."

XIV of 1882.

11. In Schedule II of the same Code, between the two lines of entries against section 211 of the Indian Penal Code the following shall be inserted, namely:—

Correction of omission in Schedule II.

XLV of 1860.

Column 2.	Column 3.	Column 4.	Column 5.	Column 6.	Column 7.	Column 8.
"If offence charged be punishable with imprisonment for seven years.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class."

12. In the part of Schedule III of the same Code entitled "IV, Ordinary Powers of a Sub-divisional Magistrate," the following shall be inserted after the second article, namely:—

Correction of omission in Schedule III.

"(2A) Power to require security for good behaviour, section 110."

Bombay District Police Act, 1867.

13. The last nine words of section 23 of the Bombay District Police Act, 1867, are hereby repealed.

Amendment of Bombay District Police Act.

Bom. V of 1867.

Indian Penal Code.

14. (1) For section 225A of the Indian Penal Code, the following shall be substituted, namely:—

Substitution of new section for section 225A of the Indian Penal Code, and repeal of section 651 of the Code of Civil Procedure.

XLV of 1860.

"225A. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

Resistance or obstruction to lawful apprehension in cases not otherwise provided for.

(2) Section 651 of the Code of Civil Procedure is hereby repealed.

XIV of 1882.

Prisoners' Act, 1871.

15. For section 30 of the Prisoners' Act, 1871, the following shall be substituted, namely:—

Substitution of new section for section 30 of the Prisoners' Act.

V of 1871.

"30. When any person is, or has been, sentenced to imprisonment by any Court, or, in default of giving security for keeping the peace or maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, the Local Government, or (subject to its orders and under its control) the Inspector General of Jails, may order his removal during the period for which he has been sentenced to imprisonment or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment within the territories subject to the same Local Government."

Removal from one jail to another in territories under Local Government.

X of 1882.

16. After the second paragraph of section 31 of the same Act the following shall be inserted, namely:—

Addition to section 31.

"In any case in which the Local Government is competent under this section to order the removal of a prisoner to a lunatic asylum or other fit place of safe custody within the territories subject to its administration, the Governor General in Council may order his removal to any lunatic asylum or other fit place of safe custody in any part of British India, and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed by order of the Local Government shall, so far as they can be made applicable, apply to a prisoner removed by order of the Governor-General in Council."

17. For section 32 of the same Act the following shall be substituted, namely:—

Substitution of new section for section 32.

"32. When any person is, or has been, sentenced to imprisonment, by any Court, or, in default of giving security for maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, the Governor-General in Council may order his removal during the period for which he has been sentenced to imprisonment or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment in British India."

Removal of prisoners from territories under one Local Government to territories under another.

X of 1882.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to correct certain minor defects in the criminal law which have been brought to the notice of the Government of India during the three years which have elapsed since the Code of Criminal Procedure, 1882, was passed.

The following are the reasons for each of the proposed amendments.

Section 1.—An Assistant Sessions Judge may pass a substantive sentence of transportation for any term not exceeding seven years under section 121A or section 124A of the Indian Penal Code, or a substituted sentence of transportation for a term not less than seven years under section 59 of that Code. But only sentences of imprisonment for a term exceeding three years are declared subject to confirmation by the Sessions Judge. The omission to require that certain sentences of transportation as well as of imprisonment should be subject to confirmation was clearly an oversight. It is now proposed to correct the omission, and, in accordance with the opinion of the Hon'ble the Chief Justice and Judges of the Bombay High Court, to extend to four years the term of transportation or imprisonment which an Assistant Sessions Judge may award without the sentence being subject to confirmation. Under section 35 of the Code a first class Magistrate can pass an aggregate sentence of imprisonment for four years which is subject only to appeal.

Section 2.—A District Magistrate specially empowered under section 30 may, under the provisions of section 59 of the Indian Penal Code, pass a sentence of transportation for seven years, instead of awarding sentence of imprisonment (9 Sutherland's Weekly Reporter, Criminal Rulings, 6). Such a substituted sentence of transportation should be subject to confirmation by the Sessions Judge.

As section 34 now stands, an aggregate sentence of imprisonment for four years passed by a District Magistrate specially empowered under section 30 is subject to the confirmation of the Sessions Judge, while such a sentence passed by one of his subordinates exercising the powers of a first class Magistrate is subject only to appeal. It seems desirable, therefore, as recommended by the Bombay High Court in the case of Assistant Sessions Judges, to extend to four years the term of imprisonment which a District Magistrate may award under section 34 without the sentence being subject to confirmation.

The difference between the powers of the Assistant Sessions Judge and those of a Magistrate specially empowered under section 30 being thus very trifling, it has been thought best to put the latter on precisely the same footing as the former, and section 34 has accordingly been re-cast.

Section 3.—This section is intended to correct an oversight in the drafting of section 88. Section 10 of the Code confines the term "District Magistrate" to the Magistrate of a district outside a Presidency town.

Sections 4 and 12.—The object of these sections is to make it clearer than section 110 and Schedule III now do that Sub-divisional Magistrates have power, without being specially empowered by the Local Government in that behalf, to require security for good behaviour from habitual offenders.

Section 5.—This section will restore the practice that obtained while the Code of 1872 was in force. Under that Code police-reports under section 125 were submitted through the superior officer of police appointed under section 117, but those under section 127 were submitted direct to the Magistrate.

Section 6.—This section will remove a doubt which has been expressed as to whether High Courts other than those referred to in section 266 can make rules under the Code regarding the manner in which jurors shall be chosen by lot.

Section 7.—It would seem that the only sort of condition on which suspension or remission of sentence may now be granted under section 401 is a potestative condition, that is to say, a condition to be performed by the convict and dependent on his will. This limitation may prove inconvenient, and sometimes prevent the release of convicts who might otherwise be set at large.

Section 8.—The object of this section is to give the Governor-General in Council the same powers in regard to the removal of persons confined under Chapter XXXIV of the Code as he possesses under section 32 of the Prisoners' Act, 1871, in the case of persons under sentence of imprisonment. It is desirable that, by whatever Local Government criminal lunatics may have been ordered to be confined, they should be confined wherever the most suitable accommodation has been provided for the custody of such persons.

Section 9.—This section is suggested by I. L. R. 10 Cal. 1026. The effect of it will be that a Local Government may appoint as many Chemical Examiners as it thinks fit. All must be gazetted as "Chemical Examiners" and must sign as such, but they can, for departmental purposes, be graded or distinguished from one another in such manner as the Local Government desires.

Section 10.—The power of a Criminal Court to order the transfer from the civil jail to the criminal jail of a civil prisoner against whom a criminal charge is made having been questioned in the Bombay Presidency, the Local Government asked the High Court whether that Court could make a rule conferring the power. In reply the Hon'ble the Chief Justice and Judges stated that they were very doubtful whether they had authority to make any valid rule on the subject, and advised that, if the conferment of the power was deemed necessary, recourse should be had to legislation.

It appears to the Government of Bombay and to the Government of India that the power should be conferred, and the object of this section is to confer it.

At the same time, in order that the rights given to decree-holders by the existing law may not be interfered with, it has been provided that the prisoner shall ordinarily be sent back to the civil jail when his detention under the orders of the Criminal Court has ceased.

Section 11.—Under the Code of 1872 the offence, under section 211 of the Indian Penal Code, of making a false charge of an offence with intent to injure, was triable by the Court of Session exclusively when the offence charged was punishable with imprisonment for seven years or upwards. While the Bill which became the Code of 1882 was under consideration, the Select Committee determined, on the suggestion of a Sessions Judge, that Magistrates of the first class should be empowered to deal with cases under section 211 when the offence charged was punishable with imprisonment for seven years, cases where the offence charged was punishable with imprisonment for a term exceeding seven years continuing to be exclusively triable by the Court of Session. The entry in the second column of Schedule II, in the second line of entries against section 211, was altered accordingly; but the additional entries which it is proposed by section 11 of this Bill to insert in Schedule II will make still clearer the alteration which the Select Committee intended to effect.

Section 13.—The last nine words of section 24, Act V of 1861, were repealed by Schedule I of the Code of 1882. Through an oversight the same words in section 23, Bombay Act VII of 1867, remained unrepealed and are still in force (I. L. R. 8 Bombay 534). It is now proposed to repeal them.

Section 14.—It is proposed by this section to substitute for section 225A of the Indian Penal Code a section that will cover not only the case there provided for, but the cases which section 651 of the Code of Civil Procedure was intended to meet, and others, such as those referred to in I. L. R. 8 Cal. 331 and 7 All. 67, for which no provision has hitherto been made.

Section 15.—The exigencies of prison administration occasionally necessitate the transfer from one jail to another within the same province of persons who have been imprisoned in default of giving security for keeping the peace or maintaining good behaviour.

Section 30 of the Prisoners' Act only provides for the transfer of persons *sentenced* to imprisonment. "Sentence" seems to imply an antecedent conviction for an offence, and persons who are imprisoned for default in furnishing security are not persons who have been so convicted.

Section 16.—The object of this section, as of section 8, is to empower the Governor-General in Council to send prisoners of unsound mind to the part of India where persons in their condition are likely to be best cared for.

Section 17.—It occasionally happens that members of criminal tribes, while on marauding expeditions in other provinces than that in which they have their homes, are arrested, ordered to give security for good behaviour, and imprisoned in default of giving it. In such cases it seems proper that the prisoners should ordinarily be sent back to the district from which they came, instead of being released in a district which may be hundreds of miles distant from their homes and where dishonesty might be their only possible means of subsistence.

The 13th July, 1885.

C. P. ILBERT.

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 29th July, 1885, and was referred to a Select Committee:—

No. 14 OF 1885.

THE CENTRAL PROVINCES CIVIL COURTS BILL, 1885.

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A Bill to amend the Law relating to Civil Courts in the Central Provinces.

WHEREAS it is expedient to amend the law relating to Civil Courts in the Central Provinces; It is hereby enacted as follows:—

Preliminary.

Short title, local extent and commencement.

1. *(1)* This Act may be called the Central Provinces Civil Courts Act, 1885.

(2) It extends to the territories for the time being under the administration of the Chief Commissioner of the Central Provinces; and

The Central Provinces Civil Courts Bill, 1885.—Sections 2-10.

(3) It shall come into force on the first day of January, 1886.

[Act XVIII of 1884, section 1, sub-section (4).] *(4)* Any authority conferred on the Chief Commissioner or on the Judicial Commissioner by this Act to issue orders or make rules may be exercised at any time after the passing of this Act; but an order or rule so issued or made shall not take effect until the Act comes into force.

Repeal.

2. *(1)* On and from the day on which this Act comes into force the Central Provinces Courts Act, 1865, and Act XXVII of 1867, so far as it relates to the Central Provinces, shall be repealed.

XIV of 1865.

[See Act XVIII of 1881, ss. 38-38.] *(2)* Any enactment or document referring to either of the enactments hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof; and all declarations made, powers conferred, limits prescribed, directions given and orders issued under either of those enactments shall, so far as may be, be deemed to have been respectively made, conferred, prescribed, given and issued under this Act.

Definitions.

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

[Act XIV of 1865, section 2.] "Assistant Commissioner" includes Extra Assistant Commissioner; and

[Act XVIII of 1884, section 3, clause (8).] "value," used with reference to a suit, means the amount or value of the subject-matter of the suit.

Classes of Courts.

[Act XIV of 1865, section 4.]

Classes of Courts.

4. Besides the Courts of Small Causes established under Act XI of 1865, and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely:—

(a) the Court of the Judicial Commissioner;

(b) the Court of the Commissioner;

(c) the Court of the Deputy Commissioner;

(d) the Court of the Assistant Commissioner of the first class;

(e) the Court of the Assistant Commissioner of the second class;

(f) the Court of the Assistant Commissioner of the third class;

(g) the Court of the Tahsíldár of the first class;

(h) the Court of the Tahsíldár of the second class.

Court of the Judicial Commissioner.

[Act XVIII of 1884, sections 5 and 6.]

Court of the Judicial Commissioner.

5. The Judicial Commissioner shall be appointed by the Governor-General in Council; and his Court shall be deemed, for the purposes of all enactments for the time being in force, to be the highest Civil Court of appeal in the territories to which this Act extends.

Courts of Commissioners and Deputy Commissioners.

[Act XIV of 1865, section 3.]

Courts of Commissioners and Deputy Commissioners.

6. *(1)* The local limits of the jurisdiction of the Court of the Commissioner shall be those of the division of the revenue-administration of which he is in charge.

(2) The local limits of the jurisdiction of the Court of the Deputy Commissioner shall be those of the district of the revenue-administration of which he is in charge.

[Act XVIII of 1884, section 22.]

Original jurisdiction of Courts of Commissioners and Deputy Commissioners in suits.

7. Except as otherwise provided by any enactment for the time being in force, the Court of the Commissioner and the Court of the Deputy Commissioner shall be competent to try original civil suits without limit as regards the value.

[Act XIV of 1865, section 3, and Act XVIII of 1884, section 23.]

Court of Deputy Commissioner to be principal Civil Court of original jurisdiction.

8. Except as otherwise provided by any enactment for the time being in force, the Deputy Commissioner shall be deemed to be the District Judge of the district, and his Court to be the District Court or principal Civil Court of original jurisdiction in the district.

Other Courts.

[Act XIV of 1865, section 5.]

Chief Commissioner may declare class to which the Court of an Assistant Commissioner or Tahsíldár shall belong.

9. The Chief Commissioner may, by order in writing, declare, as regards any Assistant Commissioner, that his Court shall be that of an Assistant Commissioner of the first or of the second or of the third class, and, as regards any Tahsíldár, that his Court shall be that of a Tahsíldár of the first or of the second class.

[Act XIV of 1865, sections 7-11.]

Pecuniary and local limits of the jurisdiction of Courts of Assistant Commissioners and Tahsíldárs.

10. *(1)* Courts of Assistant Commissioners and Tahsíldárs shall be competent to try original civil suits of which the value does not exceed that specified against each Court in the following table:—

Courts.	Value.
Court of the Assistant Commissioner of the first class	Five thousand rupees.
Court of the Assistant Commissioner of the second class	One thousand rupees.
Court of the Assistant Commissioner of the third class	Five hundred rupees.
Court of the Tahsíldár of the first class	Three hundred rupees.
Court of the Tahsíldár of the second class	One hundred rupees.

Provided that the Chief Commissioner may, by order in writing, limit the classes of original civil suits which the Courts of Tahsíldárs of the first or of the second class shall be competent to try.

(2) The local limits of the jurisdiction of the Courts mentioned in this section shall be such as the Chief Commissioner may, by order in writing, define.

The Central Provinces Civil Courts Bill, 1885.—Sections 11-17.

Náib-tahsíldárs.

[Act XIV of 1865, section 6.]

Conferment of jurisdiction in certain suits on Náib-tahsíldárs.

11. The Chief Commissioner may, by order in writing, invest, within such local limits as he thinks fit, any Náib-tahsíldár with jurisdiction to try suits of the nature cognizable in a Court of Small Causes established under Act XI of 1865, up to such value, not exceeding fifty rupees, as he thinks fit.

Judicial Assistants to Commissioners, Civil Judges and Munsifs.

[New.]

Power to invest certain persons, under the names of Judicial Assistant to Commissioner, Civil Judge and Munsif, with certain powers.

12. *(1)* The Chief Commissioner may, by order in writing, invest any person—

(a) with all or any of the powers of the Court of the Commissioner under this Act;

(b) with all or any of the powers of the Court of the Deputy Commissioner under this Act; or

(c) with all or any of the powers of the Court of a Tahsíldár of the first or of the second class under this Act;

and declare that the powers with which any person is so invested shall be exercised within any specified local area, and with respect to any particular class, or particular classes, of cases, or with respect to cases generally.

(2) Persons invested with powers under sub-section *(1)*, shall be designated as follows:—

if invested under clause *(a)*—Judicial Assistant to the Commissioner;

if invested under clause *(b)*—Civil Judge;

if invested under clause *(c)*—Munsif.

(3) The Courts of such persons shall, for all purposes connected with the exercise of the said powers, be deemed to be, respectively, Courts of Commissioners, Courts of Deputy Commissioners and Courts of Tahsíldárs.

(4) The Chief Commissioner may, by order in writing, direct how business shall be distributed between the Commissioner and the Judicial Assistant to the Commissioner, and between the Deputy Commissioner and the Civil Judge.

Small Cause Court Jurisdiction.

[Act XVIII of 1884, section 30.]

Power to confer Small Cause Court jurisdiction.

13. The Chief Commissioner may, by order in writing, confer, within such local limits as he thinks fit, upon any Court of an Assistant Commissioner of the first or of the second class the jurisdiction of a Judge of a Court of Small Causes under Act XI of 1865 for the trial of suits cognizable by such Courts up to such value as he thinks fit, not exceeding, if the Court is that of an Assistant Commissioner of the first class, five hundred rupees, or, if the Court is that of an Assistant Commissioner of the second class, one hundred rupees.

Administrative Control.

[Act XVIII of 1884, section

Superintendence and control of subordinate Courts by Courts of Judicial Commissioner, Commissioner and Deputy Commissioner.

14. *(1)* The general superintendence and control over all other Civil Courts shall be vested in, and all such Courts shall be subordinate to, the Court of the Judicial Commissioner.

(2) Subject to the general superintendence and control of the Court of the Judicial Commissioner, the control of all other Civil Courts in a division shall be vested in, and all such Courts shall be subordinate to, the Court of the Commissioner. [Act XVIII of 1884, section 33, sub-section (1).]

(3) Subject as aforesaid and to the control of Court of the Commissioner, the control of all other Civil Courts in a district shall be vested in, and all such Courts shall be subordinate to, the Court of the Deputy Commissioner: [Act XVIII of 1884, section 33, sub-section (2).]

Provided that the Chief Commissioner, by order in writing, may direct that any Judicial Assistant to the Commissioner or Civil Judge shall not be subject to the control of, or subordinate to, the Court of the Commissioner or the Court of the Deputy Commissioner, as the case may be, and may further direct that such officer shall be subject to the control of, and subordinate to, such other Court as the Chief Commissioner thinks fit. [New.]

[Act XVIII of 1884, section 34.]

Power of Court of Commissioner to transfer business.

15. *(1)* The Court of the Commissioner may exercise, as regards the Courts under its control, the same powers of withdrawal, trial and transfer as are conferred by section 25 of the Code of Civil Procedure on a District Court. XIV of 1882.

(2) The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of the suit, be deemed to be a Court of Small Causes.

[Act XVIII of 1884, section 35.] XIV of 1882.

Power to distribute business.

16. Notwithstanding anything contained in the Code of Civil Procedure, the Court of the Commissioner and the Court of the Deputy Commissioner may, by order in writing, direct that any civil business cognizable by it and the Courts under its control shall be distributed among those Courts in such manner as it thinks fit:

Provided that no direction given under this section shall empower any Court to exercise any powers or deal with any business beyond the limits of its proper jurisdiction.

Appellate Jurisdiction.

[Partly new, cf. Act XIV of 1865, sections 12, 13 and 14, & Act XVIII of 1884, section 39.]

Appeals to whom to lie.

17. *(1)* Appeals from decrees passed in original civil suits by Courts subordinate to the Court of the Deputy Commissioner shall, when such appeals are allowed by law and the value of the suit does not exceed one thousand rupees, lie to that Court.

(2) Appeals from decrees passed in original civil suits of value exceeding one thousand rupees by the Court of an Assistant Commissioner of the first class, or by a Civil Judge who is subordinate to the Court of the Deputy Commissioner, and from decrees passed in original civil suits of any value by the Court of a Deputy Commissioner, or by a Civil Judge who is not subordinate to that Court, or by a Judicial Assistant to the Commissioner who is subordinate to the Court of the Commissioner, shall, when such appeals are allowed by law, lie to the Court of the Commissioner.

(3) Appeals from decrees passed in original civil suits by the Court of the Commissioner or by a Judicial Assistant to the Commissioner who is not subordinate to the Court of the Commissioner, and from appellate decrees passed

by Civil Courts subordinate to the Court of the Judicial Commissioner, shall, when such appeals are allowed by law, lie to the Court of the Judicial Commissioner.

[Act XIV of 1865, section 15, and Act XVIII of 1884, section 48.]

Period of limitation for appeals.

18. *(1)* The period of limitation for an appeal to the Court of the Commissioners shall be sixty days.

(2) In the computation of that period and in all other respects the limitation of appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

XIV of 1877.

Rules.

[Act XVIII of 1884, section 14.]

Power to make rules.

19. *(1)* The Judicial Commissioner may make rules consistent with this Act and any other enactment for the time being in force—

(a) declaring what persons shall be permitted to practise as petition-writers in Civil Courts, and regulating the conduct of persons so practising;

(b) prescribing forms for seals to be used by those Courts;

(c) regulating the procedure in cases where any person is entitled to inspect a record of any Civil Court or obtain a copy of the same, and prescribing the fees payable by such persons for searches and copies;

(d) conferring and imposing on the ministerial officers of Civil Courts such powers and duties of a non-judicial or quasi-judicial nature as he thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed;

(e) prescribing forms for such books, entries, statistics and accounts as he thinks necessary to be kept, made or compiled in those Courts or submitted to any authority;

(f) providing for the inspection of those Courts, and the supervision of the working thereof; and

(g) regulating all such matters as he may think fit, with a view to promoting the efficiency of the judicial and ministerial officers of those Courts and maintaining proper discipline among those officers.

(2) A rule made under this section shall not take effect until it has been sanctioned by the Chief Commissioner and published in the official Gazette.

(3) Whoever breaks any rule made under clause *(a)* shall be punished with fine which may extend to fifty rupees.

[New. cf. Act XVIII of 1884, section 37, and Act VI of 1871, section 38.]

(4) Rules made under clause *(g)* may provide, among other matters, for fines, to an amount not exceeding one month's salary, being imposed on ministerial officers for misconduct or neglect in the performance of their duties, and for the recovery of fines so imposed by deduction of the amount thereof from any salary that may be or become due to the officers fined.

Supplemental Provisions.

20. *(1)* The Judicial Commissioner shall keep such registers, books and accounts as may be necessary for the transaction of the business of his Court, and shall submit to the Chief Commissioner such of those registers, books and accounts, and such statements of the work done in his Court, as may be required by the Chief Commissioner.

[Act XVIII of 1884, section 15.]

Books and accounts, and statements and returns, to be kept and furnished by Judicial Commissioner.

(2) The Judicial Commissioner shall also comply, in such form and manner as the Chief Commissioner may deem proper, with such requisitions as may be made by the Chief Commissioner for records of, or papers belonging to, the Court of the Judicial Commissioner or any Civil Court subordinate thereto, or for certified copies of, or extracts from, such records or papers, or for returns, statements or reports.

21. *(1)* The Chief Commissioner may, by order in writing, fix the place or places at which any Civil Court shall be held.

[Act XVIII of 1884, section 66.]

Place of sitting of Courts.

(2) The place or places so fixed may be beyond the local limits of the jurisdiction of the Court.

(3) Except as may be otherwise provided by any order under this section, a Civil Court may be held at any place within the local limits of its jurisdiction.

22. The Chief Commissioner may, when he is empowered by this Act to confer any powers, confer them on any person specially by name or by virtue of his office.

[Act XVIII of 1884, section 64.]

Mode of conferring powers.

23. *(1)* Subject to the approval of the Chief Commissioner, the Judicial Commissioner shall prepare a list of days to be observed in each year as holidays in his Court and the Civil Courts subordinate thereto.

[Act XVIII of 1884, section 67.]

Vacations.

(2) The list shall be published in the official Gazette.

24. *(1)* All cases or proceedings pending in the Court of the Judicial Commissioner on the day when this Act comes into force shall be disposed of as if this Act had not been passed.

[Act XVIII of 1884, section 68.]

Pending proceedings.

(2) All cases or proceedings pending in any Civil Court subordinate to the Court of the Judicial Commissioner on that day shall be disposed of as if this Act had not been passed:

Provided that the Judicial Commissioner may direct that any such cases or proceedings shall be transferred for disposal to any Court established under this Act which would have had jurisdiction if it had been in existence when the cases or proceedings were instituted.

(3) In the case of an appeal pending on the said day, the following shall, for the purposes of sub-section *(2)*, be deemed to be the Court which would have had jurisdiction as aforesaid, namely:—

(a) when the value of the suit does not exceed one thousand rupees and the decree or order has been passed by a Court of a class lower than that of the Deputy Commissioner—the Court of the Deputy Commissioner;

(b) in other cases when the decree or order has been passed by a Court of a class lower than that of the Commissioner—the Court of the Commissioner.

[Act XVIII of 1884, section 69.]

Appeals after Act comes into force against decrees and orders passed before.

25. Appeals from decrees and orders passed by Civil Courts and not appealed against before the date on which this Act comes into force shall lie and be disposed of as if this Act had not been passed and not otherwise:

Provided that the Courts to which such appeals shall lie shall be as follows:—

(a) when the appeal would before the said date have lain to the Court of the Judicial Commissioner—that Court;

(b) when the appeal is from a decree or order passed by a Court of a class lower than that of the Deputy Commissioner in an original civil suit of which the value does not exceed one thousand rupees—the Court of the Deputy Commissioner;

(c) in other cases when the decree or order has been passed by a Court of a class lower than that of the Commissioner—the Court of the Commissioner.

[cf. Act XVIII of 1884, section 65.]

Powers exerciseable from time to time.

26. All powers conferred by this Act may be exercised from time to time as occasion requires.

Publication of certain orders.

27. All orders required by this Act to be issued by the Chief Commissioner in writing shall be published in the official Gazette.

STATEMENT OF OBJECTS AND REASONS.

THE principal object of this Bill is to enable the Chief Commissioner of the Central Provinces to relieve some of the Commissioners, Deputy Commissioners and Tahsíldárs of the civil business with which they are now so over-burdened as to have insufficient time to devote to their executive duties. At present, a Commissioner has power to try original civil suits withdrawn from Courts subordinate to him, and is required to hear all appeals from decrees and orders passed in original civil suits by Assistant Commissioners of the first class and by Deputy Commissioners. It is proposed to relieve Commissioners by making appeals from decrees and orders passed by Assistant Commissioners of the first class in original civil suits of value not exceeding one thousand rupees lie to the Deputy Commissioner, and by empowering the Chief Commissioner to invest persons, under the name of Judicial Assistants to Commissioners, with all or any of the powers of the Court of a Commissioner.

A Deputy Commissioner may, like a Commissioner, try original civil suits withdrawn from Courts subordinate to him, and is required to try all original civil suits of value exceeding one thousand rupees if there is no Assistant Commissioner of higher class than the second in the district, and exceeding five thousand rupees if there is in the district an Assistant Commissioner of the first class, and to hear appeals from decrees and orders of Náib-tahsíldárs, Tahsíldárs and Assistant Commissioners of the first and second classes. It is proposed to relieve Deputy Commissioners by empowering the Chief Commissioner to invest persons, under the name of Civil Judges, with all or any of the powers of the Court of a Deputy Commissioner.

Similarly, Tahsíldárs are to be relieved by the appointment of Munsifs, who may be invested with all or any of their powers.

Judicial Assistants to Commissioners, Civil Judges and Munsifs will only be appointed when, and for so long as, their services are absolutely needed, and nothing like a uniform or final arrangement is to be attempted throughout the whole of the Provinces, the circumstances of which vary not only from district to district, but from tahsíl to tahsíl.

This scheme, which was proposed by Mr. Crosthwaite, the Chief Commissioner, has been approved by the Government of India. It proceeds on the principle that all suits should be tried and appeals heard in the lowest Court of competent jurisdiction, and it paves the way to the gradual removal of civil judicial business from the magisterial and executive authorities as the need for the removal arises.

As, in order to give effect to the scheme, it was necessary to amend the Central Provinces Courts Act, 1865, and that Act contained provisions which later legislation had rendered obsolete, and was in many respects defective, it was decided, with the concurrence of the Chief Commissioner, to consolidate the law relating to Civil Courts in the Central Provinces, and to incorporate in it not only the provisions necessary to give effect to Mr. Crosthwaite's scheme, but also certain portions of the Punjab Courts Act of last year.

This Bill has been prepared in accordance with that decision.

Those portions of the Bill which give effect to Mr. Crosthwaite's scheme for relieving Revenue-officers, where necessary, of the whole or part of their civil judicial business have already been sufficiently explained.

As to the proviso to section 10, sub-section *(1)*, it may be remarked that certain classes of suits are at present excepted by executive order from the jurisdiction of Tahsíldárs.

The other portions of the Bill which find no place in Act XIV of 1865 have for the most part been taken from Act XVIII of 1884.

The 27th July, 1885.

C. P. ILBERT.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, AUGUST 8, 1885.

☞ 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 22nd July, 1885, and was referred to a Select Committee :—

No. 13 OF 1885.

A Bill to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871.

V of 1867. XLV of 1860. V of 1871.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871; It is hereby enacted as follows :—

Code of Criminal Procedure, 1882.

X of 1882.

1. In the last paragraph of section 31 of the Code of Criminal Procedure, 1882, for the words "any sentence of imprisonment for a term exceeding three years" the words "any sentence of transportation or imprisonment for a term exceeding four years" shall be substituted.

Amendment of section 31 of the Code of Criminal Procedure.

2. For section 34 of the same Code the following shall be substituted, namely :—

Substitution of new section for section 34.

"34. The Court of a District Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of transportation or imprisonment for a term exceeding four years shall be subject to confirmation by the Sessions Judge."

3. In section 88 of the same Code, after the words "District Magistrate" the words "or Chief Presidency Magistrate" shall be inserted.

Amendment of section 88.

4. In section 110 of the same Code, for the words "Sub-divisional Magistrate or Magistrate of the first class" the words "or Sub-divisional Magistrate or a Magistrate of the first class" shall be substituted.

Amendment of section 110.

5. In section 173 of the same Code, the following shall be substituted for the second paragraph, namely :—

Amendment of section 173.

"Where a superior officer of Police has been appointed under section 158, the report shall, if the accused has been released on his bond under section 169, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation."

6. In section 266 of the same Code, for the word and figures "section 307" the words and figures "sections 276 and 307" shall be substituted.

Amendment of section 266.

7. *(1)* For the third paragraph of section 401 of the same Code the following shall be substituted, namely :—

Amendment of section 401.

"If any condition on which a sentence has been suspended or remitted by the Governor-General in Council or the Local Government is not fulfilled, the Governor-General in Council or the Local Government, as the case may be, may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any Police-officer without warrant and remanded to undergo the unexpired portion of the sentence."

(2) After the third paragraph of the same section the following shall be inserted, namely:—

"The condition on which a sentence is suspended or remitted under this section may be one to be performed by the person in whose favour the sentence is suspended or remitted, or one independent of his will."

New section to follow section 475.

8. After section 475 of the same Code the following shall be inserted, namely:—

Power of Governor-General in Council to order removal of criminal lunatics from one province to another.

"475A. The Governor-General in Council may direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail or other place of safe custody, shall be removed from the place where he is confined to any lunatic asylum, jail or other place of safe custody in British India."

Amendment of section 510.

9. In section 510 of the same Code, for the words "the Chemical Examiner or Assistant Chemical Examiner to Government" the words "a Chemical Examiner to Government" shall be substituted.

New section to follow section 541.

10. After section 541 of the same Code the following shall be inserted, namely:—

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

"541A. (1) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

"(2) When a person is removed to a criminal jail under sub-section (1), he shall, on being released therefrom, be sent back to the civil jail, unless either—

"(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure; or

XIV of 1882.

"(b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure."

XIV of 1882.

Correction of omission in Schedule II.

11. In Schedule II of the same Code, between the two lines of entries against section 211 of the Indian Penal Code the following shall be inserted, namely:—

XLV of 1860

Column 2.	Column 3.	Column 4.	Column 5	Column 6.	Column 7.	Column 8.
"If offence charged be punishable with imprisonment for seven years.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class."

Correction of omission in Schedule III.

12. In the part of Schedule III of the same Code entitled "IV, Ordinary Powers of a Sub-divisional Magistrate" the following shall be inserted after the second article, namely:—

"(2A) Power to require security for good behaviour, section 110."

Bombay District Police Act, 1867.

Amendment of Bombay District Police Act.

13. The last nine words of section 23 of the Bombay District Police Act, 1867, are hereby repealed. Bom. VII of 1867.

Indian Penal Code.

Substitution of new section for section 225A of the Indian Penal Code, and repeal of section 651 of the Code of Civil Procedure.

14. (1) For section 225A of the Indian Penal Code, the following shall be substituted, namely:— XLV of 1860.

Resistance or obstruction to lawful apprehension in cases not otherwise provided for.

"225A. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

(2) Section 651 of the Code of Civil Procedure is hereby repealed. XIV of 1882.

Prisoners' Act, 1871.

Substitution of new section for section 30 of the Prisoners' Act.

15. For section 30 of the Prisoners' Act, 1871, the following shall be substituted, namely:— V of 1871.

Removal from one jail to another in territories under Local Government.

"30. When any person is, or has been, sentenced to imprisonment by any Court, or, in default of giving security for keeping the peace or maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, the Local Government, or (subject to its orders and under its control) the Inspector General of Jails, may order his removal during the period for which he has been sentenced to imprisonment or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment within the territories subject to the same Local Government." X of 1882.

Addition to section 31.

16. After the second paragraph of section 31 of the same Act the following shall be inserted, namely:—

"In any case in which the Local Government is competent under this section to order the removal of a prisoner to a lunatic asylum or other fit place of safe custody within the territories subject to its administration, the Governor General in Council may order his removal to any lunatic asylum or other fit place of safe custody in any part of British India, and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed by order of the Local Government shall, so far as they can be made applicable, apply to a prisoner removed by order of the Governor-General in Council."

Substitution of new section for section 32.

17. For section 32 of the same Act the following shall be substituted, namely:—

Removal of prisoners from territories under one Local Government to territories under another.

"32. When any person is, or has been, sentenced to imprisonment by any Court, or, in default of giving security for maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, the Governor-General in Council may order his removal during the period for which he has been sentenced to imprisonment or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment in British India." X of 1882.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to correct certain minor defects in the criminal law which have been brought to the notice of the Government of India during the three years which have elapsed since the Code of Criminal Procedure, 1882, was passed.

The following are the reasons for each of the proposed amendments.

Section 1.—An Assistant Sessions Judge may pass a substantive sentence of transportation for any term not exceeding seven years under section 121A or section 124A of the Indian Penal Code, or a substituted sentence of transportation for a term not less than seven years under section 59 of that Code. But only sentences of imprisonment for a term exceeding three years are declared subject to confirmation by the Sessions Judge. The omission to require that certain sentences of transportation as well as of imprisonment should be subject to confirmation was clearly an oversight. It is now proposed to correct the omission, and, in accordance with the opinion of the Hon'ble the Chief Justice and Judges of the Bombay High Court, to extend to four years the term of transportation or imprisonment which an Assistant Sessions Judge may award without the sentence being subject to confirmation. Under section 35 of the Code a first class Magistrate can pass an aggregate sentence of imprisonment for four years which is subject only to appeal.

Section 2.—A District Magistrate specially empowered under section 30 may, under the provisions of section 59 of the Indian Penal Code, pass a sentence of transportation for seven years, instead of awarding sentence of imprisonment (2 Sutherland's Weekly Reporter, Criminal Rulings, 6). Such a substituted sentence of transportation should be subject to confirmation by the Sessions Judge.

As section 34 now stands, an aggregate sentence of imprisonment for four years passed by a District Magistrate specially empowered under section 30 is subject to the confirmation of the Sessions Judge, while such a sentence passed by one of his subordinates exercising the powers of a first class Magistrate is subject only to appeal. It seems desirable, therefore, as recommended by the Bombay High Court in the case of Assistant Sessions Judges, to extend to four years the term of imprisonment which a District Magistrate may award under section 34 without the sentence being subject to confirmation.

The difference between the powers of the Assistant Sessions Judge and those of a Magistrate specially empowered under section 30 being thus very trifling, it has been thought best to put the latter on precisely the same footing as the former, and section 34 has accordingly been re-cast.

Section 3.—This section is intended to correct an oversight in the drafting of section 88. Section 10 of the Code confines the term "District Magistrate" to the Magistrate of a district outside a Presidency town.

Sections 4 and 12.—The object of these sections is to make it clearer than section 110 and Schedule III now do that Sub-divisional Magistrates have power, without being specially empowered by the Local Government in that behalf, to require security for good behaviour from habitual offenders.

Section 5.—This section will restore the practice that obtained while the Code of 1872 was in force. Under that Code police-reports under section 125 were submitted through the superior officer of police appointed under section 117, but those under section 127 were submitted direct to the Magistrate.

Section 6.—This section will remove a doubt which has been expressed as to whether High Courts other than those referred to in section 266 can make rules under the Code regarding the manner in which jurors shall be chosen by lot.

Section 7.—It would seem that the only sort of condition on which suspension or remission of sentence may now be granted under section 401 is a potestative condition, that is to say, a condition to be performed by the convict and dependent on his will. This limitation may prove inconvenient, and sometimes prevent the release of convicts who might otherwise be set at large.

Section 8.—The object of this section is to give the Governor-General in Council the same powers in regard to the removal of persons confined under Chapter XXXIV of the Code as he possesses under section 32 of the Prisoners' Act, 1871, in the case of persons under sentence of imprisonment. It is desirable that, by whatever Local Government criminal lunatics may have been ordered to be confined, they should be confined wherever the most suitable accommodation has been provided for the custody of such persons.

Section 9.—This section is suggested by I. L. R. 10 Cal. 1025. The effect of it will be that a Local Government may appoint as many Chemical Examiners as it thinks fit. All must be gazetted as "Chemical Examiners" and must sign as such but they can, for departmental purposes, be graded or distinguished from one another in such manner as the Local Government desires.

Section 10.—The power of a Criminal Court to order the transfer from the civil jail to the criminal jail of a civil prisoner against whom a criminal charge is made having been questioned in the Bombay Presidency, the Local Government asked the High Court whether that Court could make a rule conferring the power. In reply the Hon'ble the Chief Justice and Judges stated that they were very doubtful whether they had authority to make any valid rule on the subject, and advised that, if the conferment of the power was deemed necessary, recourse should be had to legislation.

It appears to the Government of Bombay and to the Government of India that the power should be conferred, and the object of this section is to confer it.

At the same time, in order that the rights given to decree-holders by the existing law may not be interfered with, it has been provided that the prisoner shall ordinarily be sent back to the civil jail when his detention under the orders of the Criminal Court has ceased.

Section 11.—Under the Code of 1872 the offence, under section 211 of the Indian Penal Code, of making a false charge of an offence with intent to injure, was triable by the Court of Session exclusively when the offence charged was punishable with imprisonment for seven years or upwards. While the Bill which became the Code of 1882 was under consideration, the Select Committee determined, on the suggestion of a Sessions Judge, that Magistrates of the first class should be empowered to deal with cases under section 211 when the offence charged was punishable with imprisonment for seven years, cases where the offence charged was punishable with imprisonment for a term exceeding seven years continuing to be exclusively triable by the Court of Session. The entry in the second column of Schedule II, in the second line of entries against section 211, was altered accordingly; but the additional entries which it is proposed by section 11 of this Bill to insert in Schedule II will make still clearer the alteration which the Select Committee intended to effect.

Section 13.—The last nine words of section 21, Act V of 1861, were repealed by Schedule I of the Code of 1882. Through an oversight the same words in section 25, Bombay Act VII of 1867, remained unrepealed and are still in force (I. L. R. 8 Bombay 534). It is now proposed to repeal them.

Section 14.—It is proposed by this section to substitute for section 225 A of the Indian Penal Code a section that will cover not only the case there provided for, but the cases which section 651 of the Code of Civil Procedure was intended to meet, and others, such as those referred to in I. L. R. 8 Cal. 331 and 7 All. 67, for which no provision has hitherto been made.

Section 15.—The exigencies of prison administration occasionally necessitate the transfer from one jail to another within the same province of persons who have been imprisoned in default of giving security for keeping the peace or maintaining good behaviour.

Section 30 of the Prisoners' Act only provides for the transfer of persons *sentenced* to imprisonment. "Sentence" seems to imply an antecedent conviction for an offence, and persons who are imprisoned for default in furnishing security are not persons who have been so convicted.

Section 16.—The object of this section, as of section 8, is to empower the Governor-General in Council to send prisoners of unsound mind to the part of India where persons in their condition are likely to be best cared for.

Section 17.—It occasionally happens that members of criminal tribes, while on marauding expeditions in other provinces than that in which they have their homes, are arrested, ordered to give security for good behaviour, and imprisoned in default of giving it. In such cases it seems proper that the prisoners should ordinarily be sent back to the district from which they came, instead of being released in a district which may be hundreds of miles distant from their homes and where dishonesty might be their only possible means of subsistence.

The 13th July, 1885.

C. P. ILBERT.

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 29th July, 1885, and was referred to a Select Committee:—

No. 14 OF 1885.

THE CENTRAL PROVINCES CIVIL COURTS BILL, 1885.

CONTENTS.

SECTIONS.

Preliminary.

1. Short title, local extent and commencement.
2. Repeal.
3. Definitions.

Classes of Courts.

4. Classes of Courts.

Court of the Judicial Commissioner.

5. Court of the Judicial Commissioner.

Courts of Commissioners and Deputy Commissioners.

6. Courts of Commissioners and Deputy Commissioners.
7. Original jurisdiction of Courts of Commissioners and Deputy Commissioners in suits.
8. Court of Deputy Commissioner to be principal Civil Court of original jurisdiction.

Other Courts.

9. Chief Commissioner may declare class to which the Court of an Assistant Commissioner or Tahsíldár shall belong.
10. Pecuniary and local limits of the jurisdiction of Courts of Assistant Commissioners and Tahsíldárs.

Náib-tahsíldárs.

11. Conferment of jurisdiction in certain suits on Náib-tahsíldárs.

SECTIONS.

Judicial Assistants to Commissioners, Civil Judges and Munsifs.

12. Power to invest certain persons, under the names of Judicial Assistant to Commissioner, Civil Judge and Munsif, with certain powers.

Small Cause Court Jurisdiction.

13. Power to confer Small Cause Court jurisdiction.

Administrative Control.

14. Superintendence and control of subordinate Courts by Courts of Judicial Commissioner, Commissioner and Deputy Commissioner.
15. Power of Court of Commissioner to transfer business.
16. Power to distribute business.

Appellate Jurisdiction.

17. Appeals to whom to lie.
18. Period of limitation for appeals.

Rules.

19. Power to make rules.

Supplemental Provisions.

20. Books and accounts, and statements and returns, to be kept and furnished by Judicial Commissioner.
21. Place of sitting of Courts.
22. Mode of conferring powers.
23. Vacations.
24. Pending proceedings.
25. Appeals after Act comes into force against decrees and orders passed before.
26. Powers exerciseable from time to time.
27. Publication of certain orders.

A Bill to amend the Law relating to Civil Courts in the Central Provinces.

WHEREAS it is expedient to amend the law relating to Civil Courts in the Central Provinces; It is hereby enacted as follows:—

Preliminary.

1. *(1)* This Act may be called the Central Provinces Civil Courts Act, 1885.

Short title, local extent and commencement.

(2) It extends to the territories for the time being under the administration of the Chief Commissioner of the Central Provinces; and

(3) It shall come into force on the first day of January, 1886.

[Act XVIII of 1884, section 4(b).]

(4) Any authority conferred on the Chief Commissioner or on the Judicial Commissioner by this Act to issue orders or make rules may be exercised at any time after the passing of this Act; but an order or rule so issued or made shall not take effect until the Act comes into force.

XIV of 1865.

2. *(1)* On and from the day on which this Act comes into force the Central Provinces Courts Act, 1865, and Act XXVII of 1867, so far as it relates to the Central Provinces, shall be repealed.

Repeal.

[See Act XVIII of 1881, ss. 33-38.]

(2) Any enactment or document referring to either of the enactments hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof; and all declarations made, powers conferred, limits prescribed, directions given and orders issued under either of those enactments shall, so far as may be, be deemed to have been respectively made, conferred, prescribed, given and issued under this Act.

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

Definitions.

[Act XIV of 1865, section 3.]

"Assistant Commissioner" includes Extra Assistant Commissioner; and

[Act XVIII of 1884, section 3, clause (8).]

"value," used with reference to a suit, means the amount or value of the subject-matter of the suit.

Classes of Courts.

[Act XIV of 1865, section 4.]

4. Besides the Courts of Small Causes established under Act XI of 1865, and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely:—

Classes of Courts.

(a) the Court of the Judicial Commissioner;

(b) the Court of the Commissioner;

(c) the Court of the Deputy Commissioner;

(d) the Court of the Assistant Commissioner of the first class;

(e) the Court of the Assistant Commissioner of the second class;

(f) the Court of the Assistant Commissioner of the third class;

(g) the Court of the Tahsíldár of the first class;

(h) the Court of the Tahsíldár of the second class.

Court of the Judicial Commissioner.

[Act XVIII of 1884, sections 5 and 6.]

5. The Judicial Commissioner shall be appointed by the Governor-General in Council; and his Court shall be deemed, for the purposes of all enactments for the time being in force, to be the highest Civil Court of appeal in the territories to which this Act extends.

Court of the Judicial Commissioner.

Courts of Commissioners and Deputy Commissioners.

[Act XIV of 1865, section 3.]

6. *(1)* The local limits of the jurisdiction of the Court of the Commissioner shall be those of the division of the revenue-administration of which he is in charge.

Courts of Commissioners and Deputy Commissioners.

(2) The local limits of the jurisdiction of the Court of the Deputy Commissioner shall be those of the district of the revenue-administration of which he is in charge.

[Act XVIII of 1884, section 22]

7. Except as otherwise provided by any enactment for the time being in force, the Court of the Commissioner and the Court of the Deputy Commissioner shall be competent to try original civil suits without limit as regards the value.

Original jurisdiction of Courts of Commissioners and Deputy Commissioners in suits.

[Act XIV of 1865, section 3, and Act XVIII of 1884, section 23.]

8. Except as otherwise provided by any enactment for the time being in force, the Deputy Commissioner shall be deemed to be the District Judge of the district, and his Court to be the District Court or principal Civil Court of original jurisdiction in the district.

Court of Deputy Commissioner to be principal Civil Court of original jurisdiction.

Other Courts.

[Act XIV of 1865, section 5.]

9. The Chief Commissioner may, by order in writing, declare, as regards any Assistant Commissioner, that his Court shall be that of an Assistant Commissioner of the first or of the second or of the third class, and, as regards any Tahsíldár, that his Court shall be that of a Tahsíldár of the first or of the second class.

Chief Commissioner may declare class to which the Court of an Assistant Commissioner or Tahsíldár shall belong.

[Act XIV of 1865, section 7-11.]

10. *(1)* Courts of Assistant Commissioners and Tahsíldárs shall be competent to try original civil suits of which the value does not exceed that specified against each Court in the following table:—

Pecuniary and local limits of the jurisdiction of Courts of Assistant Commissioners and Tahsíldárs.

Courts.	Value.
Court of the Assistant Commissioner of the first class	Five thousand rupees.
Court of the Assistant Commissioner of the second class	One thousand rupees.
Court of the Assistant Commissioner of the third class	Five hundred rupees.
Court of the Tahsíldár of the first class	Three hundred rupees.
Court of the Tahsíldár of the second class	One hundred rupees.

Provided that the Chief Commissioner may, by order in writing, limit the classes of original civil suits which the Courts of Tahsíldárs of the first or of the second class shall be competent to try.

(2) The local limits of the jurisdiction of the Courts mentioned in this section shall be such as the Chief Commissioner may, by order in writing, define.

Náib-tahsíldárs.

[Act XIV of 1865, section 6.]

11. The Chief Commissioner may, by order in writing, invest, within such local limits as he thinks fit, any Náib-tahsíldár with jurisdiction to try suits of the nature cognizable in a Court of Small Causes established under Act XI of 1865, up to such value, not exceeding fifty rupees, as he thinks fit.

Conferment of jurisdiction in certain suits on Náib-tahsíldárs.

Judicial Assistants to Commissioners, Civil Judges and Munsifs.

[New.]

12. *(1)* The Chief Commissioner may, by order in writing, invest any person—

Power to invest certain persons, under the names of Judicial Assistant to Commissioner, Civil Judge and Munsif, with certain powers.

(a) with all or any of the powers of the Court of the Commissioner under this Act;

(b) with all or any of the powers of the Court of the Deputy Commissioner under this Act; or

(c) with all or any of the powers of the Court of a Tahsíldár of the first or of the second class under this Act;

and declare that the powers with which any person is so invested shall be exercised within any specified local area, and with respect to any particular class, or particular classes, of cases, or with respect to cases generally.

(2) Persons invested with powers under sub-section *(1)* shall be designated as follows:—

if invested under clause *(a)*—Judicial Assistant to the Commissioner;

if invested under clause *(b)*—Civil Judge;

if invested under clause *(c)*—Munsif.

(3) The Courts of such persons shall, for all purposes connected with the exercise of the said powers, be deemed to be, respectively, Courts of Commissioners, Courts of Deputy Commissioners and Courts of Tahsíldárs.

(4) The Chief Commissioner may, by order in writing, direct how business shall be distributed between the Commissioner and the Judicial Assistant to the Commissioner, and between the Deputy Commissioner and the Civil Judge.

Small Cause Court Jurisdiction.

[Act XVIII of 1884, section 30.]

13. The Chief Commissioner may, by order in writing, confer, within such local limits as he thinks fit, upon any Court of an Assistant Commissioner of the first or of the second class the jurisdiction of a Judge of a Court of Small Causes under Act XI of 1865 for the trial of suits cognizable by such Courts up to such value as he thinks fit, not exceeding, if the Court is that of an Assistant Commissioner of the first class, five hundred rupees, or, if the Court is that of an Assistant Commissioner of the second class, one hundred rupees.

Power to confer Small Cause Court jurisdiction.

Administrative Control.

[Act XVIII of 1884, section 13.]

14. *(1)* The general superintendence and control over all other Civil Courts shall be vested in, and all such Courts shall be subordinate to, the Judicial Commissioner.

Superintendence and control of subordinate Courts by Courts of Judicial Commissioner, Commissioner and Deputy Commissioner.

[Act XVIII of 1884, section 33, sub-section (1).]

(2) Subject to the general superintendence and control of the Court of the Judicial Commissioner, the control of all other Civil Courts in a division shall be vested in, and all such Courts shall be subordinate to, the Court of the Commissioner.

[Act XVIII of 1884, section 33, sub-section (2).]

(3) Subject as aforesaid and to the control of Court of the Commissioner, the control of all other Civil Courts in a district shall be vested in, and all such Courts shall be subordinate to, the Court of the Deputy Commissioner:

[New.]

Provided that the Chief Commissioner, by order in writing, may direct that any Judicial Assistant to the Commissioner or Civil Judge shall not be subject to the control of, or subordinate to, the Court of the Commissioner or the Court of the Deputy Commissioner, as the case may be, and may further direct that such officer shall be subject to the control of, and subordinate to, such other Court as the Chief Commissioner thinks fit.

[Act XVIII of 1884, section 34.]

15. *(1)* The Court of the Commissioner may exercise, as regards the Courts under its control, the same powers of withdrawal, trial and transfer as are conferred by section 25 of the Code of Civil Procedure on a District Court.

Power of Court of Commissioner to transfer business.

XIV of 1882.

(2) The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of the suit, be deemed to be a Court of Small Causes.

[Act XVIII of 1884, section 35.]

XIV of 1882.

16. Notwithstanding anything contained in the Code of Civil Procedure, the Court of the Commissioner and the Court of the Deputy Commissioner may, by order in writing, direct that any civil business cognizable by it and the Courts under its control shall be distributed among those Courts in such manner as it thinks fit:

Power to distribute business.

Provided that no direction given under this section shall empower any Court to exercise any powers or deal with any business beyond the limits of its proper jurisdiction.

Appellate Jurisdiction.

[Partly new. cf. Act XIV of 1865, sections 12, 13 and 14, & Act XVIII of 1884, section 39.]

17. *(1)* Appeals from decrees passed in original civil suits by Courts subordinate to the Court of the Deputy Commissioner shall, when such appeals are allowed by law and the value of the suit does not exceed one thousand rupees, lie to that Court.

Appeals to whom to lie.

(2) Appeals from decrees passed in original civil suits of value exceeding one thousand rupees by the Court of an Assistant Commissioner of the first class, or by a Civil Judge who is subordinate to the Court of the Deputy Commissioner, and from decrees passed in original civil suits of any value by the Court of a Deputy Commissioner, or by a Civil Judge who is not subordinate to that Court, or by a Judicial Assistant to the Commissioner who is subordinate to the Court of the Commissioner, shall, when such appeals are allowed by law, lie to the Court of the Commissioner.

(3) Appeals from decrees passed in original civil suits by the Court of the Commissioner or by a Judicial Assistant to the Commissioner who is not subordinate to the Court of the Commissioner, and from appellate decrees passed

by Civil Courts subordinate to the Court of the Judicial Commissioner, shall, when such appeals are allowed by law, lie to the Court of the Judicial Commissioner.

[Act XIV of 1865, section 15, and Act XVIII of 1884, section 43.]

Period of limitation for appeals.

18. *(1)* The period of limitation for an appeal to the Court of the Commissioners shall be sixty days.

(2) In the computation of that period and in all other respects the limitation of appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

XIV of 1877.

Rules.

[Act XVIII of 1884, section 14.]

Power to make rules.

19. *(1)* The Judicial Commissioner may make rules consistent with this Act and any other enactment for the time being in force—

(a) declaring what persons shall be permitted to practise as petition-writers in Civil Courts, and regulating the conduct of persons so practising;

(b) prescribing forms for seals to be used by those Courts;

(c) regulating the procedure in cases where any person is entitled to inspect a record of any Civil Court or obtain a copy of the same, and prescribing the fees payable by such persons for searches and copies;

(d) conferring and imposing on the ministerial officers of Civil Courts such powers and duties of a non-judicial or quasi-judicial nature as he thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed;

(e) prescribing forms for such books, entries, statistics and accounts as he thinks necessary to be kept, made or compiled in those Courts or submitted to any authority;

(f) providing for the inspection of those Courts, and the supervision of the working thereof; and

(g) regulating all such matters as he may think fit, with a view to promoting the efficiency of the judicial and ministerial officers of those Courts and maintaining proper discipline among those officers.

(2) A rule made under this section shall not take effect until it has been sanctioned by the Chief Commissioner and published in the official Gazette.

(3) Whoever breaks any rule made under clause *(a)* shall be punished with fine which may extend to fifty rupees.

[New. cf. Act XVIII of 1884, section 37, and Act VI of 1871, section 38.]

(4) Rules made under clause *(g)* may provide, among other matters, for fines, to an amount not exceeding one month's salary, being imposed on ministerial officers for misconduct or neglect in the performance of their duties, and for the recovery of fines so imposed by deduction of the amount thereof from any salary that may be or become due to the officers fined.

Supplemental Provisions.

[Act XVIII of 1884, section 15.]

Books and accounts, and statements and returns, to be kept and furnished by Judicial Commissioner.

20. *(1)* The Judicial Commissioner shall keep such registers, books and accounts as may be necessary for the transaction of the business of his Court, and shall submit to the Chief Commissioner such of those registers, books and accounts, and such statements of the work done in his Court, as may be required by the Chief Commissioner.

(2) The Judicial Commissioner shall also comply, in such form and manner as the Chief Commissioner may deem proper, with such requisitions as may be made by the Chief Commissioner for records of, or papers belonging to, the Court of the Judicial Commissioner or any Civil Court subordinate thereto, or for certified copies of, or extracts from, such records or papers, or for returns, statements or reports.

[Act XVIII of 1884, section 66.]

Place of sitting of Courts.

21. *(1)* The Chief Commissioner may, by order in writing, fix the place or places at which any Civil Court shall be held.

(2) The place or places so fixed may be beyond the local limits of the jurisdiction of the Court.

(3) Except as may be otherwise provided by any order under this section, a Civil Court may be held at any place within the local limits of its jurisdiction.

[Act XVIII of 1884, section 64.]

Mode of conferring powers.

22. The Chief Commissioner may, when he is empowered by this Act to confer any powers, confer them on any person specially by name or by virtue of his office.

[Act XVIII of 1884, section 67.]

Vacations.

23. *(1)* Subject to the approval of the Chief Commissioner, the Judicial Commissioner shall prepare a list of days to be observed in each year as holidays in his Court and the Civil Courts subordinate thereto.

(2) The list shall be published in the official Gazette.

[Act XVIII of 1884, section 68.]

Pending proceedings.

24. *(1)* All cases or proceedings pending in the Court of the Judicial Commissioner on the day when this Act comes into force shall be disposed of as if this Act had not been passed.

(2) All cases or proceedings pending in any Civil Court subordinate to the Court of the Judicial Commissioner on that day shall be disposed of as if this Act had not been passed:

Provided that the Judicial Commissioner may direct that any such cases or proceedings shall be transferred for disposal to any Court established under this Act which would have had jurisdiction if it had been in existence when the cases or proceedings were instituted.

(3) In the case of an appeal pending on the said day, the following shall, for the purposes of sub-section *(2)*, be deemed to be the Court which

would have had jurisdiction as aforesaid, namely:—

(a) when the value of the suit does not exceed one thousand rupees and the decree or order has been passed by a Court of a class lower than that of the Deputy Commissioner—the Court of the Deputy Commissioner;

(b) in other cases when the decree or order has been passed by a Court of a class lower than that of the Commissioner—the Court of the Commissioner.

[Act XVIII of 1884, section 69.]

Appeals after Act comes into force against decrees and orders passed before.

25. Appeals from decrees and orders passed by Civil Courts and not appealed against before the date on which this Act comes into force shall lie and be disposed of as if this Act had not been passed and not otherwise:

Provided that the Courts to which such appeals shall lie shall be as follows:—

(a) when the appeal would before the said date have lain to the Court of the Judicial Commissioner—that Court;

(b) when the appeal is from a decree or order passed by a Court of a class lower than that of the Deputy Commissioner in an original civil suit of which the value does not exceed one thousand rupees—the Court of the Deputy Commissioner;

(c) in other cases when the decree or order has been passed by a Court of a class lower than that of the Commissioner—the Court of the Commissioner.

[cf. Act XVIII of 1884, section 65.]

Powers exercisable from time to time.

26. All powers conferred by this Act may be exercised from time to time as occasion requires.

Publication of certain orders.

27. All orders required by this Act to be issued by the Chief Commissioner in writing shall be published in the official Gazette.

STATEMENT OF OBJECTS AND REASONS.

THE principal object of this Bill is to enable the Chief Commissioner of the Central Provinces to relieve some of the Commissioners, Deputy Commissioners and Tahsíldárs of the civil business with which they are now so over-burdened as to have insufficient time to devote to their executive duties. At present, a Commissioner has power to try original civil suits withdrawn from Courts subordinate to him, and is required to hear all appeals from decrees and orders passed in original civil suits by Assistant Commissioners of the first class and by Deputy Commissioners. It is proposed to relieve Commissioners by making appeals from decrees and orders passed by Assistant Commissioners of the first class in original civil suits of value not exceeding one thousand rupees lie to the Deputy Commissioner, and by empowering the Chief Commissioner to invest persons, under the name of Judicial Assistants to Commissioners, with all or any of the powers of the Court of a Commissioner.

A Deputy Commissioner may, like a Commissioner, try original civil suits withdrawn from Courts subordinate to him, and is required to try all original civil suits of value exceeding one thousand rupees if there is no Assistant Commissioner of higher class than the second in the district, and exceeding five thousand rupees if there is in the district an Assistant Commissioner of the first class, and to hear appeals from decrees and orders of Náib-tahsíldárs, Tahsíldárs and Assistant Commissioners of the first and second classes. It is proposed to relieve Deputy Commissioners by empowering the Chief Commissioner to invest persons, under the name of Civil Judges, with all or any of the powers of the Court of a Deputy Commissioner.

Similarly, Tahsíldárs are to be relieved by the appointment of Munsifs, who may be invested with all or any of their powers.

Judicial Assistants to Commissioners, Civil Judges and Munsifs will only be appointed when, and for so long as, their services are absolutely needed, and nothing like a uniform or final arrangement is to be attempted throughout the whole of the Provinces, the circumstances of which vary not only from district to district, but from tahsíl to tahsíl.

This scheme, which was proposed by Mr. Crosthwaite, the Chief Commissioner, has been approved by the Government of India. It proceeds on the principle that all suits should be tried and appeals heard in the lowest Court of competent jurisdiction, and it paves the way to the gradual removal of civil judicial business from the magisterial and executive authorities as the need for the removal arises.

As, in order to give effect to the scheme, it was necessary to amend the Central Provinces Courts Act, 1865, and that Act contained provisions which later legislation had rendered obsolete, and was in many respects defective, it was decided, with the concurrence of the Chief Commissioner, to consolidate the law relating to Civil Courts in the Central Provinces, and to incorporate in it not only the provisions necessary to give effect to Mr. Crosthwaite's scheme, but also certain portions of the Punjab Courts Act of last year.

This Bill has been prepared in accordance with that decision.

Those portions of the Bill which give effect to Mr. Crosthwaite's scheme for relieving Revenue-officers, where necessary, of the whole or part of their civil judicial business have already been sufficiently explained.

As to the proviso to section 10, sub-section *(1)*, it may be remarked that certain classes of suits are at present excepted by executive order from the jurisdiction of Tahsíldárs.

The other portions of the Bill which find no place in Act XIV of 1865 have for the most part been taken from Act XVIII of 1884.

C. P. ILBERT.

The 27th July, 1885.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, AUGUST 15, 1885.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 29th July, 1885, and was referred to a Select Committee:—

No. 14 OF 1885.

THE CENTRAL PROVINCES CIVIL COURTS BILL, 1885.

CONTENTS.

SECTIONS.

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1. Short title, local extent and commencement.
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4. Classes of Courts.

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6. Courts of Commissioners and Deputy Commissioners.
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8. Court of Deputy Commissioner to be principal Civil Court of original jurisdiction.

Other Courts.

9. Chief Commissioner may declare class to which the Court of an Assistant Commissioner or Tahsíldár shall belong.
10. Pecuniary and local limits of the jurisdiction of Courts of Assistant Commissioners and Tahsíldárs.

Náib-tahsíldárs.

11. Conferment of jurisdiction in certain suits on Náib-tahsíldárs.

SECTIONS.

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15. Power of Court of Commissioner to transfer business.
16. Power to distribute business.

Appellate Jurisdiction.

17. Appeals to whom to lie.
18. Period of limitation for appeals.

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19. Power to make rules.

Supplemental Provisions.

20. Books and accounts, and statements and returns, to be kept and furnished by Judicial Commissioner.
21. Place of sitting of Courts.
22. Mode of conferring powers.
23. Vacations.
24. Pending proceedings.
25. Appeals after Act comes into force against decrees and orders passed before.
26. Powers exerciseable from time to time.
27. Publication of certain orders.

A Bill to amend the Law relating to Civil Courts in the Central Provinces.

WHEREAS it is expedient to amend the law relating to Civil Courts in the Central Provinces; It is hereby enacted as follows:—

Preliminary.

Short title, local extent and commencement.

1. *(1)* This Act may be called the Central Provinces Civil Courts Act, 1885.

(2) It extends to the territories for the time being under the administration of the Chief Commissioner of the Central Provinces; and

The Central Provinces Civil Courts Bill, 1885.—Sections 2-10.

(3) It shall come into force on the first day of January, 1886.

[Act XVIII of 1884, section 1, sub-section (4).]

(4) Any authority conferred on the Chief Commissioner or on the Judicial Commissioner by this Act to issue orders or make rules may be exercised at any time after the passing of this Act; but an order or rule so issued or made shall not take effect until the Act comes into force.

Repeal.

2. *(1)* On and from the day on which this Act comes into force the Central Provinces Courts Act, 1865, and Act XXVII of 1867, so far as it relates to the Central Provinces, shall be repealed.

XIV of 1865.

[See Act XVIII of 1881, ss. 33-38.]

(2) Any enactment or document referring to either of the enactments hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof; and all declarations made, powers conferred, limits prescribed, directions given and orders issued under either of those enactments shall, so far as may be, be deemed to have been respectively made, conferred, prescribed, given and issued under this Act.

Definitions.

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

[Act XIV of 1865, section 3.]

"Assistant Commissioner" includes Extra Assistant Commissioner; and

[Act XVIII of 1884, section 3, clause (8).]

"value," used with reference to a suit, means the amount or value of the subject-matter of the suit.

Classes of Courts.

Classes of Courts.

4. Besides the Courts of Small Causes established under Act XI of 1865, and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely :—

[Act XIV of 1865, section 4.]

(a) the Court of the Judicial Commissioner;

(b) the Court of the Commissioner;

(c) the Court of the Deputy Commissioner;

(d) the Court of the Assistant Commissioner of the first class;

(e) the Court of the Assistant Commissioner of the second class;

(f) the Court of the Assistant Commissioner of the third class;

(g) the Court of the Tahsíldár of the first class;

(h) the Court of the Tahsíldár of the second class.

Court of the Judicial Commissioner.

Court of the Judicial Commissioner.

[Act XVIII of 1884, sections 16.]

5. The Judicial Commissioner shall be appointed by the Governor-General in Council; and his Court shall be deemed, for the purposes of all enactments for the time being in force, to be the highest Civil Court of appeal in the territories to which this Act extends.

Courts of Commissioners and Deputy Commissioners.

Courts of Commissioners and Deputy Commissioners.

[Act XIV of 1865, section 6.]

6. *(1)* The local limits of the jurisdiction of the Court of the Commissioner shall be those of the division of the revenue-administration of which he is in charge.

(2) The local limits of the jurisdiction of the Court of the Deputy Commissioner shall be those of the district of the revenue-administration of which he is in charge.

Original jurisdiction of Courts of Commissioners and Deputy Commissioners in suits.

[Act XVIII of 1884, section 22.]

7. Except as otherwise provided by any enactment for the time being in force, the Court of the Commissioner and the Court of the Deputy Commissioner shall be competent to try original civil suits without limit as regards the value.

Court of Deputy Commissioner to be principal Civil Court of original jurisdiction.

[Act XIV of 1865, section 3, and Act XVIII of 1884, section 23.]

8. Except as otherwise provided by any enactment for the time being in force, the Deputy Commissioner shall be deemed to be the District Judge of the district, and his Court to be the District Court or principal Civil Court of original jurisdiction in the district.

Other Courts.

Chief Commissioner may declare class to which the Court of an Assistant Commissioner or Tahsíldár shall belong.

[Act XIV of 1865, section 5.]

9. The Chief Commissioner may, by order in writing, declare, as regards any Assistant Commissioner, that his Court shall be that of an Assistant Commissioner of the first or of the second or of the third class, and, as regards any Tahsíldár, that his Court shall be that of a Tahsíldár of the first or of the second class.

Pecuniary and local limits of the jurisdiction of Courts of Assistant Commissioners and Tahsíldárs.

[Act XIV of 1865, section 7-11.]

10. *(1)* Courts of Assistant Commissioners and Tahsíldárs shall be competent to try original civil suits of which the value does not exceed that specified against each Court in the following table :—

Courts.	Value.
Court of the Assistant Commissioner of the first class	Five thousand rupees.
Court of the Assistant Commissioner of the second class	One thousand rupees.
Court of the Assistant Commissioner of the third class	Five hundred rupees.
Court of the Tahsíldár of the first class	Three hundred rupees.
Court of the Tahsíldár of the second class	One hundred rupees.

Provided that the Chief Commissioner may, by order in writing, limit the classes of original civil suits which the Courts of Tahsíldárs of the first or of the second class shall be competent to try.

(2) The local limits of the jurisdiction of the Courts mentioned in this section shall be such as the Chief Commissioner may, by order in writing, define.

The Central Provinces Civil Courts Bill, 1885.—Sections 11-17.

Náib-tahsíldárs.

[Act XIV of 1865, section 6.]

Conferment of jurisdiction in certain suits on Náib-tahsíldárs.

11. The Chief Commissioner may, by order in writing, invest, within such local limits as he thinks fit, any Náib-tahsíldár with jurisdiction to try suits of the nature cognizable in a Court of Small Causes established under Act XI of 1865, up to such value, not exceeding fifty rupees, as he thinks fit.

Judicial Assistants to Commissioners, Civil Judges and Munsifs.

[New.]

Power to invest certain persons, under the names of Judicial Assistant to Commissioner, Civil Judge and Munsif, with certain powers.

12. *(1)* The Chief Commissioner may, by order in writing, invest any person—

(a) with all or any of the powers of the Court of the Commissioner under this Act;

(b) with all or any of the powers of the Court of the Deputy Commissioner under this Act; or

(c) with all or any of the powers of the Court of a Tahsíldár of the first or of the second class under this Act;

and declare that the powers with which any person is so invested shall be exercised within any specified local area, and with respect to any particular class, or particular classes, of cases, or with respect to cases generally.

(2) Persons invested with powers under sub-section *(1)* shall be designated as follows :—

if invested under clause *(a)*—Judicial Assistant to the Commissioner;

if invested under clause *(b)*—Civil Judge;

if invested under clause *(c)*—Munsif.

(3) The Courts of such persons shall, for all purposes connected with the exercise of the said powers, be deemed to be, respectively, Courts of Commissioners, Courts of Deputy Commissioners and Courts of Tahsíldárs.

(4) The Chief Commissioner may, by order in writing, direct how business shall be distributed between the Commissioner and the Judicial Assistant to the Commissioner, and between the Deputy Commissioner and the Civil Judge.

Small Cause Court Jurisdiction.

[Act XVIII of 1884, section 30.]

Power to confer Small Cause Court jurisdiction.

13. The Chief Commissioner may, by order in writing, confer, within such local limits as he thinks fit, upon any Court of an Assistant Commissioner of the first or of the second class the jurisdiction of a Judge of a Court of Small Causes under Act XI of 1865 for the trial of suits cognizable by such Courts up to such value as he thinks fit, not exceeding, if the Court is that of an Assistant Commissioner of the first class, five hundred rupees, or, if the Court is that of an Assistant Commissioner of the second class, one hundred rupees.

Administrative Control.

[Act XVIII of 1884, section 17.]

Superintendence and control of subordinate Courts by Courts of Judicial Commissioner, Commissioner and Deputy Commissioner.

14. *(1)* The general superintendence and control over all other Civil Courts shall be vested in, and all such Courts shall be subordinate to, the Court of the Judicial Commissioner.

(2) Subject to the general superintendence and control of the Court of the Judicial Commissioner, the control of all other Civil Courts in a division shall be vested in, and all such Courts shall be subordinate to, the Court of the Commissioner.

[Act XVIII of 1884, section 33, sub-section (1).]

(3) Subject as aforesaid and to the control of Court of the Commissioner, the control of all other Civil Courts in a district shall be vested in, and all such Courts shall be subordinate to, the Court of the Deputy Commissioner :

[Act XVIII of 1884, section 33, sub-section (2).]

Provided that the Chief Commissioner, by order in writing, may direct that any Judicial Assistant to the Commissioner or Civil Judge shall not be subject to the control of, or subordinate to, the Court of the Commissioner or the Court of the Deputy Commissioner, as the case may be, and may further direct that such officer shall be subject to the control of, and subordinate to, such other Court as the Chief Commissioner thinks fit.

[New.]

Power of Court of Commissioner to transfer business.

15. *(1)* The Court of the Commissioner may exercise, as regards the Courts under its control, the same powers of withdrawal, trial and transfer as are conferred by section 25 of the Code of Civil Procedure on a District Court.

[Act XVIII of 1884, section 34.]

XIV of 1882.

(2) The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of the suit, be deemed to be a Court of Small Causes.

Power to distribute business.

16. Notwithstanding anything contained in the Code of Civil Procedure, the Court of the Commissioner and the Court of the Deputy Commissioner may, by order in writing, direct that any civil business cognizable by it and the Courts under its control shall be distributed among those Courts in such manner as it thinks fit :

[Act XVIII of 1884, section 35.]

XIV of 1882.

Provided that no direction given under this section shall empower any Court to exercise any powers or deal with any business beyond the limits of its proper jurisdiction.

Appellate Jurisdiction.

Appeals to whom to lie.

17. *(1)* Appeals from decrees passed in original civil suits by Courts subordinate to the Court of the Deputy Commissioner shall, when such appeals are allowed by law and the value of the suit does not exceed one thousand rupees, lie to that Court.

[Partly new, cf. Act XIV of 1865, sections 12, 13 and 14, & Act XVIII of 1884, section 39.]

(2) Appeals from decrees passed in original civil suits of value exceeding one thousand rupees by the Court of an Assistant Commissioner of the first class, or by a Civil Judge who is subordinate to the Court of the Deputy Commissioner, and from decrees passed in original civil suits of any value by the Court of a Deputy Commissioner, or by a Civil Judge who is not subordinate to that Court, or by a Judicial Assistant to the Commissioner who is subordinate to the Court of the Commissioner, shall, when such appeals are allowed by law, lie to the Court of the Commissioner.

(3) Appeals from decrees passed in original civil suits by the Court of the Commissioner or by a Judicial Assistant to the Commissioner who is not subordinate to the Court of the Commissioner, and from appellate decrees passed

by Civil Courts subordinate to the Court of the Judicial Commissioner, shall, when such appeals are allowed by law, lie to the Court of the Judicial Commissioner.

[Act XIV of 1865, section 15, and Act XVIII of 1884, section 43.]

Period of limitation for appeals.

18. *(1)* The period of limitation for an appeal to the Court of the Commissioners shall be sixty days.

(2) In the computation of that period and in all other respects the limitation of appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

XIV of 1877.

Rules.

[Act XVIII of 1884, section 14.]

Power to make rules.

19. *(1)* The Judicial Commissioner may make rules consistent with this Act and any other enactment for the time being in force—

(a) declaring what persons shall be permitted to practise as petition-writers in Civil Courts, and regulating the conduct of persons so practising;

(b) prescribing forms for seals to be used by those Courts;

(c) regulating the procedure in cases where any person is entitled to inspect a record of any Civil Court or obtain a copy of the same, and prescribing the fees payable by such persons for searches and copies;

(d) conferring and imposing on the ministerial officers of Civil Courts such powers and duties of a non-judicial or quasi-judicial nature as he thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed;

(e) prescribing forms for such books, entries, statistics and accounts as he thinks necessary to be kept, made or compiled in those Courts or submitted to any authority;

(f) providing for the inspection of those Courts, and the supervision of the working thereof; and

(g) regulating all such matters as he may think fit, with a view to promoting the efficiency of the judicial and ministerial officers of those Courts and maintaining proper discipline among those officers.

(2) A rule made under this section shall not take effect until it has been sanctioned by the Chief Commissioner and published in the official Gazette.

(3) Whoever breaks any rule made under clause *(a)* shall be punished with fine which may extend to fifty rupees.

[New. cf. Act XVIII of 1884, section 27, and Act VI of 1871, section 38.]

(4) Rules made under clause *(g)* may provide, among other matters, for fines, to an amount not exceeding one month's salary, being imposed on ministerial officers for misconduct or neglect in the performance of their duties, and for the recovery of fines so imposed by deduction of the amount thereof from any salary that may be or become due to the officers fined.

Supplemental Provisions.

[Act XVIII of 1884, section 15.]

Books and accounts, and statements and returns, to be kept and furnished by Judicial Commissioner.

20. *(1)* The Judicial Commissioner shall keep such registers, books and accounts as may be necessary for the transaction of the business of his Court, and shall submit to the Chief Commissioner such of those registers, books and accounts, and such statements of the work done in his Court, as may be required by the Chief Commissioner.

(2) The Judicial Commissioner shall also comply, in such form and manner as the Chief Commissioner may deem proper, with such requisitions as may be made by the Chief Commissioner for records of, or papers belonging to, the Court of the Judicial Commissioner or any Civil Court subordinate thereto, or for certified copies of, or extracts from, such records or papers, or for returns, statements or reports.

[Act XVIII of 1884, section 66.]

Place of sitting of Courts.

21. *(1)* The Chief Commissioner may, by order in writing, fix the place or places at which any Civil Court shall be held.

(2) The place or places so fixed may be beyond the local limits of the jurisdiction of the Court.

(3) Except as may be otherwise provided by any order under this section, a Civil Court may be held at any place within the local limits of its jurisdiction.

[Act XVIII of 1884, section 64.]

Mode of conferring powers.

22. The Chief Commissioner may, when he is empowered by this Act to confer any powers, confer them on any person specially by name or by virtue of his office.

[Act XVIII of 1884, section 67.]

Vacations.

23. *(1)* Subject to the approval of the Chief Commissioner, the Judicial Commissioner shall prepare a list of days to be observed in each year as holidays in his Court and the Civil Courts subordinate thereto.

(2) The list shall be published in the official Gazette.

[Act XVIII of 1884, section 68.]

Pending proceedings.

24. *(1)* All cases or proceedings pending in the Court of the Judicial Commissioner on the day when this Act comes into force shall be disposed of as if this Act had not been passed.

(2) All cases or proceedings pending in any Civil Court subordinate to the Court of the Judicial Commissioner on that day shall be disposed of as if this Act had not been passed:

Provided that the Judicial Commissioner may direct that any such cases or proceedings shall be transferred for disposal to any Court established under this Act which would have had jurisdiction if it had been in existence when the cases or proceedings were instituted.

(3) In the case of an appeal pending on the said day, the following shall, for the purposes of sub-section *(2)*, be deemed to be the Court which

would have had jurisdiction as aforesaid, namely:—

(a) when the value of the suit does not exceed one thousand rupees and the decree or order has been passed by a Court of a class lower than that of the Deputy Commissioner—the Court of the Deputy Commissioner;

(b) in other cases when the decree or order has been passed by a Court of a class lower than that of the Commissioner—the Court of the Commissioner.

[Act XVIII of 1884, section 69.]

Appeals after Act comes into force against decrees and orders passed before.

25. Appeals from decrees and orders passed by Civil Courts and not appealed against before the date on which this Act comes into force shall lie and be disposed of as if this Act had not been passed and not otherwise:

Provided that the Courts to which such appeals shall lie shall be as follows:—

(a) when the appeal would before the said date have lain to the Court of the Judicial Commissioner—that Court;

(b) when the appeal is from a decree or order passed by a Court of a class lower than that of the Deputy Commissioner in an original civil suit of which the value does not exceed one thousand rupees—the Court of the Deputy Commissioner;

(c) in other cases when the decree or order has been passed by a Court of a class lower than that of the Commissioner—the Court of the Commissioner.

[cf. Act XVIII of 1884, section 65.]

Powers exercisable from time to time.

26. All powers conferred by this Act may be exercised from time to time as occasion requires.

Publication of certain orders.

27. All orders required by this Act to be issued by the Chief Commissioner in writing shall be published in the official Gazette.

STATEMENT OF OBJECTS AND REASONS.

THE principal object of this Bill is to enable the Chief Commissioner of the Central Provinces to relieve some of the Commissioners, Deputy Commissioners and Tahsíldárs of the civil business with which they are now so over-burdened as to have insufficient time to devote to their executive duties. At present, a Commissioner has power to try original civil suits withdrawn from Courts subordinate to him, and is required to hear all appeals from decrees and orders passed in original civil suits by Assistant Commissioners of the first class and by Deputy Commissioners. It is proposed to relieve Commissioners by making appeals from decrees and orders passed by Assistant Commissioners of the first class in original civil suits of value not exceeding one thousand rupees lie to the Deputy Commissioner, and by empowering the Chief Commissioner to invest persons, under the name of Judicial Assistants to Commissioners, with all or any of the powers of the Court of a Commissioner.

A Deputy Commissioner may, like a Commissioner, try original civil suits withdrawn from Courts subordinate to him, and is required to try all original civil suits of value exceeding one thousand rupees if there is no Assistant Commissioner of higher class than the second in the district, and exceeding five thousand rupees if there is in the district an Assistant Commissioner of the first class, and to hear appeals from decrees and orders of Náib-tahsíldárs, Tahsíldárs and Assistant Commissioners of the first and second classes. It is proposed to relieve Deputy Commissioners by empowering the Chief Commissioner to invest persons, under the name of Civil Judges, with all or any of the powers of the Court of a Deputy Commissioner.

Similarly, Tahsíldárs are to be relieved by the appointment of Munsifs, who may be invested with all or any of their powers.

Judicial Assistants to Commissioners, Civil Judges and Munsifs will only be appointed when, and for so long as, their services are absolutely needed, and nothing like a uniform or final arrangement is to be attempted throughout the whole of the Provinces, the circumstances of which vary not only from district to district, but from tahsíl to tahsíl.

This scheme, which was proposed by Mr. Crosthwaite, the Chief Commissioner, has been approved by the Government of India. It proceeds on the principle that all suits should be tried and appeals heard in the lowest Court of competent jurisdiction, and it paves the way to the gradual removal of civil judicial business from the magisterial and executive authorities as the need for the removal arises.

As, in order to give effect to the scheme, it was necessary to amend the Central Provinces Courts Act, 1865, and that Act contained provisions which later legislation had rendered obsolete, and was in many respects defective, it was decided, with the concurrence of the Chief Commissioner, to consolidate the law relating to Civil Courts in the Central Provinces, and to incorporate in it not only the provisions necessary to give effect to Mr. Crosthwaite's scheme, but also certain portions of the Punjab Courts Act of last year.

This Bill has been prepared in accordance with that decision.

Those portions of the Bill which give effect to Mr. Crosthwaite's scheme for relieving Revenue-officers, where necessary, of the whole or part of their civil judicial business have already been sufficiently explained.

As to the proviso to section 10, sub-section *(1)*, it may be remarked that certain classes of suits are at present excepted by executive order from the jurisdiction of Tahsíldárs.

The other portions of the Bill which find no place in Act XIV of 1865 have for the most part been taken from Act XVIII of 1884.

C. P. ILBERT.

The 27th July, 1885.

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 12th August, 1885, and was referred to a Select Committee :—

No. 15 OF 1885.

A Bill to amend the Northern India Ferries Act, 1878.

WHEREAS it is expedient to amend the Northern India Ferries Act, 1878; It is hereby enacted as follows :— XVII of 1878.

Substitution of new section for section 8, and amendment of section 15.

1. *(1)* For section 8 the following shall be substituted, namely :—

Letting ferry-tolls.

"8. The Magistrate of the district may, from time to time, let the tolls of any public ferry by public auction for a term not exceeding five years with the approval of the Commissioner, or by public auction, or otherwise than by public auction, for any term with the previous sanction of the Local Government.

"The lessee shall conform to the rules made under this Act for the management and control of such ferry, and may be required by the Magistrate of the district to give such security for his good conduct and for the punctual payment of the rent as such Magistrate thinks fit.

"When the tolls are put up to public auction, the Magistrate of the district, or the officer conducting the auction on his behalf, may, for reasons recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction."

(2) In the third paragraph of section 15, for the word "auction" the word "lease" shall be substituted.

Amendment of section 13, and substitution of new section for section 26.

2. *(1)* For the first paragraph of section 13 the following shall be substituted, namely :—

"Except with the sanction of the Magistrate of the district or of such other officer as the Local Government may, from time to time, appoint in this behalf, by name or in virtue of his office, no person shall establish, maintain or work a ferry to or from any point within a distance of two miles from the limits of a public ferry."

(2) For section 26 the following shall be substituted, namely :—

Penalty for maintaining private ferry within prohibited limits.

"26. Whoever establishes, maintains or works a ferry in contravention of the provisions of section 13 shall be punished with fine which may extend to five hundred rupees, and with a further fine which may extend to one hundred rupees for every day during which the ferry is maintained or worked in contravention of those provisions."

STATEMENT OF OBJECTS AND REASONS.

THE necessity of amending section 13 of the Northern India Ferries Act, 1878, has been brought to the notice of the Government of India by a recent judgment of the High Court for the North-Western Provinces. In the case before the Court the accused persons had established a bridge-of-boats in the immediate neighbourhood of a public ferry. A bridge-of-boats is a "ferry" within the meaning of the Act, but section 13, in its present form, does not prohibit the keeping of a "ferry", but only of a "ferry-boat", within certain limits. While, therefore, the accused would have committed an offence if they had kept a ferry-boat for the purpose of plying for hire, they had committed no offence by establishing a bridge-of-boats and receiving tolls for the use of it. The intention of the legislature was to prohibit the establishment, without proper authority, of private "ferries" in the immediate neighbourhood of public ferries, but through an inadvertence in the drafting of section 13 the word "ferry-boat", which occurred in the corresponding section of Bengal Regulation VI of 1819, was used instead of "ferry". The main object of this Bill is to correct the oversight.

2. Occasion having thus arisen for amending the Act, the opportunity has been taken to provide for the tolls of public ferries being let, with the previous sanction of the Local Government, otherwise than by public auction, and for any term. Contracts between the Government of India and Railway Companies sometimes provide for the establishment of ferries by the Companies, and it occasionally happens that Companies desire to establish the ferries at or near places where public ferries already exist. In such cases there may be insufficient traffic to admit of two ferries being worked remuneratively side by side, and the Local Government may find it convenient to let the public ferry to the Company for a long term of years. The Bengal Legislative Council, it may be observed, has recently, in the Bengal Ferries Act, 1885, omitted the restriction under which the term of a lease was limited to five years. The establishment of steam-ferries may involve heavy expenditure and entitle their promoters to the security afforded by leases for long terms.

The 1st August, 1885.

T. C. HOPE.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, AUGUST 22, 1885.

☞ 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 12th August, 1885, and was referred to a Select Committee :—

No. 15 OF 1885.

A Bill to amend the Northern India Ferries Act, 1878.

WHEREAS it is expedient to amend the North-
XVII of 1878. ern India Ferries Act, 1878; It is hereby enacted as follows :—

Substitution of new section for section 8, and amendment of section 15.

1. *(1)* For section 8 the following shall be substituted, namely :—

Letting ferry-tolls.

"8. The Magistrate of the district may, from time to time, let the tolls of any public ferry by public auction for a term not exceeding five years with the approval of the Commissioner, or by public auction, or otherwise than by public auction, for any term with the previous sanction of the Local Government.

"The lessee shall conform to the rules made under this Act for the management and control of such ferry, and may be required by the Magistrate of the district to give such security for his good conduct and for the punctual payment of the rent as such Magistrate thinks fit.

"When the tolls are put up to public auction, the Magistrate of the district, or the officer conducting the auction on his behalf, may, for reasons recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction."

(2) In the third paragraph of section 15, for the word "auction" the word "lease" shall be substituted.

Amendment of section 13, and substitution of new section for section 26.

2. *(1)* For the first paragraph of section 13 the following shall be substituted, namely :—

"Except with the sanction of the Magistrate of the district or of such other officer as the Local Government may, from time to time, appoint in this behalf, by name or in virtue of his office, no person shall establish, maintain or work a ferry to or from any point within a distance of two miles from the limits of a public ferry."

(2) For section 26 the following shall be substituted, namely :—

Penalty for maintaining private ferry within prohibited limits.

"26. Whoever establishes, maintains or works a ferry in contravention of the provisions of section 13 shall be punished with fine which may extend to five hundred rupees, and with a further fine which may extend to one hundred rupees for every day during which the ferry is maintained or worked in contravention of those provisions."

STATEMENT OF OBJECTS AND REASONS.

THE necessity of amending section 13 of the Northern India Ferries Act, 1878, has been brought to the notice of the Government of India by a recent judgment of the High Court for the North-Western Provinces. In the case before the Court the accused persons had established a bridge-of-boats in the immediate neighbourhood of a public ferry. A bridge-of-boats is a "ferry" within the meaning of the Act, but section 13, in its present form, does not prohibit the keeping of a "ferry", but only of a "ferry-boat", within certain limits.

While, therefore, the accused would have committed an offence if they had kept a ferry-boat for the purpose of plying for hire, they had committed no offence by establishing a bridge-of-boats and receiving tolls for the use of it. The intention of the legislature was to prohibit the establishment, without proper authority, of private "ferries" in the immediate neighbourhood of public ferries, but through an inadvertence in the drafting of section 13 the word "ferry-boat", which occurred in the corresponding section of Bengal Regulation VI of 1819, was used instead of "ferry". The main object of this Bill is to correct the oversight.

2. Occasion having thus arisen for amending the Act, the opportunity has been taken to provide for the tolls of public ferries being let, with the previous sanction of the Local Government, otherwise than by public auction, and for any term. Contracts between the Government of India and Railway Companies sometimes provide for the establishment of ferries by the Companies, and it occasionally happens that Companies desire to establish the ferries at or near places where public ferries already exist. In such cases there may be insufficient traffic to admit of two ferries being worked remuneratively side by side, and the Local Government may find it convenient to let the public ferry to the Company for a long term of years. The Bengal Legislative Council, it may be observed, has recently, in the Bengal Ferries Act, 1885, omitted the restriction under which the term of a lease was limited to five years. The establishment of steam-ferries may involve heavy expenditure and entitle their promoters to the security afforded by leases for long terms.

The 1st August, 1885.

T. C. HOPE.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, AUGUST 29, 1885.

☞ **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 12th August, 1885, and was referred to a Select Committee:—

No. 15 OF 1885.

A Bill to amend the Northern India Ferries Act, 1878.

WHEREAS it is expedient to amend the Northern India Ferries Act, 1878; It is hereby enacted as follows:— XVII of 1878.

Substitution of new section for section 8, and amendment of section 15.

1. *(1)* For section 8 the following shall be substituted, namely:—

Letting ferry-tolls.

"8. The Magistrate of the district may, from time to time, let the tolls of any public ferry by public auction for a term not exceeding five years with the approval of the Commissioner, or by public auction, or otherwise than by public auction, for any term with the previous sanction of the Local Government.

"The lessee shall conform to the rules made under this Act for the management and control of such ferry, and may be required by the Magistrate of the district to give such security for his good conduct and for the punctual payment of the rent as such Magistrate thinks fit.

"When the tolls are put up to public auction, the Magistrate of the district, or the officer conducting the auction on his behalf, may, for reasons recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction."

(2) In the third paragraph of section 15, for the word "auction" the word "lease" shall be substituted.

Amendment of section 13, and substitution of new section for section 26.

2. *(1)* For the first paragraph of section 13 the following shall be substituted, namely:—

"Except with the sanction of the Magistrate of the district or of such other officer as the Local Government may, from time to time, appoint in this behalf, by name or in virtue of his office, no person shall establish, maintain or work a ferry to or from any point within a distance of two miles from the limits of a public ferry."

(2) For section 26 the following shall be substituted, namely:—

Penalty for maintaining private ferry within prohibited limits.

"26. Whoever establishes, maintains or works a ferry in contravention of the provisions of section 13 shall be punished with fine which may extend to five hundred rupees, and with a further fine which may extend to one hundred rupees for every day during which the ferry is maintained or worked in contravention of those provisions."

STATEMENT OF OBJECTS AND REASONS.

THE necessity of amending section 13 of the Northern India Ferries Act, 1878, has been brought to the notice of the Government of India by a recent judgment of the High Court for the North-Western Provinces. In the case before the Court the accused persons had established a bridge-of-boats in the immediate neighbourhood of a public ferry. A bridge-of-boats is a "ferry" within the meaning of the Act, but section 13, in its present form, does not prohibit the keeping of a "ferry", but only of a "ferry-boat", within certain limits.

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2. Occasion having thus arisen for amending the Act, the opportunity has been taken to provide for the tolls of public ferries being let, with the previous sanction of the Local Government, otherwise than by public auction, and for any term. Contracts between the Government of India and Railway Companies sometimes provide for the establishment of ferries by the Companies, and it occasionally happens that Companies desire to establish the ferries at or near places where public ferries already exist. In such cases there may be insufficient traffic to admit of two ferries being worked remuneratively side by side, and the Local Government may find it convenient to let the public ferry to the Company for a long term of years. The Bengal Legislative Council, it may be observed, has recently, in the Bengal Ferries Act, 1885, omitted the restriction under which the term of a lease was limited to five years. The establishment of steam-ferries may involve heavy expenditure and entitle their promoters to the security afforded by leases for long terms.

The 1st August, 1885.

T. C. HOPE.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 17, 1885.

☞ 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 15th October, 1885, and was referred to a Select Committee:—

No. 16 OF 1885.

A Bill to declare and amend the Law relating to the Stone Mahál in the District of Mirzapur in the North-Western Provinces.

WHEREAS it is expedient to declare and amend the law relating to the Stone Mahál in the district of Mirzapur in the North-Western Provinces; It is hereby enacted as follows:—

Preliminary.

1. *(1)* This Act may be called the Mirzapur Stone Mahál Act, 1885; and

Short title and commencement.

(2) It shall come into force on such day as the Local Government, by notification in the official Gazette, appoints.

(3) The power conferred by this Act on the Local Government to make rules may be exercised at any time after the passing of this Act; but a rule so made shall not take effect until the Act comes into force.

2. On and from the day on which this Act comes into force, Bengal Regulation II of 1800, (*a Regulation for laying open to public use the stone-quarries at Chunar, Gházípur* [properly called Ghásipur] *and Mirzapur, in the Province of Benares, subject to a fixed duty*) shall be repealed.

Repeal.

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

Definitions.

(1) "the district" means the whole of the area comprised in the district of Mirzapur as constituted at the time of the passing of this Act, except the lands described in the schedule to this Act:

(2) "Collector" means the Collector of the Mirzapur district and includes an Assistant Collector of the first class empowered by him to perform any of the functions of the Collector under this Act:

(3) "Commissioner" means the Commissioner of the Benares Division:

(4) "Board" means the Board of Revenue of the North-Western Provinces:

(5) "quarry" means to take from the surface as well as to extract from a quarry:

(6) "transport" means to remove from one place to another within the district:

(7) "proprietor" includes an assignee of land-revenue and any person claiming under a proprietor or exercising any of the rights of a proprietor.

Rights of the Government and the Public.

4. The Government is entitled to levy duty on all stone quarried in the district.

Right of the Government to levy duty.

5. No proprietor of any land in any part of the district is entitled to impose any prohibition or restriction, or to demand or receive any sum by way of rent, premium, duty or price, in respect of the opening of a quarry, or the quarrying of stone, in the land, or in respect of the storing of stone at the quarry or the transport of stone over the land, or, save as may be provided by rules made under this Act, to receive from any person any compensation whatever in respect of any of the matters aforesaid.

Prohibition of levy of duty by proprietors.

6. *(1)* Subject to the rules made under this Act, any person is entitled to open a quarry, or quarry stone, in any land in any part of the district, and to store the stone at the quarry, and to transport it over any land.

Right of the public to quarry stone.

(2) A person may, if and so far as the rules made under this Act permit, acquire an exclusive

right to open a quarry, or quarry stone, within certain local limits in any part of the district, and may retain the right so long as those rules permit.

(3) If a dispute as to the right referred to in sub-section *(1)*, to open a quarry, or quarry stone, in any land, or as to the mode of exercising an exclusive right to open a quarry, or quarry stone, within certain local limits, arises between any persons, or if a dispute as to the right to store stone on, or transport stone over, any land arises between the person claiming to store or transport the stone and the proprietor of the land, it shall, on application for that purpose by either of the disputing parties to the Collector, be decided by him.

(4) A Civil Court shall not take cognizance of any such dispute, or in any suit or proceeding whatever make any decree or order whereby any party to the dispute may be bound with respect to the subject-matter thereof either directly or indirectly.

Rules.

Power to make rules.

7. *(1)* The Local Government may, from time to time, make rules consistent with this Act to regulate within the whole or any specified part of the district all or any of the following matters:—

(a) the quarrying of stone, and the places where stone may be quarried;

(b) conflicting claims to exercise the right of opening a quarry or quarrying stone;

(c) the conditions on the fulfilment of which a person is to acquire an exclusive right of opening a quarry, or quarrying stone, within certain local limits, and how that right may cease to exist;

(d) the compensation to be paid for injury caused to crops or arable land by the quarrying, storing or transport of stone, and the authority by which the compensation is to be determined;

(e) the transport of stone;

(f) the storing of stone;

(g) the classification of stones, the rate or rates of duty to be paid in respect of each class of stone to the Government or to a farmer to whom the Government has leased the duties leviable thereon, and the time when, the place where, and the persons by whom, the duty is to be paid;

(h) the exemptions from, or reductions of, duty to be allowed, the conditions to attach to those exemptions or reductions, and the consequences to ensue on the breach of any of those conditions;

(i) the custody and disposal of stone confiscated or seized under this Act; and,

(j) generally, for carrying out the purposes of this Act.

(2) In making a rule under this section the Local Government may direct that a breach of it shall be punishable with fine which may extend to one hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to ten rupees for every day after the first during which the breach continues.

Procedure for making rules.

8. *(1)* The Local Government shall, before making any rules under section 7, publish a draft of the proposed rules for the information of persons interested.

(2) The publication shall be made in such manner as in the opinion of the Local Government is sufficient.

(3) A notice shall be published with the draft specifying a date at or after which the draft will be taken into consideration.

(4) The Local Government shall, before making the rules, receive and consider any objection or suggestion which is made by any person with respect to the draft before the date so specified.

Publication of rules.

9. Every rule made under section 7 shall be published in the official Gazette in English and in such other language or languages as the Local Government directs, and that publication shall be conclusive proof that the rule has been made as required by section 8.

Deferred operation of rules altering duty.

10. If a rule made under section 7, sub-section *(1)*, clause *(g)*, alters the rate of duty to be paid in respect of any class of stone, it shall not have effect till the expiration of one year from the date on which it is published.

Offences.

Penalties for evasion of duty.

11. If any person evades, or attempts to evade, or abets the evasion of, the payment of any duty payable under a rule made under section 7, sub-section *(1)*, clause *(g)*, he shall be punished with fine which may extend to two hundred rupees and twenty times the duty payable on the stone in respect of which the offence was committed; and the Court convicting him may further order the confiscation of the stone.

Burden of proof as to payment of duty.

12. The burden of proving that duty has been paid on stone in respect of which a prosecution for an offence under section 11 has been instituted shall lie on the accused person.

Limitation for prosecutions.

13. A prosecution for an offence under section 11 or against a rule made under section 7 shall not be instituted after the expiration of six months from the commission of the offence.

Saving of prosecutions under other laws.

14. Nothing in this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under section 11 or against a rule made under section 7, or from being liable under that other law to any other or higher punishment or penalty than that provided by section 11 or a rule made under section 7: Provided that a person shall not be punished twice for the same offence.

Arrest, Search and Seizure.

Powers of officers.

15. Any officer whom the Collector, with the previous sanction of the Commissioner, may empower in this behalf, may—

(a) proceed, in respect of an offence under section 11 or against a rule made under section 7 which in his presence a person commits or is accused of committing, in the same manner as a police-officer may proceed, under section 57 of the Code of Criminal Procedure, 1882, in respect of a non-cognizable offence which in his presence a person commits or is accused of committing; and

X of 1882.

(b) seize any stone in respect of which he has reason to believe that an offence under section 11 or against a rule made under section 7 has been committed, and, if the stone is being transported, use, for the removal thereof to the nearest place appointed for the custody of stone seized under this Act, any animals and conveyances used in transporting it.

Search-warrants.

16. *(1)* A Magistrate may issue his warrant for the search, after sunrise and before sunset, of any building, vessel or place in which he has reason to believe that stone in respect of which an offence under section 11 or against a rule made under section 7 has been committed is kept or concealed, and for the seizure of any stone found there.

X of 1882.

(2) The provisions of the Code of Criminal Procedure, 1882, relating to searches under that Code shall, so far as the same are applicable, apply to searches under this section.

Recovery of Duty.

Recovery of duty.

17. An arrear of duty payable to the Government under a rule made under section 7, sub-section *(1)*, clause *(g)*, and an arrear due from a farmer of duties payable on stone, may be recovered from the person primarily liable to pay the same to the Government, or from his surety (if any), as if it were an arrear of land-revenue.

Appeal and Revision.

Appeal and revision.

18. *(1)* Decisions and orders passed by the Collector under this Act or any rule made under this Act shall be appealable to the Commissioner in the manner provided by the law for the time being in force in the district respecting appeals from the orders of the Collector to the Commissioner in matters pertaining to land-revenue.

(2) The Board may revise any decision or order passed by the Collector under this Act or under any rule made under this Act, or by the Commissioner under sub-section *(1)*.

Miscellaneous.

Saving of existing rates of duty.

19. The rates of duty actually levied at the time of the passing of this Act shall continue to be levied until the Act comes into force, and shall then be deemed to have been prescribed by a rule made under section 7, sub-section *(1)*, clause *(g)*.

Exemption of the inhabitants of the hills.

20. *(1)* Notwithstanding anything hereinbefore contained, but subject to any rules which the Local Government may from time to time make to regulate the enjoyment of the privilege hereby conferred, the inhabitants of the tract south of the Vindhya range of hills shall be exempt from the payment of duty on stones quarried by them within the limits of that tract for their own use within those limits.

(2) The Local Government may, from time to time, by notification in the official Gazette, define the limits of the said tract for the purposes of this section.

THE SCHEDULE.

LANDS EXCLUDED FROM THE AREA COMPRISED IN THE DISTRICT OF MIRZAPUR.

[*See section 3, clause (1).*]

Parganá or tappa.	Village.	Remarks.
Kantit	Bakhta ...	These villages were transferred from the Allahabad district in 1840.
	Bargaura Rajman ...	
	Palti ...	
	Surmatwa ...	
	Barha Khurd ...	
	Basaura ...	
	Chak Katra ...	
	Chak Madari ...	
	Dogauli ...	
	Rasauli ...	
	Katahra ...	
	Gunguti ...	
	Hargarh ...	
Upraudh	Nairi Katari ...	These villages were transferred from the Allahabad district in 1861.
	Durjanipur ...	
	Deohat ...	
	Mahuat ...	
	Maheshpur ...	
	Katra Lahorya Dih	
	Bhainsaur ...	
	Mahagarhi ...	

STATEMENT OF OBJECTS AND REASONS.

In January, 1800, Bengal Regulation II of that year was passed for laying open to public use the stone-quarries at Chunar, Ghazipur and Mirzapur, in the Province of Benares, subject to a fixed duty.

2. The preamble to the Regulation runs as follows:—

"The stone-quarries at Chunár, Gházípúr and Mirzápúr, in the Province of Benares, have been hitherto worked for the exclusive use of Government, and either let in farm, under the provisions contained in sections 81 and 82 of Regulation XXII, 1795, or managed (since August, 1797) by an agent, who disposed of the stones, at stated prices, chiefly in the city of Benares.

"With a view to encourage the excavation of the quarries, and bring a greater quantity of stones to sale for the general convenience of builders and others, a notification was published, under date the 9th April, 1799, that the stone-quarries in the Province of Benares had been laid open for public use, subject to a duty, the rates of which would be subsequently published for general information.

"In pursuance of this notification, and for the purpose of determining the rates of duty upon all stones quarried by individuals subsequent thereto, or which may be hereafter quarried under this Regulation, the following rules have been enacted by the Governor General in Council, to be considered in force, as far as they respect the rates of duty, from the 9th day of April last, and in all other respects from the period of their promulgation in the Province of Benares."

3. At the time when the Regulation was passed one of the principal quarries was at a place which in the records of 1797-1800 is variously called "Cassepoor", "Cassipoor", "Casepore", and "Ghasseepoor". The place is a village in purgana Bhagwat in the Chunar tahsil of the Mirzapur district, and the name assigned to it in Calcutta, where the Regulation was drafted, was "Ghazeepoor," though in the rough draft prepared by the Collector of Benares the word correctly appears as "Ghasseepoor". The error and its origin are noticed here, because the mention in Regulation II of 1800 of the quarries at Ghazipur, though there is no stone of any sort in the Ghazipur district, has often been the subject of comment, and has been cited as an illustration of the ignorance which characterised the local administration after Mr. Duncan's departure from Benares.

4. Much of the Regulation of 1800 is now obsolete, and those portions of it to which operation may still be given are very defective. For instance, the only punishment provided in the case of a person detected in fraudulently removing stone without payment of duty is the confiscation of the stone and of the cattle and carriages used in carrying it. As the owners of the cattle and carriages are for the most part ignorant people, hired by the day, and can often have little or no means of knowing whether or not the stone they are transporting is stone in respect of which an offence has been committed, it would generally be inequitable to confiscate their property. The person who does deserve punishment is the dealer who procures the use of their cattle and carriages for the purpose of effecting the fraud he is committing on the revenue, and for him the confiscation of the stone is a wholly insufficient penalty. Again, if stone removed without payment of duty has been used in the construction of a house or well, there are difficulties in the way of seizing and confiscating it. Thus, the penalties prescribed in the Regulation are apt to fall on the wrong people, and, when they do fall on the right people, to be either wholly inadequate or so harsh as to be practically unimposable.

5. For this reason, and because the Regulation has reference generally to a state of things that no longer exists, a new enactment for regulating the administration of the Stone Mahál has become necessary.

6. As stone is not found beyond the limits of the Mirzapur district in any part of the Province of Benares, it has been considered unnecessary at present to re-enact section 14 of the Regulation, and the Bill extends therefore to so much of the Mirzapur district only as formed part of the Province of Benares in the year 1800.

7. No proprietor is entitled to levy duty in any form on stone quarried in his land. On this subject Mr. Thomason, the Lieutenant-Governor of the North-Western Provinces, wrote as follows in 1846:—

"The zamíndárs have no concern whatever with the quarries. The persons who work the quarries open them, take stone from them and leave them without consulting the zamíndárs."

8. Section 7 of the Bill specifies the matters which the Local Government may regulate by rules. Among those matters are the conflicting claims of persons to exercise the common right of quarrying, and the conditions on which an exclusive right may be acquired to quarry stone within certain local limits. An exclusive right can, by the custom of the district, be acquired to a circular area of which the radius is the distance the opener of a quarry can throw a stone with his left hand. This custom is analogous to that obtaining in Derbyshire, where the first discoverer of a vein of lead-ore is entitled to have assigned to him two meers of ground, and to that obtaining in certain parts of Cornwall, where tinners may bound unappropriated waste to the extent of an acre. So also the free miners of the Forest of Dean are entitled to three gales or allotments for coal or iron mining (1 & 2 Vic., c. 43). The rules will define the period after which the exclusive right to a quarry which has been abandoned will cease to exist. Section 7 provides also for rules being made to regulate exemptions from, and reductions of, duty. The Local Government has exempted His Highness the Mahárájá of Benares from payment of duty on stone quarried for his own use in pargana Kera Mangror, and has reduced the duty on ballast required by the East Indian Railway Company.

9. Section 8 requires the publication of proposed rules before they are made, and section 10 provides that no rule altering a rate of duty shall have effect till the expiration of one year from the date on which the rule was published. Thus, persons interested in the Stone Mahál will have an opportunity of expressing their opinion on the rules which the Local Government from time to time proposes to make under the Act, and contractors will have warning of any adverse change in the rates of duty in time to admit of their shaping their contracts to meet the change.

10. There is little else in the Bill that calls for remark. Section 19 saves for the present the existing rates of duty which, with very slight variations, have been in force for nearly forty years; and section 20 continues to the inhabitants of the hills the privilege conceded to them by the fourth clause of section 82 of Regulation XXII of 1795, and maintained in their favour by section 15 of Regulation II of 1800.

The 12th October, 1885.

C. P. ILBERT.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 24, 1885.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 15th October, 1885, and was referred to a Select Committee:—

No. 16 OF 1885.

A Bill to declare and amend the Law relating to the Stone Mahál in the District of Mirzapur in the North-Western Provinces.

WHEREAS it is expedient to declare and amend the law relating to the Stone Mahál in the district of Mirzapur in the North-Western Provinces; It is hereby enacted as follows:—

Preliminary.

Short title and commencement.

1. *(1)* This Act may be called the Mirzapur Stone Mahál Act, 1885; and

(2) It shall come into force on such day as the Local Government, by notification in the official Gazette, appoints.

(3) The power conferred by this Act on the Local Government to make rules may be exercised at any time after the passing of this Act; but a rule so made shall not take effect until the Act comes into force.

Repeal.

2. On and from the day on which this Act comes into force, Bengal Regulation II of 1800 (*a Regulation for laying open to public use the stone-quarries at Chunar, Gházípur* [properly called Ghásípur] *and Mirzapur, in the Province of Benares, subject to a fixed duty*) shall be repealed.

Definitions.

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

(1) "the district" means the whole of the area comprised in the district of Mirzapur as constituted at the time of the passing of this Act, except the lands described in the schedule to this Act:

(2) "Collector" means the Collector of the Mirzapur district and includes an Assistant Collector of the first class empowered by him to perform any of the functions of the Collector under this Act:

(3) "Commissioner" means the Commissioner of the Benares Division:

(4) "Board" means the Board of Revenue of the North-Western Provinces:

(5) "quarry" means to take from the surface as well as to extract from a quarry:

(6) "transport" means to remove from one place to another within the district:

(7) "proprietor" includes an assignee of land-revenue and any person claiming under a proprietor or exercising any of the rights of a proprietor.

Rights of the Government and the Public.

Right of the Government to levy duty.

4. The Government is entitled to levy duty on all stone quarried in the district.

Prohibition of levy of duty by proprietors.

5. No proprietor of any land in any part of the district is entitled to impose any prohibition or restriction, or to demand or receive any sum by way of rent, premium, duty or price, in respect of the opening of a quarry, or the quarrying of stone, in the land, or in respect of the storing of stone at the quarry or the transport of stone over the land, or, save as may be provided by rules made under this Act, to receive from any person any compensation whatever in respect of any of the matters aforesaid.

Right of the public to quarry stone.

6. *(1)* Subject to the rules made under this Act, any person is entitled to open a quarry, or quarry stone, in any land in any part of the district, and to store the stone at the quarry, and to transport it over any land.

(2) A person may, if and so far as the rules made under this Act permit, acquire an exclusive

right to open a quarry, or quarry stone, within certain local limits in any part of the district, and may retain the right so long as those rules permit.

(3) If a dispute as to the right referred to in sub-section *(1)*, to open a quarry, or quarry stone, in any land, or as to the mode of exercising an exclusive right to open a quarry, or quarry stone, within certain local limits, arises between any persons, or if a dispute as to the right to store stone on, or transport stone over, any land arises between the person claiming to store or transport the stone and the proprietor of the land, it shall, on application for that purpose by either of the disputing parties to the Collector, be decided by him.

(4) A Civil Court shall not take cognizance of any such dispute, or in any suit or proceeding whatever make any decree or order whereby any party to the dispute may be bound with respect to the subject-matter thereof either directly or indirectly.

Rules.

Power to make rules.

7. *(1)* The Local Government may, from time to time, make rules consistent with this Act to regulate within the whole or any specified part of the district all or any of the following matters:—

(a) the quarrying of stone, and the places where stone may be quarried;

(b) conflicting claims to exercise the right of opening a quarry or quarrying stone;

(c) the conditions on the fulfilment of which a person is to acquire an exclusive right of opening a quarry, or quarrying stone, within certain local limits, and how that right may cease to exist;

(d) the compensation to be paid for injury caused to crops or arable land by the quarrying, storing or transport of stone, and the authority by which the compensation is to be determined;

(e) the transport of stone;

(f) the storing of stone;

(g) the classification of stones, the rate or rates of duty to be paid in respect of each class of stone to the Government or to a farmer to whom the Government has leased the duties leviable thereon, and the time when, the place where, and the persons by whom, the duty is to be paid;

(h) the exemptions from, or reductions of, duty to be allowed, the conditions to attach to those exemptions or reductions, and the consequences to ensue on the breach of any of those conditions;

(i) the custody and disposal of stone confiscated or seized under this Act; and,

(j) generally, for carrying out the purposes of this Act.

(2) In making a rule under this section the Local Government may direct that a breach of it shall be punishable with fine which may extend to one hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to ten rupees for every day after the first during which the breach continues.

Procedure for making rules.

8. *(1)* The Local Government shall, before making any rules under section 7, publish a draft of the proposed rules for the information of persons interested.

(2) The publication shall be made in such manner as in the opinion of the Local Government is sufficient.

(3) A notice shall be published with the draft specifying a date at or after which the draft will be taken into consideration.

(4) The Local Government shall, before making the rules, receive and consider any objection or suggestion which is made by any person with respect to the draft before the date so specified.

Publication of rules.

9. Every rule made under section 7 shall be published in the official Gazette in English and in such other language or languages as the Local Government directs, and that publication shall be conclusive proof that the rule has been made as required by section 8.

Deferred operation of rules altering duty.

10. If a rule made under section 7, sub-section *(1)*, clause *(g)*, alters the rate of duty to be paid in respect of any class of stone, it shall not have effect till the expiration of one year from the date on which it is published.

Offences.

Penalties for evasion of duty.

11. If any person evades, or attempts to evade, or abets the evasion of, the payment of any duty payable under a rule made under section 7, sub-section *(1)*, clause *(g)*, he shall be punished with fine which may extend to two hundred rupees and twenty times the duty payable on the stone in respect of which the offence was committed; and the Court convicting him may further order the confiscation of the stone.

Burden of proof as to payment of duty.

12. The burden of proving that duty has been paid on stone in respect of which a prosecution for an offence under section 11 has been instituted shall lie on the accused person.

Limitation for prosecutions.

13. A prosecution for an offence under section 11 or against a rule made under section 7 shall not be instituted after the expiration of six months from the commission of the offence.

Saving of prosecutions under other laws.

14. Nothing in this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under section 11 or against a rule made under section 7, or from being liable under that other law to any other or higher punishment or penalty than that provided by section 11 or a rule made under section 7: Provided that a person shall not be punished twice for the same offence.

Arrest, Search and Seizure.

Powers of officers.

15. Any officer whom the Collector, with the previous sanction of the Commissioner, may empower in this behalf, may—

(a) proceed, in respect of an offence under section 11 or against a rule made under section 7 which in his presence a person commits or is accused of committing, in the same manner as a police-officer may proceed, under section 57 of the Code of Criminal Procedure, 1882, in respect of a non-cognizable offence which in his presence a person commits or is accused of committing; and

X of 1882.

(b) seize any stone in respect of which he has reason to believe that an offence under section 11 or against a rule made under section 7 has been committed, and, if the stone is being transported, use, for the removal thereof to the nearest place appointed for the custody of stone seized under this Act, any animals and conveyances used in transporting it.

Search-warrants.

16. *(1)* A Magistrate may issue his warrant for the search, after sunrise and before sunset, of any building, vessel or place in which he has reason to believe that stone in respect of which an offence under section 11 or against a rule made under section 7 has been committed is kept or concealed, and for the seizure of any stone found there.

(2) The provisions of the Code of Criminal Procedure, 1882, relating to searches under that Code shall, so far as the same are applicable, apply to searches under this section.

X of 1882.

Recovery of Duty.

Recovery of duty.

17. An arrear of duty payable to the Government under a rule made under section 7, sub-section *(1)*, clause *(g)*, and an arrear due from a farmer of duties payable on stone, may be recovered from the person primarily liable to pay the same to the Government, or from his surety (if any), as if it were an arrear of land-revenue.

Appeal and Revision.

Appeal and revision.

18. *(1)* Decisions and orders passed by the Collector under this Act or any rule made under this Act shall be appealable to the Commissioner in the manner provided by the law for the time being in force in the district respecting appeals from the orders of the Collector to the Commissioner in matters pertaining to land-revenue.

(2) The Board may revise any decision or order passed by the Collector under this Act or under any rule made under this Act, or by the Commissioner under sub-section *(1)*.

Miscellaneous.

Saving of existing rates of duty.

19. The rates of duty actually levied at the time of the passing of this Act shall continue to be levied until the Act comes into force, and shall then be deemed to have been prescribed by a rule made under section 7, sub-section *(1)*, clause *(g)*.

Exemption of the inhabitants of the hills.

20. *(1)* Notwithstanding anything hereinbefore contained, but subject to any rules which the Local Government may from time to time make to regulate the enjoyment of the privilege hereby conferred, the inhabitants of the tract south of the Vindhya range of hills shall be exempt from the payment of duty on stones quarried by them within the limits of that tract for their own use within those limits.

(2) The Local Government may, from time to time, by notification in the official Gazette, define the limits of the said tract for the purposes of this section.

THE SCHEDULE.

LANDS EXCLUDED FROM THE AREA COMPRISED IN THE DISTRICT OF MIRZAPUR.

[*See section 3, clause (1).*]

Parganá or tappa.	Village.	Remarks.
Kantit	Bakhta ...	These villages were transferred from the Allahabad district in 1840.
	Bargaura Rajman ...	
	Palti ...	
	Surmatwa ...	
	Barha Khurd ...	
	Basaura ...	
	Chak Katra ...	
	Chak Madari ...	
	Degauli ...	
	Rasauli ...	
	Katahra ...	
	Gunguti ...	
	Hargarh ...	
Upraudh	Nairi Katari ...	These villages were transferred from the Allahabad district in 1861.
	Durjanipur ...	
	Deohat ...	
	Mahuat ...	
	Maheshpur ...	
	Katra Lahorya Dih	
	Bhainsaur ...	
	Mahagarhi ...	

STATEMENT OF OBJECTS AND REASONS.

In January, 1800, Bengal Regulation II of that year was passed for laying open to public use the stone-quarries at Chunar, Ghazipur and Mirzapur, in the Province of Benares, subject to a fixed duty.

2. The preamble to the Regulation runs as follows:—

"The stone-quarries at Chunár, Gházípúr and Mirzápúr, in the Province of Benares, have been hitherto worked for the exclusive use of Government, and either let in farm, under the provisions contained in sections 81 and 82 of Regulation XXII, 1795, or managed (since August, 1797) by an agent, who disposed of the stones, at stated prices, chiefly in the city of Benares.

"With a view to encourage the excavation of the quarries, and bring a greater quantity of stones to sale for the general convenience of builders and others, a notification was published, under date the 9th April, 1799, that the stone-quarries in the Province of Benares had been laid open for public use, subject to a duty, the rates of which would be subsequently published for general information.

"In pursuance of this notification, and for the purpose of determining the rates of duty upon all stones quarried by individuals subsequent thereto, or which may be hereafter quarried under this Regulation, the following rules have been enacted by the Governor General in Council, to be considered in force, as far as they respect the rates of duty, from the 9th day of April last, and in all other respects from the period of their promulgation in the Province of Benares."

3. At the time when the Regulation was passed one of the principal quarries was at a place which in the records of 1797-1800 is variously called "Cassepoor", "Cassipoor", "Caseepore", and "Ghasseepoor". The place is a village in pargana Bhagwat in the Chunar tahsil of the Mirzapur district, and the name assigned to it in Calcutta, where the Regulation was drafted, was "Ghazeepoor," though in the rough draft prepared by the Collector of Benares the word correctly appears as "Ghasseepoor". The error and its origin are noticed here, because the mention in Regulation II of 1800 of the quarries at Ghazipur, though there is no stone of any sort in the Ghazipur district, has often been the subject of comment, and has been cited as an illustration of the ignorance which characterised the local administration after Mr. Duncan's departure from Benares.

4. Much of the Regulation of 1800 is now obsolete, and those portions of it to which operation may still be given are very defective. For instance, the only punishment provided in the case of a person detected in fraudulently removing stone without payment of duty is the confiscation of the stone and of the cattle and carriages used in carrying it. As the owners of the cattle and carriages are for the most part ignorant people, hired by the day, and can often have little or no means of knowing whether or not the stone they are transporting is stone in respect of which an offence has been committed, it would generally be inequitable to confiscate their property. The person who does deserve punishment is the dealer who procures the use of their cattle and carriages for the purpose of effecting the fraud he is committing on the revenue, and for him the confiscation of the stone is a wholly insufficient penalty. Again, if stone removed without payment of duty has been used in the construction of a house or well, there are difficulties in the way of seizing and confiscating it. Thus, the penalties prescribed in the Regulation are apt to fall on the wrong people, and, when they do fall on the right people, to be either wholly inadequate or so harsh as to be practically unimposable.

5. For this reason, and because the Regulation has reference generally to a state of things that no longer exists, a new enactment for regulating the administration of the Stone Mahál has become necessary.

6. As stone is not found beyond the limits of the Mirzapur district in any part of the Province of Benares, it has been considered unnecessary at present to re-enact section 14 of the Regulation, and the Bill extends therefore to so much of the Mirzapur district only as formed part of the Province of Benares in the year 1800.

7. No proprietor is entitled to levy duty in any form on stone quarried in his land. On this subject Mr. Thomason, the Lieutenant-Governor of the North-Western Provinces, wrote as follows in 1846:—

"The zamíndárs have no concern whatever with the quarries. The persons who work the quarries open them, take stone from them and leave them without consulting the zamíndárs."

8. Section 7 of the Bill specifies the matters which the Local Government may regulate by rules. Among those matters are the conflicting claims of persons to exercise the common right of quarrying, and the conditions on which an exclusive right may be acquired to quarry stone within certain local limits. An exclusive right can, by the custom of the district, be acquired to a circular area of which the radius is the distance the opener of a quarry can throw a stone with his left hand. This custom is analogous to that obtaining in Derbyshire, where the first discoverer of a vein of lead-ore is entitled to have assigned to him two meers of ground, and to that obtaining in certain parts of Cornwall, where tinners may bound unappropriated waste to the extent of an acre. So also the free miners of the Forest of Dean are entitled to three gales or allotments for coal or iron mining (1 & 2 Vic., c. 43). The rules will define the period after which the exclusive right to a quarry which has been abandoned will cease to exist. Section 7 provides also for rules being made to regulate exemptions from, and reductions of, duty. The Local Government has exempted His Highness the Mahárájá of Benares from payment of duty on stone quarried for his own use in pargana Kera Mangror, and has reduced the duty on ballast required by the East Indian Railway Company.

9. Section 8 requires the publication of proposed rules before they are made, and section 10 provides that no rule altering a rate of duty shall have effect till the expiration of one year from the date on which the rule was published. Thus, persons interested in the Stone Mahál will have an opportunity of expressing their opinion on the rules which the Local Government from time to time proposes to make under the Act, and contractors will have warning of any adverse change in the rates of duty in time to admit of their shaping their contracts to meet the change.

10. There is little else in the Bill that calls for remark. Section 19 saves for the present the existing rates of duty which, with very slight variations, have been in force for nearly forty years; and section 20 continues to the inhabitants of the hills the privilege conceded to them by the fourth clause of section 82 of Regulation XXII of 1795, and maintained in their favour by section 15 of Regulation II of 1800.

The 12th October, 1885.

C. P. ILBERT.

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 15th October, 1885:—

No. 17 OF 1885.

A Bill rendering it permissive to the members of the Maimon Community to declare themselves subject to Muhammadan Law.

WHEREAS there is in the Presidency of Bombay and elsewhere a community known as the Maimons, and questions have from time to time arisen in the case of some of those persons as to the law by which in certain particulars they are governed, and whereas some of those persons consider that they are governed or desire to be governed in those particulars by the Muhammadan law as established in the Hanafi School;

And whereas it is expedient that a procedure should be provided whereby the applicability of that law to them in those particulars could be placed beyond dispute;

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Maimons Act, 1886.

Declaration to be made by Maimons.

2. *(1)* When any Maimon who has attained his majority has declared in manner next hereinafter provided that he desires to be governed by the Muhammadan law as established in the Hanafi School that law shall thereafter, notwithstanding any custom to the contrary, apply to him in each part of British India in the same particulars and to the same extent as it applies to other persons in that part of British India who are governed by it.

(2) A declaration to take effect under sub-section *(1)* must be made by a written instrument under the hand of the person making the same, in the form given in the schedule to this Act or in a form to the like effect, and must—

(a) if made in a part of British India in which the Indian Registration Act, 1877, is for the time being in force, be registered during his lifetime under that Act; and [Act III of 1877, s. 33.] III of 1877.

(b) if made elsewhere, be executed before, and authenticated by, a notary public or a Court, Judge, Magistrate, British Consul or Vice-Consul or representative of Her Majesty or of the Government of India.

(3) Nothing in this Act shall prevent any person being or becoming subject to any form of Muhammadan law in any other manner than that provided by this Act.

THE SCHEDULE.

FORM OF DECLARATION.

I hereby declare that I wish to be governed to the extent provided by the Maimons Act, 1886, by the Muhammadan law as established in the Hanafi School.

STATEMENT OF OBJECTS AND REASONS.

1. The Maimons, like the Khojás, were originally Hindus, and have been converted to Muhammadanism, but though they are said, as a rule, to be Muhammadans in a fuller sense than the great body of the Khojás, it has been held by the Courts that certain sections of them are in some particulars still governed by Hindu customs instead of by Muhammadan law.

2. From a petition lately received by the Government, it appears that to a large number of the Maimons in question this position is not satisfactory. They hold that they should be governed, or they wish to be governed, by the Muhammadan law of the Hanafi School, and they ask that it may be declared by the legislature that they are so governed.

3. It is not to be expected that any such declaration would be made by the legislature unless it were shown that it was desired by the entire community to which it would apply, and it must be admitted that there is a want of unanimity among them on this subject.

It seems but reasonable, however, that some simple procedure should be provided by which the petitioners and other members of the Maimon class, who may be of their way of thinking, would be enabled to secure the application to themselves of those portions of the Muhammadan law which are applied by our Courts to ordinary Muhammadans, and to avoid all risk of being held to be governed by customs which are distasteful to them, and which it is to be apprehended are far from being well settled.

4. Such a procedure is to be found in the clause which it has been proposed to insert in the Khojá Succession Bill now under consideration, and which provides that a Khojá of full age may by a registered declaration withdraw himself from the peculiar law of succession by which Khojás are to be governed and place himself under the Muhammadan law of succession.

The present Bill has been prepared with a view to providing a similar procedure for Maimons. It is, however, not restricted to the matter of succession, as the difficulty which it is intended to meet is not confined to that branch of the law; and as, from all that has appeared up to this, the Hanafi form of the Muhammadan law is the only one to which Maimons would desire to be subject, it provides for the application to them only of that form of the law.

5. As it is obviously undesirable that any doubt should be thrown on the legal position of Maimons who may be already fully subject to the Muhammadan law, or that it should be suggested that a Maimon could not after the passing of the Bill become fully subject to that law in any way in which he, in common with Hindus and others, might become subject to it at present, a clause has been inserted in the Bill, providing that nothing therein contained shall prevent any person from being or becoming subject to any form of Muhammadan law in any other manner than that provided by the Bill.

AMÍR ALÍ.

The 15th October, 1885.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

[illegible], SATURDAY, OCTOBER 31, 1885.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 15th October, 1885, and was referred to a Select Committee:—

No. 16 OF 1885.

A Bill to declare and amend the Law relating to the Stone Mahál in the District of Mirzapur in the North-Western Provinces.

WHEREAS it is expedient to declare and amend the law relating to the Stone Mahál in the district of Mirzapur in the North-Western Provinces; It is hereby enacted as follows:—

Preliminary.

Short title and commencement.

1. *(1)* This Act may be called the Mirzapur Stone Mahál Act, 1885; and

(2) It shall come into force on such day as the Local Government, by notification in the Official Gazette, appoints.

(3) The power conferred by this Act on the Local Government to make rules may be exercised at any time after the passing of this Act; but a rule so made shall not take effect until the Act comes into force.

Repeal.

2. On and from the day on which this Act comes into force, Bengal Regulation II of 1800 (*a Regulation for laying open to public use the stone-quarries at Chunar, Gházípur* [properly called Ghásípur] *and Mirzapur, in the Province of Benares, subject to a fixed duty*) shall be repealed.

Definitions.

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

(1) "the district" means the whole of the area comprised in the district of Mirzapur as constituted at the time of the passing of this Act, except the lands described in the schedule to this Act:

(2) "Collector" means the Collector of the Mirzapur district and includes an Assistant Collector of the first class empowered by him to perform any of the functions of the Collector under this Act:

(3) "Commissioner" means the Commissioner of the Benares Division:

(4) "Board" means the Board of Revenue of the North-Western Provinces:

(5) "quarry" means to take from the surface as well as to extract from a quarry:

(6) "transport" means to remove from one place to another within the district:

(7) "proprietor" includes an assignee of land-revenue and any person claiming under a proprietor or exercising any of the rights of a proprietor.

Rights of the Government and the Public.

Right of the Government to levy duty.

4. The Government is entitled to levy duty on all stone quarried in the district.

Prohibition of levy of duty by proprietors.

5. No proprietor of any land in any part of the district is entitled to impose any prohibition or restriction, or to demand or receive any sum by way of rent, premium, duty or price, in respect of the opening of a quarry, or the quarrying of stone, in the land, or in respect of the storing of stone at the quarry or the transport of stone over the land, or, save as may be provided by rules made under this Act, to receive from any person any compensation whatever in respect of any of the matters aforesaid.

Right of the public to quarry stone.

6. *(1)* Subject to the rules made under this Act, any person is entitled to open a quarry, or quarry stone, in any land in any part of the district, and to store the stone at the quarry, and to transport it over any land.

(2) A person may, if and so far as the rules made under this Act permit, acquire an exclusive

right to open a quarry, or quarry stone, within certain local limits in any part of the district, and may retain the right so long as those rules permit.

(3) If a dispute as to the right referred to in sub-section *(1)*, to open a quarry, or quarry stone, in any land, or as to the mode of exercising an exclusive right to open a quarry, or quarry stone, within certain local limits, arises between any persons, or if a dispute as to the right to store stone on, or transport stone over, any land arises between the person claiming to store or transport the stone and the proprietor of the land, it shall, on application for that purpose by either of the disputing parties to the Collector, be decided by him.

(4) A Civil Court shall not take cognizance of any such dispute, or in any suit or proceeding whatever make any decree or order whereby any party to the dispute may be bound with respect to the subject-matter thereof either directly or indirectly.

Rules.

Power to make rules.

7. *(1)* The Local Government may, from time to time, make rules consistent with this Act to regulate within the whole or any specified part of the district all or any of the following matters:—

(a) the quarrying of stone, and the places where stone may be quarried;

(b) conflicting claims to exercise the right of opening a quarry or quarrying stone;

(c) the conditions on the fulfilment of which a person is to acquire an exclusive right of opening a quarry, or quarrying stone, within certain local limits, and how that right may cease to exist;

(d) the compensation to be paid for injury caused to crops or arable land by the quarrying, storing or transport of stone, and the authority by which the compensation is to be determined;

(e) the transport of stone;

(f) the storing of stone;

(g) the classification of stones, the rate or rates of duty to be paid in respect of each class of stone to the Government or to a farmer to whom the Government has leased the duties leviable thereon, and the time when, the place where, and the persons by whom, the duty is to be paid;

(h) the exemptions from, or reductions of, duty to be allowed, the conditions to attach to those exemptions or reductions, and the consequences to ensue on the breach of any of those conditions;

(i) the custody and disposal of stone confiscated or seized under this Act; and,

(j) generally, for carrying out the purposes of this Act.

(2) In making a rule under this section the Local Government may direct that a breach of it shall be punishable with fine which may extend to one hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to ten rupees for every day after the first during which the breach continues.

Procedure for making rules.

8. *(1)* The Local Government shall, before making any rules under section 7, publish a draft of the proposed rules for the information of persons interested.

(2) The publication shall be made in such manner as in the opinion of the Local Government is sufficient.

(3) A notice shall be published with the draft specifying a date at or after which the draft will be taken into consideration.

(4) The Local Government shall, before making the rules, receive and consider any objection or suggestion which is made by any person with respect to the draft before the date so specified.

Publication of rules.

9. Every rule made under section 7 shall be published in the official Gazette in English and in such other language or languages as the Local Government directs, and that publication shall be conclusive proof that the rule has been made as required by section 8.

Deferred operation of rules altering duty.

10. If a rule made under section 7, sub-section *(1)*, clause *(g)*, alters the rate of duty to be paid in respect of any class of stone, it shall not have effect till the expiration of one year from the date on which it is published.

Offences.

Penalties for evasion of duty.

11. If any person evades, or attempts to evade, or abets the evasion of, the payment of any duty payable under a rule made under section 7, sub-section *(1)*, clause *(g)*, he shall be punished with fine which may extend to two hundred rupees and twenty times the duty payable on the stone in respect of which the offence was committed; and the Court convicting him may further order the confiscation of the stone.

Burden of proof as to payment of duty.

12. The burden of proving that duty has been paid on stone in respect of which a prosecution for an offence under section 11 has been instituted shall lie on the accused person.

Limitation for prosecutions.

13. A prosecution for an offence under section 11 or against a rule made under section 7 shall not be instituted after the expiration of six months from the commission of the offence.

Saving of prosecutions under other laws.

14. Nothing in this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under section 11 or against a rule made under section 7, or from being liable under that other law to any other or higher punishment or penalty than that provided by section 11 or a rule made under section 7: Provided that a person shall not be punished twice for the same offence.

Arrest, Search and Seizure.

Powers of officers.

15. Any officer whom the Collector, with the previous sanction of the Commissioner, may empower in this behalf, may—

(a) proceed, in respect of an offence under section 11 or against a rule made under section 7 which in his presence a person commits or is accused of committing, in the same manner as a police-officer may proceed, under section 57 of the Code of Criminal Procedure, 1882, in respect of a non-cognizable offence which in his presence a person commits or is accused of committing; and

X of 1882.

(b) seize any stone in respect of which he has reason to believe that an offence under section 11 or against a rule made under section 7 has been committed, and, if the stone is being transported, use, for the removal thereof to the nearest place appointed for the custody of stone seized under this Act, any animals and conveyances used in transporting it.

Search-warrants.

16. *(1)* A Magistrate may issue his warrant for the search, after sunrise and before sunset, of any building, vessel or place in which he has reason to believe that stone in respect of which an offence under section 11 or against a rule made under section 7 has been committed is kept or concealed, and for the seizure of any stone found there.

X of 1882.

(2) The provisions of the Code of Criminal Procedure, 1882, relating to searches under that Code shall, so far as the same are applicable, apply to searches under this section.

Recovery of Duty.

Recovery of duty.

17. An arrear of duty payable to the Government under a rule made under section 7, sub-section *(1)*, clause *(g)*, and an arrear due from a farmer of duties payable on stone, may be recovered from the person primarily liable to pay the same to the Government, or from his surety (if any), as if it were an arrear of land-revenue.

Appeal and Revision.

Appeal and revision.

18. *(1)* Decisions and orders passed by the Collector under this Act or any rule made under this Act shall be appealable to the Commissioner in the manner provided by the law for the time being in force in the district respecting appeals from the orders of the Collector to the Commissioner in matters pertaining to land-revenue.

(2) The Board may revise any decision or order passed by the Collector under this Act or under any rule made under this Act, or by the Commissioner under sub-section *(1)*.

Miscellaneous.

Saving of existing rates of duty.

19. The rates of duty actually levied at the time of the passing of this Act shall continue to be levied until the Act comes into force, and shall then be deemed to have been prescribed by a rule made under section 7, sub-section *(1)*, clause *(g)*.

Exemption of the inhabitants of the hills.

20. *(1)* Notwithstanding anything hereinbefore contained, but subject to any rules which the Local Government may from time to time make to regulate the enjoyment of the privilege hereby conferred, the inhabitants of the tract south of the Vindhya range of hills shall be exempt from the payment of duty on stones quarried by them within the limits of that tract for their own use within those limits.

(2) The Local Government may, from time to time, by notification in the official Gazette, define the limits of the said tract for the purposes of this section.

THE SCHEDULE.

LANDS EXCLUDED FROM THE AREA COMPRISED IN THE DISTRICT OF MIRZAPUR.

[*See section 3, clause (1).*]

Parganá or tappa.	Village.	Remarks.
Kantit	Bakhta ...	These villages were transferred from the Allahabad district in 1840.
	Bargaura Rajman ...	
	Palti ...	
	Surmatwa ...	
	Barha Khurd ...	
	Basaura ...	
	Chak Katra ...	
	Chak Madari ...	
	Dogauli ...	
	Rasauli ...	
	Katahra ...	
	Gunguti ...	
	Hargarh ...	
Upraudh	Nairi Katari ...	These villages were transferred from the Allahabad district in 1861.
	Durjanipur ...	
	Deohat ...	
	Mahuat ...	
	Maheshpur ...	
	Katra Lahorya Dih	
	Bhainsaur ...	
	Mahagarhi ...	

STATEMENT OF OBJECTS AND REASONS.

In January, 1800, Bengal Regulation II of that year was passed for laying open to public use the stone-quarries at Chunar, Ghazipur and Mirzapur, in the Province of Benares, subject to a fixed duty.

2. The preamble to the Regulation runs as follows:—

"The stone-quarries at Chunár, Gházípúr and Mirzápúr, in the Province of Benares, have been hitherto worked for the exclusive use of Government, and either let in farm, under the provisions contained in sections 81 and 82 of Regulation XXII, 1795, or managed (since August, 1797) by an agent, who disposed of the stones, at stated prices, chiefly in the city of Benares.

"With a view to encourage the excavation of the quarries, and bring a greater quantity of stones to sale for the general convenience of builders and others, a notification was published, under date the 9th April, 1799, that the stone-quarries in the Province of Benares had been laid open for public use, subject to a duty, the rates of which would be subsequently published for general information.

"In pursuance of this notification, and for the purpose of determining the rates of duty upon all stones quarried by individuals subsequent thereto, or which may be hereafter quarried under this Regulation, the following rules have been enacted by the Governor General in Council, to be considered in force, as far as they respect the rates of duty, from the 9th day of April last, and in all other respects from the period of their promulgation in the Province of Benares."

3. At the time when the Regulation was passed one of the principal quarries was at a place which in the records of 1797-1800 is variously called "Cassepoor", "Cassipoor", "Caseepore", and "Ghasseepoor". The place is a village in pargana Bhagwat in the Chunar tahsíl of the Mirzapur district, and the name assigned to it in Calcutta, where the Regulation was drafted, was "Ghazeepoor," though in the rough draft prepared by the Collector of Benares the word correctly appears as "Ghasseepoor". The error and its origin are noticed here, because the mention in Regulation II of 1800 of the quarries at Ghazipur, though there is no stone of any sort in the Ghazipur district, has often been the subject of comment, and has been cited as an illustration of the ignorance which characterised the local administration after Mr. Duncan's departure from Benares.

4. Much of the Regulation of 1800 is now obsolete, and those portions of it to which operation may still be given are very defective. For instance, the only punishment provided in the case of a person detected in fraudulently removing stone without payment of duty is the confiscation of the stone and of the cattle and carriages used in carrying it. As the owners of the cattle and carriages are for the most part ignorant people, hired by the day, and can often have little or no means of knowing whether or not the stone they are transporting is stone in respect of which an offence has been committed, it would generally be inequitable to confiscate their property. The person who does deserve punishment is the dealer who procures the use of their cattle and carriages for the purpose of effecting the fraud he is committing on the revenue, and for him the confiscation of the stone is a wholly insufficient penalty. Again, if stone removed without payment of duty has been used in the construction of a house or well, there are difficulties in the way of seizing and confiscating it. Thus, the penalties prescribed in the Regulation are apt to fall on the wrong people, and, when they do fall on the right people, to be either wholly inadequate or so harsh as to be practically unimposable.

5. For this reason, and because the Regulation has reference generally to a state of things that no longer exists, a new enactment for regulating the administration of the Stone Mahál has become necessary.

6. As stone is not found beyond the limits of the Mirzapur district in any part of the Province of Benares, it has been considered unnecessary at present to re-enact section 11 of the Regulation, and the Bill extends therefore to so much of the Mirzapur district only as formed part of the Province of Benares in the year 1800.

7. No proprietor is entitled to levy duty in any form on stone quarried in his land. On this subject Mr. Thomason, the Lieutenant-Governor of the North-Western Provinces, wrote as follows in 1846:—

"The zamíndárs have no concern whatever with the quarries. The persons who work the quarries open them, take stone from them and leave them without consulting the zamíndárs."

8. Section 7 of the Bill specifies the matters which the Local Government may regulate by rules. Among those matters are the conflicting claims of persons to exercise the common right of quarrying, and the conditions on which an exclusive right may be acquired to quarry stone within certain local limits. An exclusive right can, by the custom of the district, be acquired to a circular area of which the radius is the distance the opener of a quarry can throw a stone with his left hand. This custom is analogous to that obtaining in Derbyshire, where the first discoverer of a vein of lead-ore is entitled to have assigned to him two meers of ground, and to that obtaining in certain parts of Cornwall, where tinners may bound unappropriated waste to the extent of an acre. So also the free miners of the Forest of Dean are entitled to three gales or allotments for coal or iron mining (1 & 2 Vic., c. 43). The rules will define the period after which the exclusive right to a quarry which has been abandoned will cease to exist. Section 7 provides also for rules being made to regulate exemptions from, and reductions of, duty. The Local Government has exempted His Highness the Maháráját of Benares from payment of duty on stone quarried for his own use in pargana Kera Mangror, and has reduced the duty on ballast required by the East Indian Railway Company.

9. Section 8 requires the publication of proposed rules before they are made, and section 10 provides that no rule altering a rate of duty shall have effect till the expiration of one year from the date on which the rule was published. Thus, persons interested in the Stone Mahál will have an opportunity of expressing their opinion on the rules which the Local Government from time to time proposes to make under the Act, and contractors will have warning of any adverse change in the rates of duty in time to admit of their shaping their contracts to meet the change.

10. There is little else in the Bill that calls for remark. Section 19 saves for the present the existing rates of duty which, with very slight variations, have been in force for nearly forty years; and section 20 continues to the inhabitants of the hills the privilege conceded to them by the fourth clause of section 82 of Regulation XXII of 1795, and immunities in their favour by section 15 of Regulation II of 1800.

The 12th October, 1885.

C. P. ILBERT.

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 15th October, 1885:—

No. 17 OF 1885.

A Bill rendering it permissive to the members of the Maimon Community to declare themselves subject to Muhammadan Law.

WHEREAS there is in the Presidency of Bombay and elsewhere a class of persons known as Maimons, and questions have from time to time arisen in the case of some of those persons as to the law by which in certain particulars they are governed, and whereas some of those persons consider that they are governed or desire to be governed in those particulars by the Muhammadan law as established in the Hanafi School;

And whereas it is expedient that a procedure should be provided whereby the applicability of that law to them in those particulars could be placed beyond dispute;

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Maimons Act, 1886.

Declaration to be made by Maimons.

2. *(1)* When any Maimon who has attained his majority has declared in manner next hereinafter provided that he desires to be governed by the Muhammadan law as established in the Hanafi School, that law shall thereafter, notwithstanding any custom to the contrary, apply to him in each part of British India in the same particulars and to the same extent as it applies to other persons in that part of British India who are governed by it.

(2) A declaration to take effect under sub-section *(1)* must be made by a written instrument under the hand of the person making the same, in the form given in the schedule to this Act or in a form to the like effect, and must—

(a) if made in a part of British India in which the Indian Registration Act, 1877, is for the time being in force, be registered during his lifetime under that Act; and [Act III of 1877, s. 33.] III of 1877.

(b) if made elsewhere, be executed before, and authenticated by, a notary public or a Court, Judge, Magistrate, British Consul or Vice-Consul or representative of Her Majesty or of the Government of India.

(3) Nothing in this Act shall prevent any person being or becoming subject to any form of Muhammadan law in any other manner than that provided by this Act.

THE SCHEDULE.

FORM OF DECLARATION.

I hereby declare that I wish to be governed to the extent provided by the Maimons Act, 1886, by the Muhammadan law as established in the Hanafi School.

STATEMENT OF OBJECTS AND REASONS.

1. THE Maimons, like the Khojás, were originally Hindus, and have been converted to Muhammadanism, but though they are said, as a rule, to be Muhammadans in a fuller sense than the great body of the Khojás, it has been held by the Courts that certain sections of them are in some particulars still governed by Hindu customs instead of by Muhammadan law.

2. From a petition lately received by the Government, it appears that to a large number of the Maimons in question this position is not satisfactory. They hold that they should be governed, or they wish to be governed, by the Muhammadan law of the Hanafi School, and they ask that it may be declared by the legislature that they are so governed.

3. It is not to be expected that any such declaration would be made by the legislature unless it were shown that it was desired by the entire community to which it would apply, and it must be admitted that there is a want of unanimity among them on this subject.

It seems but reasonable, however, that some simple procedure should be provided by which the petitioners and other members of the Maimon class, who may be of their way of thinking, would be enabled to secure the application to themselves of those portions of the Muhammadan law which are applied by our Courts to ordinary Muhammadans, and to avoid all risk of being held to be governed by customs which are distasteful to them, and which it is to be apprehended are far from being well settled.

4. Such a procedure is to be found in the clause which it has been proposed to insert in the Khojá Succession Bill now under consideration, and which provides that a Khojá of full age may by a registered declaration withdraw himself from the peculiar law of succession by which Khojás are to be governed and place himself under the Muhammadan law of succession.

The present Bill has been prepared with a view to providing a similar procedure for Maimons. It is, however, not restricted to the matter of succession, as the difficulty which it is intended to meet is not confined to that branch of the law; and as, from all that has appeared up to this, the Hanafi form of the Muhammadan law is the only one to which Maimons would desire to be subject, it provides for the application to them only of that form of the law.

5. As it is obviously undesirable that any doubt should be thrown on the legal position of Maimons who may be already fully subject to the Muhammadan law, or that it should be suggested that a Maimon could not after the passing of the Bill become fully subject to that law in any way in which he, in common with Hindus and others, might become subject to it at present, a clause has been inserted in the Bill, providing that nothing therein contained shall prevent any person from being or becoming subject to any form of Muhammadan law in any other manner than that provided by the Bill.

AMÍR ALÍ.

The 15th October, 1885.

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 22nd October, 1885:—

No. 18 OF 1885.

THE INDIAN TRAMWAYS BILL, 1885.

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A Bill to facilitate the construction and to regulate the working of Tramways.

WHEREAS it is expedient to facilitate the construction and to regulate the working of tramways; It is hereby enacted as follows:—

Preliminary.

Short title and commencement.

1. *(1)* This Act may be called the Indian Tramways Act, 1886; and

(2) It shall come into force at once.

Local extent.

2. *(1)* It extends in the first instance to the whole of British India, except the territories administered by the Governor of Fort Saint George in Council, the Governor of Bombay in Council, and the Lieutenant-Governor of Bengal.

(2) But the Governor of Fort Saint George in Council, the Governor of Bombay in Council or the Lieutenant-Governor of Bengal may, by notification in the official Gazette, extend this Act to the whole or any part of the territories under his administration.

Definitions.

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

[Act XIII, 1885, s. 3, clause (7).] *(1)* "local authority" means a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund:

[Act XXII, 1883, s. 2.] *(2)* "road" means the way of a road, street, thoroughfare, passage or place along or across which a tramway authorised under this Act is, or is intended to be, laid, and includes the surface soil and sub-soil of a road, and the footway and drains of a road, and any bridge, culvert or causeway forming part of a road:

[33 & 34 Vic., c. 78, s. 3.] *(3)* "road-authority", in relation to a road, means—

(a) if a local authority maintains and repairs the road, then that authority:

(b) if a local authority does not maintain and repair the road, and the road is neither vested in Her Majesty nor maintained and repaired by the Government, then the person in whom the road is vested; and

(c) if a local authority does not maintain and repair the road, and the road is vested in Her Majesty or maintained and repaired by the Government, then the Local Government:

[33 & 34 Vic., c. 78, s. 3.] *(4)* "circle", in relation to a local authority or road-authority, means the area within the control of that authority:

[Act XXII, 1883, s. 2.] *(5)* "tramway" means a tramway, or any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway:

(6) "order" means an order authorising the construction of a tramway under this Act, and includes a further order substituted for, or amending, extending or varying, that order:

[33 & 34 Vic., c. 78, ss. 4, 24, 43 & 44; and Act XXII, 1883, Schedule, Articles 1 and 26.] *(7)* "promoter" means a local authority or person in whose favour an order has been made, and includes a local authority or person on whom the rights and liabilities conferred and imposed on the promoter by this Act and the order and any rules made under the Act, as to the construction, maintenance and use of the tramway, have devolved:

(8) "undertaking" includes all moveable and immoveable property of the promoter suitable to and used by him for the purposes of the tramway:

(9) "carriage", in the case of a tramway on which steam-power or any other mechanical power is used, includes an engine worked on the tramway for the purpose of producing that power:

(10) "toll" includes any charge leviable in respect of the use of a tramway:

(11) "lessee" means a person to whom a lease has been granted of the right of user of a tramway and of demanding and taking the authorised tolls:

(12) "District Magistrate" includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area all or any of the functions of a District Magistrate under this Act:

(13) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area the functions of a Collector under this Act; and

(14) "prescribed" means prescribed by rules made by the Local Government under this Act.

Orders authorising the Construction of Tramways.

Application for and consent necessary to making of order.

[33 & 34 Vic., c. 78, s. 4.] **4.** *(1)* The Local Government may make an order authorising the construction of a tramway in a circle on the application of—

(a) the local authority of the circle, with, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, the consent of the road-authority in respect of that road or part; or

(b) any person with the consent of the local authority and, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, of the road-authority in respect of that road or part:

Provided that, if any part of the proposed tramway is to traverse land which is not included within the limits of a municipality or of a cantonment, the Local Government shall not make the order without the previous sanction of the Governor-General in Council.

The Indian Tramways Bill, 1885.—Sections 5-7.

(2) A local authority shall not make an application for an order, or be deemed to consent to an application being made by any person for an order, unless the making of the application or the giving of the consent has been approved by the local authority in manner prescribed.

[33 & 34 Vic., c. 78, s. 5.]

Consent of local or road authority not necessary in certain cases.

5. When it is proposed to lay a tramway in two or more circles, and a local authority or road-authority having control in either or any of the circles does not consent thereto, the Local Government may, nevertheless, make an order authorising the construction of the tramway in the circle, if, after considering the objections of the dissenting authority, and the benefit which the public is likely to derive from the tramway being laid in the circle of that authority, it is satisfied that the construction of the tramway therein is expedient.

[33 & 34 Vic., c. 78, ss. 7 & 8; & Act XV, 1873, s. 68.]

Procedure for making order.

6. *(1)* The Local Government on receiving an application shall consider it, and, if satisfied as to the propriety of proceeding thereon, publish in the official Gazette, and in such other manner as it deems sufficient for giving information to persons interested, a draft of a proposed order authorising the construction of the tramway.

(2) A notice shall be published with the draft stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the Local Government on or before a date to be specified in the notice, be received and considered.

(3) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the Local Government is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may settle and make an order accordingly.

(4) Every order authorising the construction of a tramway shall be published in the official Gazette in English, and in the other prescribed language or languages, if any, and that publication shall be conclusive proof that the order has been made as required by this section.

[33 & 34 Vic., c. 78, s. 8.]

Contents of order.

7. *(1)* An order made under section 6 shall empower the promoter therein specified to construct and maintain the tramway therein described in the manner therein provided, and shall specify the time within which the tramway shall be commenced and the time within which it shall be completed and opened for public traffic.

[See 33 & 34 Vic., c. 78, s. 10, and s. 10 of this Bill.]

(2) The order may also provide, in manner consistent with this Act, for all or any of the following, among other matters, that is to say:—

[Provisional Order Clause 11.]

(a) a period before the expiration of which the tramway shall not be commenced, and the conditions subject to which the local authority, when it is not itself the promoter, may, within that period, elect to be substituted in the place of the promoter in respect of the undertaking or of so much thereof as is within its circle; and the limits of time within which, and the terms upon which, the local authority may, after the tramway has been constructed, require the promoter to sell to it the undertaking or so much thereof as is within its circle;

[33 & 34 Vic., c. 78, ss. 8 & 15; Provisional Order Clauses 2 and 5; and Report of House of Lords Committee, 1879, paragraph 11.]

(b) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purposes;

[33 & 34 Vic., c. 78, ss 26 & 27, and Provisional Order Clause 9.]

(c) the conditions subject to which roads may be opened and broken up for the purposes of the construction or maintenance of the tramway or any part thereof, and the method of, and materials to be used in, the reinstating of the roads, and the approval of the method and materials by the Local Government or the road-authority before the commencement of the work;

[33 & 34 Vic. c. 78, s. 26.]

(d) the conditions on which the tramway may be constructed over a bridge or across a railway or tramway when the carriageway over the bridge is to form part of the tramway or when the tramway is to cross a railway or another tramway on the level;

[33 & 34 Vic., c. 78, s 9, and Provisional Order Clause 13.]

(e) the space which shall ordinarily intervene between the outside of the carriageway on either side of a road whereon the tramway is to be constructed and the nearest rail of the tramway, and the conditions on which a smaller space may be permitted;

[33 & 34 Vic., c. 78, s. 25, and Provisional Order Clauses 6 and 10.]

(f) the gauge of the tramway; the rails to be used, and the mode in which, and the level at which, they shall be laid and maintained; and the adoption and application by the promoter of such improvements in the rails, and in their situation and in the sub-structure upon which they rest, as the Local Government may require;

[33 & 34 Vic., c. 78, s. 28, and Provisional Order Clauses 8, 11 & 12.]

(g) the portion of the road or roads traversed by the tramway to be kept in repair by the promoter, the maintenance by the promoter to the satisfaction of the Local Government or the road-authority, or both, of that portion of the road or roads, and the liability of the promoter, on the requisition of the Local Government, from time to time to adopt and apply such improvements in the tramway as the Local Government may consider necessary or desirable for the safety and convenience of the public, and to alter the position or level of the tramway to suit future alterations in the road or roads;

[33 & 34 Vic., c. 78, s. 27, and Provisional Order Clause 17.]

(h) the application of material excavated by the promoter in the construction or maintenance of the tramway;

[Provisional Order Clause 16.]

(i) the provision of such crossings, passing-places, sidings, junctions and other works, in addition to those specified in or authorised by the order, as may from time to time be necessary or convenient to the efficient working of the tramway;

[33 & 34 Vic. c. 78, s. 23, and Provisional Order Clause 18.]

(j) the powers which may from time to time be exercised by the Local Government, the local authority, the road-authority or any person in respect of sewers, drains, telegraph-lines, gas-pipes or water-pipes in or

on land occupied by the tramway; the notice (if any) to be given of the intended exercise of those powers; the manner in which the powers shall be exercised; and the extent to which the tramway and the traffic thereon may be interfered with in the exercise thereof;

[33 & 34 Vic., c. 78, ss. 30 & 31.]

(k) the conditions subject to which the promoter may from time to time interfere with, or alter or require the alteration of the position of, drains (not being sewers or main drains), telegraph-lines, gas-pipes or water-pipes;

[Provisional Order Clause 16.]

(l) the provision of a temporary tramway in place of a part of a tramway which has been removed, or of which the use has been discontinued, by reason of the execution of any work affecting a road along which the part of the tramway was laid;

[33 & 34 Vic., c. 78, s. 34; and Provisional Order Clauses 25, 26 & 27.]

(m) the motive power to be used on the tramway, and the conditions on which steam-power or any other mechanical power may be used;

[33 & 34 Vic., c. 78, s. 34; Schedule A to form of Provisional Order; and Regulations and Bye-laws of the Board of Trade with respect to the use of steam-power on tramways.]

(n) the nature, dimensions, fittings, appliances and apparatus of the carriages to be used on the tramway, and the inspection and examination thereof by officers of the Local Government or the local authority, and the liability of the promoter or lessee, on the requisition of the Local Government, from time to time, to adopt and apply such improvements in the carriages, and in the fittings, appliances and apparatus, as the Local Government may consider necessary or desirable for the safety and convenience of the public;

[33 & 34 Vic., c. 78, s. 10, and Provisional Order Clauses 33 to 36 and 38 to 43.]

(o) the traffic which may be carried on the tramway, the traffic which the promoter or lessee shall be bound to carry, and the traffic which he may refuse to carry; the tolls to be leviable by the promoter or lessee, and the periodical revision thereof by the Local Government; and the regulation of the traffic and of the levy of the tolls;

[Provisional Order Clause 37.]

(p) the use of the tramway free of toll by the local authority, with its own carriages, for specified purposes, during specified hours, with power to the local authority to make such sidings and other works as may be necessary for communication between its premises and the tramway;

[33 & 34 Vic., c. 78, s. 44, and Provisional Order Clause 48.]

(q) the conditions subject to which the promoter may transfer the undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise; and the conditions subject to which the local authority may be the transferee;

[33 & 34 Vic., c. 78, s. 28, proviso.]

(r) the performance by the Local Government or by the local authority or road-authority of any work required by the Act or the order to be done by the promoter; and

[Provisional Order Clauses 10, 11, 26, 27 and 40.]

(s) the penalty to be incurred by the promoter or lessee for failure to observe any condition or direction contained in the order, and the application of the penalty when recovered.

[Report of House of Lords Committee, 1870, para. 11.]

(3) The Local Government may, in providing in the order for the acquisition of land for the purposes of a tramway of which the promoter is not a company, direct that land may be acquired for the promoter under the provisions of the Land Acquisition Act, 1870, in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a company were the promoter.

X of 1870.

(4) The order shall imply the condition—

(a) in the case of a tramway of which a local authority is the promoter, that a lease thereof shall be granted only in manner by this Act provided, and

(b) in the case of a tramway of which a local authority is not the promoter, that a lease thereof shall be only of the right of user and of demanding and taking the authorised tolls, and shall not confer or impose on the lessee any of the powers or duties of the promoter in respect of the construction or maintenance of the tramway.

8. *(1)* The Local Government may, on the application of the promoter, revoke, amend, extend or vary the order by a further order.

[33 & 34 Vic., c. 78, s. 16.]

Further orders.

(2) An application for a further order shall be made in the same manner and subject to the same conditions as an application for an order.

(3) The Local Government may, in its discretion, either grant or reject the application.

(4) If it grants the application, it shall make the further order in the same manner as an order, except that no addition to, or modification of, the rights, powers and authorities asked for in the application, or restriction or condition with respect thereto, shall be made or imposed by the further order without the consent in writing of the promoter.

9. *(1)* Subject to, and in accordance with, the provisions of this Act, the Local Government may, on a joint application, or on two or more separate applications, settle and make an order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof.

[33 & 34 Vic., c. 78, s. 17.]

Power to authorise joint work by local authorities.

(2) All the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of the tramway, and the form of the order may be adapted to the circumstances of the case.

10. *(1)* If a promoter authorised by an order to construct a tramway—

[33 & 34 Vic., c. 78, s. 18.]

Cesser of powers given by an order.

(a) does not within the time specified in the order substantially commence the construction of the tramway, or

(b) having commenced the construction, suspends it without a reason sufficient in the opinion of the Local Government to warrant the suspension, or

(c) does not within the time specified in the order complete the tramway and open it for public traffic,—

the following consequences shall ensue:—

(i) the powers given by the order to the promoter for constructing the tramway and otherwise in relation thereto shall, unless the Local Government, by special direction in writing, prolongs the time or condones the suspension, cease to be exercised except as to so much of the tramway as is then completed;

(ii) as to so much of the tramway as is then completed, the Local Government may either permit, or refuse to permit, the powers given by the order to continue;

(iii) if the Local Government refuses to permit the powers to continue, then so much of the tramway as is then completed may be dealt with, under the provisions of this Act relating to the discontinuance of tramways, as a tramway of which the discontinuance has been proved to the satisfaction of the Local Government.

[Sections 19 & 20 of this Bill.]

(2) A notification published by the Local Government in the official Gazette to the effect that on a date specified in the notification the construction of a tramway had not been substantially commenced or a tramway had not been completed and opened for public traffic, or that the construction of a tramway had been suspended without sufficient reason, shall, for the purposes of this section, be conclusive proof of the matter stated therein.

Construction and Maintenance of Tramways.

[33 & 34 Vic., c. 78, s. 25.]

11. A tramway shall be constructed and maintained in the manner provided by the order.

Mode of formation of tramway.

[33 & 34 Vic., c. 78, s. 25, & Act IV, 1879, s. 5.]

12. A tramway, or portion or extension of, or addition to, a tramway, shall not be opened for public traffic until an engineer appointed in this behalf by the Local Government has inspected it and certified it to be fit for such traffic.

Inspection of tramway before opening.

[33 & 34 Vic., c. 78, s. 29.]

13. The road-authority and the promoter may from time to time enter into agreements with respect to the keeping in repair of the whole or a part of a road traversed by a tramway, and with respect to the proportion to be paid by either of them of the expense of keeping the road or part in repair.

Agreement between road-authority and promoter as to repair of roadway.

Traffic on Tramways.

[33 & 34 Vic., c. 78, ss. 34 & 62, and Act XXII, 1883, s. 8.]

14. *(1)* The promoter of a tramway shall, subject to the provisions of sub-section *(2)* and to the other provisions of this Act and of the order, have the exclusive use of the tramway for carriages with flange-wheels or other wheels suitable to run on the rail described in the order as the rail to be used on the tramway:

Rights of promoters and the public over tramways.

Provided that nothing in this Act or the order or in any rule made under the Act shall affect the right of any person authorised to use a tramway or railway to pass across a tramway constructed under this Act with carriages having wheels suitable to run on the rail thereof.

(2) The public shall have a right to pass along or across any part of a road along or across which a tramway is constructed, whether on or off the tramway, with carriages not having flange-wheels or other wheels suitable to run on the rail of the tramway: provided—

(a) that this sub-section shall not apply where the tramway is constructed on land the right to the exclusive possession of which has been acquired by the promoter, and

(b) that the Local Government may by an order authorise the construction of a tramway on any part of a road with rails raised above the surface of the road, if it is satisfied that the convenience of the public will not be injuriously affected thereby.

[33 & 34 Vic., c. 78, s. 45.]

15. *(1)* The promoter or lessee may demand and take, in respect of the tramway, tolls not exceeding the limits specified in or determinable under the order, or if the order contains no provision in this behalf, then such sums as may from time to time be fixed by the promoter or lessee with the previous sanction of the Local Government.

Tolls leviable by promoter or lessee.

[33 & 34 Vic., c. 78, ss. 58; and Act XXII, 1883, s. 13.]

(2) A list of all the tolls authorised to be levied shall be exhibited, in such languages as the District Magistrate may direct, in a conspicuous place inside and outside each of the carriages used upon the tramway.

16. *(1)* A person shall not be entitled to carry, or to require to be carried, on a tramway constructed under this Act, any goods of a dangerous or offensive nature.

Carriage of dangerous or offensive goods.

(2) A person taking such goods with him on the tramway shall, before entering the carriage, give notice of their nature to the servant of the promoter or lessee in charge of the carriage.

(3) A person sending such goods by the tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the servant of the promoter or lessee with whom he leaves them for the purpose of their being sent by the tramway.

(4) Any servant of the promoter or lessee may refuse to carry upon the tramway a parcel which he suspects to contain goods of a dangerous or offensive nature, and, if any such parcel has been received for the purpose of being carried upon the tramway, may stop the transit thereof until he is satisfied as to the nature of its contents.

Licenses to use Tramways.

[33 & 34 Vic., c. 78, s. 35.]

17. If, at any time after a tramway or part of a tramway has been for three years opened for public traffic in a circle, the local authority of the circle represents in writing to the Local Government that the public is deprived of the full benefit of the tramway or of the part thereof, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, grant a license to any person to use the tramway conformably to this Act and the order and to the rules made under the Act, subject to the following provisions, namely:—

Grant to third parties of licenses to use tramway in certain events.

(a) the license shall be for a period not less than one year or more than three years from the date of the license, but the Local Government may in its discretion renew it;

(b) the license shall be to use the whole of the tramway for the time being opened for public traffic, or such part or parts of the tramway as the Local Government, having regard to the cause for granting the license, thinks fit;

(c) the license shall specify the number of carriages which the licensee shall run upon the tramway, the mode in which, and times at which, the carriages shall be run, the tolls to be paid to the promoter or lessee by the licensee for the use of the tramway, and the tolls, being those for the time being leviable by the promoter or lessee, which the licensee may demand and take for the use of his carriages;

(d) the licensee and his officers and servants shall permit one person, duly authorised for that purpose by the promoter or lessee, to travel free of toll in or upon each carriage of the licensee run upon the tramway for the whole or any part of a journey; and

(e) the Local Government may revoke, alter or modify the license for any cause sufficient in its opinion to warrant the revocation, alteration or modification thereof.

[33 & 34 Vic., c. 78, s. 37.]

Licensee to give to promoter or lessee an account of traffic.

18. A licensee shall, on demand, give to an officer or servant authorised in that behalf by the promoter or lessee an exact account in writing, signed by the licensee, of the number of passengers, or number or quantity of goods, conveyed by any and every carriage used by him on the tramway.

Discontinuance of Tramways.

[33 & 34 Vic., c. 78, s. 41.]

Cesser of powers of promoter and lessee on discontinuance of tramway.

19. If it is proved to the satisfaction of the Local Government, at any time after the opening of a tramway for public traffic, that the working of the tramway, or any part thereof, has been discontinued, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance, the Local Government, if it thinks fit, may, by notification in the official Gazette, declare that the powers of the promoter and of the lessee, if any, in respect of the tramway or the part thereof so discontinued, shall, from the date of the notification, be at an end, and thereupon the said powers shall cease and determine, except in so far as they may be purchased by a local authority in manner by this Act provided.

[Section 22 of this Bill.]

[33 & 34 Vic., c. 78, s. 41.]

Powers of road-authority on cesser of powers of promoter.

20. *(1)* Where a notification has been published under section 19, the road-authority may, at any time after the expiration of two months from the date of the notification, remove the tramway or part of the tramway so discontinued, and use the materials thereof in re-instating the road.

(2) The promoter shall pay to the road-authority the cost incurred by that authority in removing the tramway or the part thereof and in re-instating the road.

(3) The cost shall be certified by an officer of the road-authority, and his certificate, countersigned by the District Magistrate, shall be conclusive proof as to the cost incurred.

(4) If the promoter does not pay the amount so certified within one month after the delivery to him of the certificate or of a copy thereof, the road-authority may, without any previous notice to the promoter and without prejudice to any other remedy which it may have for the recovery of the amount, sell and dispose of such materials of the tramway or part thereof removed as it has not used in re-instating the road, either by public auction or by private sale, and for such sum or sums, and to such person or persons, as it thinks fit, and may, out of the proceeds of the sale, pay and reimburse itself the amount of the cost aforesaid and of the expenses of the sale, and shall pay over the residue (if any) of the proceeds of the sale to the promoter.

[Section 36 of this Bill.]

Insolvency of Promoter.

[33 & 34 Vic., c. 78, s. 42.]

Proceedings in case of insolvency of promoter.

21. *(1)* If, at any time after the opening of a tramway in a circle for public traffic, it appears to the road-authority or local authority of the circle that the promoter of the tramway is insolvent, so that he is unable to maintain the tramway, or work it with advantage to the public, and either of those authorities makes a representation to that effect to the Local Government, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, declare, by notification in the official Gazette, that the powers of the promoter shall, at the expiration of six months from the publication of the notification, be at an end; and the powers of the promoter shall cease and determine at the expiration of that period, except in so far as they may be purchased by a local authority in manner by this Act provided.

[Section 22 of this Bill.]

(2) Where a notification has been published under sub-section *(1)*, the road-authority may, at any time after the expiration of six months from the date thereof, remove the tramway in the same manner, and subject to the same provisions as to the payment of the cost of the removal, and to the same remedy for recovery of the cost, in every respect as in cases of removal under section 20.

Purchase of Tramways.

[33 & 34 Vic., c. 78, s. 43.]

Future purchase of undertaking by local authority.

22. *(1)* Where the promoter of a tramway in a circle is not the local authority, the local authority, with the previous sanction of the Local Government, may—

(a) within such limits of time as may be specified in this behalf in the order, or

(b) if a time was not specified in the order, then within six months after the expiration of a period of twenty-one years from the date of the order, and within six months after the expiration of every subsequent period of seven years, or

(c) within two months after the publication of a notification under section 19 or within six months after the publication of a notification under section 21,—

by notice in writing, require the promoter to sell to the local authority his undertaking or the part thereof which is within the circle of the local authority; and thereupon the promoter shall sell the same upon the terms specified in the order, or, if the terms were not specified in the order, then upon the terms of paying the then value of the undertaking or of the part thereof, exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatsoever.

(2) A requisition shall not be made under sub-section *(1)* unless the making thereof has been approved by the local authority in manner prescribed.

(3) When a sale has been made under this section, all the rights, powers and authorities of the promoter in respect of the undertaking or part thereof sold, or, where a notification has been published under section 19 or section 21, all the rights, powers and authorities of the promoter previous to the publication of the notification in respect of the undertaking or part thereof sold, shall be transferred to the authority to whom the undertaking or part has been sold, and shall vest in, and may be exercised by, that authority in the same manner as if the tramway had been constructed by it under an order made under this Act.

(4) Subject to, and in accordance with, the preceding provisions of this section, two or more local authorities may jointly purchase an undertaking or so much thereof as is within their circles.

Working of Tramways owned by Local Authorities.

[33 & 34 Vic., c. 78, s. 19.]

Lease of, or working of, tramway by local authority.

23. *(1)* When a local authority has under the authority of an order completed a tramway, or has under the provisions of this Act or of an order acquired possession of a tramway, it may, by a lease to be approved by the Local Government, let to any person the right of user of the tramway and of demanding and taking the authorised tolls.

(2) On the determination of a lease, the local authority may from time to time let the right for such further term and on such conditions as the Local Government may approve.

(3) Every lease made under this section shall imply a condition of re-entry if at any time after the making thereof it is proved to the satisfaction of the Local Government that the lessee has discontinued the working of the tramway leased, or of any part thereof, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance.

(4) Notice of the intention of the local authority to make a lease shall be given in manner prescribed.

(5) If the local authority cannot by means of a lease obtain what it deems to be a fair rent for the tramway, it may itself, with the previous sanction of the Local Government and for such term as the Local Government directs, place and run carriages upon the tramway, and demand and take the authorised tolls in respect of the use of the carriages.

Rules.

[33 & 34 Vic., c. 78, ss. 46 & 64; and Act XXII, 1883, s. 20.]

Power to make rules.

24. *(1)* In addition to any other power to make rules expressly or by implication conferred by this Act, the Local Government may make rules consistent with this Act—

(a) as to the form in which an application for an order shall be made;

(b) as to the costs to be paid by an applicant in respect of an order, and the time when, and the place where, those costs shall be paid;

(c) as to the payment of money or lodgment of securities, by way of deposit, by the applicant for an order before the order is published under section 6, sub-section *(4)*, or a further order is made under section 8; the investment of money so paid; the disposal of interest or dividends from time to time accruing due on money or securities so paid, lodged or invested; the application of the money or securities or the proceeds thereof to the discharge of any liability incurred by the promoter, and the forfeiture, repayment or return of the money or securities;

(d) as to the publication of any works to be deposited by applicants for orders or by promoters;

(e) for regulating the use of steam-power or any other mechanical power on a tramway;

(f) as to any matter specified in section 7, sub-section *(2)*, clauses (c), *(d)*, *(e)*, *(j)* and *(k)*, as a matter which may be provided for in an order, when that matter has not been so provided for, or has not, in the opinion of the Local Government, been effectually so provided for;

(g) as to any matter respecting which rules may be made under this section by a local authority or a promoter or lessee; and,

(h) generally, as to any other matter or thing in respect of which it may seem to the Local Government to be expedient to make rules for the purpose of carrying this Act into execution.

[33 & 34 Vic., c. 78, s. 46; and Act XXII, 1883, s. 20.]

(2) A local authority may, from time to time, with the previous sanction of the Local Government, make rules, consistent with this Act and the order and any rules made by the Local Government under the Act, for regulating—

(a) the rate of speed to be observed in travelling upon a tramway within the circle of the local authority;

(b) the use of animal power on the tramway;

(c) the distances at which carriages using the tramway shall be allowed to follow one after the other;

(d) the stopping of carriages using the tramway;

(e) the traffic on roads along or across which the tramway is laid;

(f) the number of passengers which may be carried in any carriage;

(g) the licensing and control of drivers, conductors and other persons having charge of the carriages of the promoter or lessee or a licensee; and,

[33 & 34 Vic., c. 78, s. 48.]

(h) generally, the mode of use of the tramway.

[Act XXII, 1883, s. 20.]

(3) The promoter or lessee of a tramway may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act and the order and any rules made under the Act—

[33 & 34 Vic., c. 78, s. 46, and Act XXII, 1883, s. 20.]

(a) for preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to him; and

(b) for regulating the travelling in any carriage belonging to him.

[33 & 34 Vic., c. 78, s. 47.]

Power to impose penalty by rule.

25. The authority making any rule under section 24 may direct that a breach of it shall be punishable with fine which may extend—

[Act XXII, 1883, s. 14.]

(a) if the authority making the rule is the Local Government, to two hundred rupees, and

[Act XXII, 1883, s. 20, sub-section (3).]

(b) if that authority is a local authority or a promoter or lessee, to twenty rupees;

and, when the breach is a continuing breach, with a further fine which may extend—

[Act XXII, 1883, s. 14.]

(c) if the authority making the rule is the Local Government, to fifty rupees, and

[33 & 34 Vic., c. 78, s. 47.]

(d) if that authority is a local authority or a promoter or lessee, to five rupees,

for every day after the first during which the breach continues.

Procedure for making, and publication of, rules.

26. *(1)* Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by a local authority or by a promoter or lessee, in manner prescribed.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made.

(6) The Local Government may cancel any rule made by a local authority or by a promoter or lessee under section 24.

Offences.

Penalty for failure of promoter, lessee or licensee to comply with Act or order.

27. If a promoter—

(a) constructs or maintains a tramway otherwise than in accordance with the order;

[Act XXII, 1883, s. 14.]

(b) opens the tramway for traffic, or permits it to be so opened, before it has been inspected and certified in manner required by section 12; or

(c) fails to observe any requirement or condition of the order for neglect or breach whereof no penalty has been expressly provided in the order;

or if a promoter, lessee or licensee runs a carriage on a tramway otherwise than in accordance with the order;—

he shall (without prejudice to the enforcement of specific performance of the requirements of this Act or of the order, or to any other remedy which may be obtained against him in a Court of Civil Judicature), on the complaint of the Local Government or of the local authority or road-authority or of any person injuriously affected thereby, be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for every day after the first during which the offence continues to be committed.

Penalty for obstructing promoter in exercise of his powers.

28. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing or maintaining a tramway, or injures or destroys any mark made for the purpose of setting out the line of the tramway, he shall be punished with fine which may extend to fifty rupees.

[33 & 34 Vic., c. 78, s. 49, and Act XXII, 1883, s. 15.]

Penalty for interfering with tramway.

29. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully does any of the following things, namely:—

[33 & 34 Vic., c. 78, s. 50, and Act XXII, 1883, s. 16.]

(a) interferes with, removes or alters any part of a tramway constructed under this Act, or of the works connected therewith;

(b) places or throws upon or across any such tramway any wood, stone, refuse or other thing;

(c) does anything in such a manner as to obstruct any carriage using any such tramway; or

(d) abets within the meaning of the Indian Penal Code the doing of, or attempts to do, anything mentioned in clause *(b)*, clause *(b)* or clause *(c)*,

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he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punished with fine which may extend to one hundred rupees.

Penalty for using tramway with carriage having flange-wheels.

30. If any person, except under a lease from, or by agreement with, the promoter, or under license from the Local Government granted under this Act, uses on a tramway, otherwise than as permitted by section 14, a carriage having flange-wheels or other wheels suitable to run on the rail of the tramway, he shall be punished with fine which may extend to two hundred rupees.

[33 & 34 Vic., c. 78, s. 54.]

Penalty for evading payment of proper toll.

31. *(1)* If any person travelling or having travelled in a carriage of the promoter or lessee or a licensee evades or attempts to evade payment of toll, or if any person having paid toll for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional toll for the additional distance or attempts to evade payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid toll to quit the carriage, he shall be punished with fine which may extend to ten rupees.

[33 & 34 Vic., c. 78, s. 51, and Act XXII, 1883, s. 18.]

(2) When a person commits an offence under this section and refuses, on demand of a servant of the promoter, lessee or licensee, to give his name and residence, or gives a name or residence which the servant has reason to believe to be false, he may be arrested and taken to the nearest police-station by the servant or any person whom the servant may call in for his assistance.

[33 & 34 Vic. c. 78, s. 52 Act XXII, 1883, s. 19, and Act X, 1882, s. 57.]

(3) When the person is taken to the police-station, he shall with the least possible delay be forwarded to the nearest Magistrate unless 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.

[33 & 34 Vic., c. 78, s. 53, and Act XXII, 1883, s. 17.]

Penalty for taking or sending dangerous or offensive goods without giving notice.

32. If any person takes or sends by a tramway any goods of a dangerous or offensive nature without giving the notice required by section 16, he shall be punished with fine which may extend to fifty rupees.

[33 & 34 Vic., c. 78 — 38.]

Penalty for licensee not giving to promoter or lessee an account of traffic or giving false account.

33. *(1)* If a licensee fails on demand to give the account mentioned in section 18, or, with intent to evade the payment of tolls, gives a false account when he is called upon to give an account under that section, he shall be punished with fine which may extend to fifty rupees.

(2) The fine shall be in addition to any tolls payable by the licensee to the promoter or lessee in respect of the passengers or goods conveyed by the carriage or carriages used by the licensee on the tramway.

[Act XIII, 1884, s. 168.]

Saving of prosecutions under other laws.

34. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules made under it: Provided that a person shall not be punished twice for the same offence.

Settlement of Differences.

[33 & 34 Vic., c. 78, s. 33.]

Differences between promoters or lessees and authorities.

35. *(1)* If any difference arises between the promoter or lessee on the one hand and the Local Government, or the local authority or the road-authority, or a person having the charge of any sewers, drains, telegraph lines, gas-pipes or water-pipes, on the other hand, with respect to any interference or control exercised or claimed to be exercised by, or on behalf of, either party by virtue of this or any other Act, or of the order, or of rules made under this Act, or with respect to the propriety of, or the mode of, the execution of any work, or with respect to any compensation to be made by or to the promoter or lessee, or on the question whether any work is such as ought reasonably to satisfy the Local Government or the road-authority or both, or with respect to any other subject or thing regulated by, or comprised in, this Act or the order or rules made under the Act, and not otherwise expressly provided for therein, the matter in difference shall, on the application of either party, be settled by a referee.

(2) Where the difference is between the promoter or lessee on the one hand and the Local Government, either as such or as the road-authority, on the other, the referee shall be the District Court within the jurisdiction of which the tramway is situate, or, where the tramway is within the jurisdiction of more than one District Court, the District Court within the jurisdiction of which the greater part of the tramway is situate.

(3) In other cases, the referee shall be appointed by the Local Government.

(4) The powers and procedure of the referee may be prescribed.

(5) The decision of the referee shall be binding and conclusive on both parties.

Recovery of Tolls.

[33 & 34 Vic., c. 78, s. 56; & Act XIII, 1884, s. 61.]

Recovery of moneys due from promoters and, in certain cases, from lessees.

36. Any of the following moneys, namely, any rent due to a local authority from a lessee, any penalty recoverable from a promoter or lessee under an order, any sum payable by a promoter or lessee under an award of a referee, the cost of the performance under this Act by the Local Government or by a local authority or road-authority of any work required by this Act or an order to be done by a promoter, and the cost incurred by a road-authority in removing a tramway and reinstating a road under this Act, may, without prejudice to any other remedy the authority to which the money is due may have by suit or otherwise, be recovered by that authority, on application made in this behalf to the Collector, as if the sum due were an arrear of land-revenue due by the promoter or lessee or his surety (if any):

Provided that nothing in this section shall authorise the arrest of the promoter or lessee or his surety in execution of any process issued by the Collector.

[Act XIII, 1884, s. 172.]

Recovery of tolls from licensees.

37. *(1)* If a licensee fails to pay on demand the tolls due for the use of a tramway, the promoter or lessee to whom the tolls are due may, without prejudice to the remedy which he may have by suit, apply to a Magistrate to recover the amount of the tolls, and the Magistrate may, after giving notice to the licensee if possible and allowing him an opportunity of being heard, proceed to recover the amount by distress and sale of any carriages or other moveable property of the licensee which may be found on the tramway or premises connected therewith.

(2) When a licensee has failed to pay on demand the tolls due from him, the promoter or lessee to whom the tolls are due may seize any carriage or other moveable property of the licensee on the tramway or on premises connected therewith, and detain the same for forty-eight hours unless the tolls are sooner paid.

(3) When application is made to a Magistrate under sub-section *(1)*, he may make an interim order of distraint pending his final decision.

[Act XIII, 1884, s. 172.]

Recovery of tolls from passengers.

38. Any toll due to a promoter, lessee or licensee from a passenger may be recovered either by suit or, on application to a Magistrate having jurisdiction within any local area in which any part of the tramway is laid, by distress and sale of any moveable property belonging to the passenger within the local limits of the jurisdiction of the Magistrate.

Savings.

[33 & 34 Vic., c. 78, s. 57, and Act XXII, 1883, s. 9.]

Promoter to have right of user only.

39. *(1)* Notwithstanding anything contained in this Act or in an order, a promoter shall not acquire any right other than that of user only over a road along or across which he lays a tramway, nor shall anything contained in this Act or in an order exempt the promoter of a tramway, or any other person using the tramway, from the payment of such charges as may lawfully be levied in respect of the use of a road or bridge along or across which the tramway is laid.

[Act VIII, 1851.]

[Act XVII, 1878, s. 18.]

(2) The Local Government may, if it thinks fit, fix rates at which a promoter, lessee or licensee

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may compound for the charges payable in respect of the use of a road or bridge.

[33 & 34 Vic., c. 78, ss. 33 & 60.]

Saving of power over roads traversed by tramways.

40. *(1)* Nothing in this Act or in an order shall take away or abridge any power which a road-authority, local authority or other person has by law to break up, widen, alter, divert or improve a road, railroad or tramway along or across which a tramway is laid.

(2) The road-authority, local authority or other person executing any work referred to in sub-section *(1)* shall not be liable to pay to a promoter, lessee or licensee any compensation for injury done to a tramway by the execution of the work or for loss of traffic occasioned by the reasonable use of any power lawfully exercised for the execution thereof.

[33 & 34 Vic., c. 78, s. 61; and Act XXII, 1883, s. 10.]

Saving of power of local authority and police to regulate traffic on roads.

41. Nothing in this Act or in an order shall affect the powers of a local authority or of a magistrate or police-officer to regulate the passage of traffic along or across a road along or across which a tramway is laid; and the authority, magistrate or officer aforesaid may exercise its or his powers as well on as off the tramway and with respect as well to the traffic of a promoter, lessee or licensee as to the traffic of other persons.

Supplemental Provisions.

[33 & 34 Vic., c. 78, ss. 40 & 58.]

Promoters, lessees and licensees to be responsible for all injuries.

42. A promoter, lessee or licensee shall be answerable for all injuries happening through his act or default, or through the act or default of any person in his employment, by reason or in consequence of any of his carriages or works, and shall save harmless all authorities and persons collectively and individually, and their officers and servants, from all damages and costs in respect of injuries so happening.

[Act XXII, 1883, s. 21.]

Want of funds not a sufficient reason for default.

43. For the purposes of this Act, want of funds shall not be deemed to be a sufficient reason for the suspension of the construction, or the discontinuance of the working, of a tramway by a promoter or lessee.

[Act XXII, 1883, s. 22.]

Power to exempt from municipal taxation.

44. When a tramway is constructed under this Act within the limits of a municipality, the Local Government may exempt the animals, plant, rolling-stock, yards, workshops, engine-sheds and depôts of the promoter or lessee, for such period as it thinks fit, from all or any municipal taxes leviable within those limits.

[33 & 34 Vic., c. 78, s. 20.]

Application by local authorities of local funds to tramways.

45. The fund to or with the control or management of which the local authority of a municipality, cantonment or district is entitled or entrusted shall, notwithstanding anything in any Act respecting the purposes to which that fund may be applied, be applicable, subject to the control of the Local Government, to the payment of expenses incidental to the exercise of the powers and functions which may be vested in or exercised by a local authority under this Act.

Extension of Act to existing tramways.

46. The Local Government may, with the consent of the local authority and road-authority and of the promoter, extend any part of this Act or of any rules made thereunder, either with or without modification, to the whole or any part of a tramway constructed, or authorised to be constructed, before the passing of this Act, and to any extension of, or addition to, any such tramway, and may withdraw any part of the Act so extended.

IV of 1879.

Meaning of "tramway" in Railway Act.

47. In section 54 of the Indian Railway Act, 1879, the word "tramway" shall have the meaning assigned to it by section 3 of this Act.

[Act XIII, 1884, s. 173.]

Powers of Local Government exerciseable from time to time.

48. All powers conferred by this Act on a Local Government may be exercised from time to time as occasion requires.

STATEMENT OF OBJECTS AND REASONS.

THE introduction of this Bill has been rendered necessary by the projected construction of tramways in parts of India beyond the reach of a local legislature. In 1883 a special Act was passed by the Governor General in Council to authorise the making, and regulate the working, of tramways in Rangoon. Since that year application has been made for special Acts for tramways in Lahore and Amritsar, and legislation would probably be found to be necessary to regulate the use of tramways in other large towns in which their construction has been approved by, or is under the consideration of, the local authorities.

2. The Bill has been drawn on the lines of the Tramways Act, 1870 (33 & 34 Vic., c. 78), and of the provisional orders and rules made by the Board of Trade under that statute. These orders and rules, and the fullest discussion on almost all points connected with the subject of tramways, will be found in Mr. Sutton's "Tramway Acts of the United Kingdom."

3. The Bill extends in the first instance to the whole of British India except the territories comprised within the sphere of a local legislature, and is extendible to those territories by the Local Government.

4. "Orders" take the place of the "provisional orders" of the English statute, but differ from those orders in not being "provisional" and not being confirmed by a subsequent Act of the Legislature. They also differ from provisional orders in that they must be consistent with the Act and cannot vary or except any part of it.

5. Sections 4 to 6 of the Bill prescribe the conditions on which, and the manner in which, an order may be made; and section 7 specifies the matters for which provision may be made in an order. A reference to the authorities cited against the several clauses of that section will show how those matters are now provided for in the United Kingdom. If an order is found on experience to be defective, it can be supplemented by a further order on the

application of the person in whose favour the original order was made (section 8), or, in certain particulars, by rules (section 24).

6. When the order has been made, the tramway must be constructed, maintained and worked in the manner provided by the order (sections 11 and 27). If the tramway is constructed by a local authority, it will ordinarily be worked by a lessee (section 23). If it is constructed by a private speculator, it may be worked by him or by a lessee to whom he has let the right of user and of demanding and taking the authorised tolls (section 7, sub-section *(4)*). If the owner of the tramway or his lessee so works the tramway that the public is deprived of the full benefit of it, the Local Government may grant a license to any person to use the tramway on the payment of tolls to the owner or the lessee (section 17). If the owner discontinues the working of the tramway (section 19) or through want of funds is unable to maintain the tramway or work it with advantage to the public (section 21), the Local Government may revoke his powers. When the powers of the owner are so revoked, the tramway may either be removed by the authority which has charge of the road on which the tramway is laid (section 20 and section 21, sub-section *(2)*), or it may be purchased by the local authority (section 22).

7. Section 22 provides for tramways which have been constructed by companies and private persons being purchased by local authorities on the expiration of the periods, and upon the terms, specified in the order, or, if the periods and terms were not specified in the order, then on the expiration of the periods, and upon the terms, prescribed in the English statute.

8. When a tramway is purchased by a local authority, it will ordinarily be worked by a lessee. There may, however, be cases in which the authority would be unable to let a tramway for an adequate consideration. It has been provided, therefore (section 23), that in those cases the Local Government may authorise the local authority itself to engage in the business of running carriages.

9. Differences between owners or lessees of tramways and the Local Government or local authorities are to be settled by a referee (section 35), who, if the Local Government is directly interested, is to be the District Judge. The decision of the referee will be final.

10. Sections 36 to 38 provide for the recovery by suit or summary process of moneys due to and from owners, lessees and licensees of tramways.

11. Sections 39 to 41 contain the savings usually found in enactments and agreements relating to the construction of tramways, and section 44 enables the Local Government to exempt from local taxation the animals, plant, rolling-stock and premises of owners and lessees of tramways constructed within the limits of municipalities.

12. Section 46 enables the Local Government, with the consent of the owner and the local authorities, to extend any part of the Act, with or without modification, to a tramway or any part of a tramway constructed, or authorised to be constructed, before the passing of the Act.

The 22nd October, 1885.

C. P. ILBERT.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, NOVEMBER 7, 1885.

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

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 15th October, 1885:—

No. 17 OF 1885.

A Bill rendering it permissive to the members of the Maimon Community to declare themselves subject to Muhammadan Law.

WHEREAS there is in the Presidency of Bombay and elsewhere a class of persons known as Maimons, and questions have from time to time arisen in the case of some of those persons as to the law by which in certain particulars they are governed, and whereas some of those persons consider that they are governed or desire to be governed in those particulars by the Muhammadan law as established in the Hanafi School;

And whereas it is expedient that a procedure should be provided whereby the applicability of that law to them in those particulars could be placed beyond dispute;

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Maimons Act, 1886.

Declaration to be made by Maimons.

2. *(1)* When any Maimon who has attained his majority has declared in manner next hereinafter provided that he desires to be governed by the Muhammadan law as established in the Hanafi School, that law shall thereafter, notwithstanding any custom to the contrary, apply to him in each part of British India in the same particulars and to the same extent as it applies to other persons in that part of British India who are governed by it.

(2) A declaration to take effect under sub-section *(1)* must be made by a written instrument under the hand of the person making the same, in the form given in the schedule to this Act or in a form to the like effect, and must—

(a) if made in a part of British India in which the Indian Registration Act, 1877, is for the time being in force, be registered during his lifetime under that Act; and [Act III of 1877, s. 33.] III of 1877.

(b) if made elsewhere, be executed before, and authenticated by, a notary public or a Court, Judge, Magistrate, British Consul or Vice-Consul or representative of Her Majesty or of the Government of India.

(3) Nothing in this Act shall prevent any person being or becoming subject to any form of Muhammadan law in any other manner than that provided by this Act.

THE SCHEDULE.

FORM OF DECLARATION.

I hereby declare that I wish to be governed to the extent provided by the Maimons Act, 1886, by the Muhammadan law as established in the Hanafi School.

STATEMENT OF OBJECTS AND REASONS.

1. THE Maimons, like the Khojás, were originally Hindus, and have been converted to Muhammadanism, but though they are said, as a rule, to be Muhammadans in a fuller sense than the great body of the Khojás, it has been held by the Courts that certain sections of them are in some particulars still governed by Hindu customs instead of by Muhammadan law.

2. From a petition lately received by the Government, it appears that to a large number of the Maimons in question this position is not satisfactory. They hold that they should be governed, or they wish to be governed, by the Muhammadan law of the Hanafi School, and they ask that it may be declared by the legislature that they are so governed.

3. It is not to be expected that any such declaration would be made by the legislature unless it were shown that it was desired by the entire community to which it would apply, and it must be admitted that there is a want of unanimity among them on this subject.

It seems but reasonable, however, that some simple procedure should be provided by which the petitioners and other members of the Maimon class, who may be of their way of thinking, would be enabled to secure the application to themselves of those portions of the Muhammadan law which are applied by our Courts to ordinary Muhammadans, and to avoid all risk of being held to be governed by customs which are distasteful to them, and which it is to be apprehended are far from being well settled.

4. Such a procedure is to be found in the clause which it has been proposed to insert in the Khojá Succession Bill now under consideration, and which provides that a Khojá of full age may by a registered declaration withdraw himself from the peculiar law of succession by which Khojás are to be governed and place himself under the Muhammadan law of succession.

The present Bill has been prepared with a view to providing a similar procedure for Maimons. It is, however, not restricted to the matter of succession, as the difficulty which it is intended to meet is not confined to that branch of the law; and as, from all that has appeared up to this, the Hanafi form of the Muhammadan law is the only one to which Maimons would desire to be subject, it provides for the application to them only of that form of the law.

5. As it is obviously undesirable that any doubt should be thrown on the legal position of Maimons who may be already fully subject to the Muhammadan law, or that it should be suggested that a Maimon could not after the passing of the Bill become fully subject to that law in any way in which he, in common with Hindus and others, might become subject to it at present, a clause has been inserted in the Bill, providing that nothing therein contained shall prevent any person from being or becoming subject to any form of Muhammadan law in any other manner than that provided by the Bill.

AMÍR ALÍ.

The 15th October, 1885.

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 22nd October, 1885:—

No. 18 OF 1885.

THE INDIAN TRAMWAYS BILL, 1885.

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A Bill to facilitate the construction and to regulate the working of Tramways.

WHEREAS it is expedient to facilitate the construction and to regulate the working of tramways; It is hereby enacted as follows:—

Preliminary.

Short title and commencement.

1. *(1)* This Act may be called the Indian Tramways Act, 1886; and

(2) It shall come into force at once.

Local extent.

2. *(1)* It extends in the first instance to the whole of British India, except the territories administered by the Governor of Fort Saint George in Council, the Governor of Bombay in Council, and the Lieutenant-Governor of Bengal.

(2) But the Governor of Fort Saint George in Council, the Governor of Bombay in Council or the Lieutenant-Governor of Bengal may, by notification in the official Gazette, extend this Act to the whole or any part of the territories under his administration.

Definitions.

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

[Act XIII, 1868, s. 3, clause (7).]

(1) "local authority" means a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund:

[Act XXII, 1883, s. 2.]

(2) "road" means the way of a road, street, thoroughfare, passage or place along or across which a tramway authorised under this Act is, or is intended to be, laid, and includes the surface soil and sub-soil of a road, and the footway and drains of a road, and any bridge, culvert or causeway forming part of a road:

[33 & 34 Vic., c. 78, s. 3.]

(3) "road-authority", in relation to a road, means—

(a) if a local authority maintains and repairs the road, then that authority:

(b) if a local authority does not maintain and repair the road, and the road is neither vested in Her Majesty nor maintained and repaired by the Government, then the person in whom the road is vested; and

(c) if a local authority does not maintain and repair the road, and the road is vested in Her Majesty or maintained and repaired by the Government, then the Local Government:

[33 & 34 Vic., c. 78, s. 3.]

(4) "circle", in relation to a local authority or road-authority, means the area within the control of that authority:

[Act XXII, 1883, s. 2.]

(5) "tramway" means a tramway, or any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway:

(6) "order" means an order authorising the construction of a tramway under this Act, and includes a further order substituted for, or amending, extending or varying, that order:

[33 & 34 Vic., c. 78, ss. 4, 24, 43 & 44; and Act XXII, 1883, Schedule, Articles 1 and 26.]

(7) "promoter" means a local authority or person in whose favour an order has been made, and includes a local authority or person on whom the rights and liabilities conferred and imposed on the promoter by this Act and the order and any rules made under the Act, as to the construction, maintenance and use of the tramway, have devolved:

(8) "undertaking" includes all moveable and immoveable property of the promoter suitable to and used by him for the purposes of the tramway:

(9) "carriage", in the case of a tramway on which steam-power or any other mechanical power is used, includes an engine worked on the tramway for the purpose of producing that power

(10) "toll" includes any charge leviable in respect of the use of a tramway:

(11) "lessee" means a person to whom a lease has been granted of the right of user of a tramway and of demanding and taking the authorised tolls:

(12) "District Magistrate" includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area all or any of the functions of a District Magistrate under this Act:

(13) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area the functions of a Collector under this Act; and

(14) "prescribed" means prescribed by rules made by the Local Government under this Act.

Orders authorising the Construction of Tramways.

Application for and consent necessary to making of order.

4. *(1)* The Local Government may make an order authorising the construction of a tramway in a circle on the application of— [33 & 34 Vic., c. 78, s. 4.]

(a) the local authority of the circle, with, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, the consent of the road-authority in respect of that road or part; or

(b) any person with the consent of the local authority and, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, of the road-authority in respect of that road or part:

Provided that, if any part of the proposed tramway is to traverse land which is not included within the limits of a municipality or of a cantonment, the Local Government shall not make the order without the previous sanction of the Governor General in Council.

The Indian Tramways Bill, 1885.—Sections 5-7.

(2) A local authority shall not make an application for an order, or be deemed to consent to an application being made by any person for an order, unless the making of the application or the giving of the consent has been approved by the local authority in manner prescribed.

[33 & 34 Vic., c. 78, s. 5.]

Consent of local or road authority not necessary in certain cases.

5. When it is proposed to lay a tramway in two or more circles, and a local authority or road-authority having control in either or any of the circles does not consent thereto, the Local Government may, nevertheless, make an order authorising the construction of the tramway in the circle, if, after considering the objections of the dissenting authority, and the benefit which the public is likely to derive from the tramway being laid in the circle of that authority, it is satisfied that the construction of the tramway therein is expedient.

[33 & 34 Vic., c. 78, ss. 7 & 8; & Act XV, 1873, s. 68.]

Procedure for making order.

6. *(1)* The Local Government on receiving an application shall consider it, and, if satisfied as to the propriety of proceeding thereon, publish in the official Gazette, and in such other manner as it deems sufficient for giving information to persons interested, a draft of a proposed order authorising the construction of the tramway.

(2) A notice shall be published with the draft stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the Local Government on or before a date to be specified in the notice, be received and considered.

(3) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the Local Government is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may settle and make an order accordingly.

(4) Every order authorising the construction of a tramway shall be published in the official Gazette in English, and in the other prescribed language or languages, if any, and that publication shall be conclusive proof that the order has been made as required by this section.

[33 & 34 Vic., c. 78, s. 8.]

Contents of order.

7. *(1)* An order made under section 6 shall empower the promoter therein specified to construct and maintain the tramway therein described in the manner therein provided, and shall specify the time within which the tramway shall be commenced and the time within which it shall be completed and opened for public traffic.

[See 33 & 34 Vic., c. 78, s. 18, and s. 10 of this Bill.]

(2) The order may also provide, in manner consistent with this Act, for all or any of the following, among other matters, that is to say:—

[Provisional Order Clause 24.]

(a) a period before the expiration of which the tramway shall not be commenced, and the conditions subject to which the local authority, when it is not itself the promoter, may, within that period, elect to be substituted in the place of the promoter in respect of the undertaking or of so much thereof as is within its circle; and the limits of time within which, and the terms upon which, the local authority may, after the tramway has been constructed, require the promoter to sell to it the undertaking or so much thereof as is within its circle;

(b) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purposes; [33 & 34 Vic., c. 78, ss. 8 & 15; Provisional Order Clauses 2 and 5; and Report of House of Lords Committee, 1879, paragraph 11.]

(c) the conditions subject to which roads may be opened and broken up for the purposes of the construction or maintenance of the tramway or any part thereof, and the method of, and materials to be used in, the re-instating of the roads, and the approval of the method and materials by the Local Government or the road-authority before the commencement of the work; [33 & 34 Vic., c. 78, ss. 26 & 27, and Provisional Order Clause 9.]

(d) the conditions on which the tramway may be constructed over a bridge or across a railway or tramway when the carriageway over the bridge is to form part of the tramway or when the tramway is to cross a railway or another tramway on the level; [33 & 34 Vic. c. 78, s. 26.]

(e) the space which shall ordinarily intervene between the outside of the carriageway on either side of a road whereon the tramway is to be constructed and the nearest rail of the tramway, and the conditions on which a smaller space may be permitted; [33 & 34 Vic., c. 78, s 9, and Provisional Order Clause 13.]

(f) the gauge of the tramway; the rails to be used, and the mode in which, and the level at which, they shall be laid and maintained; and the adoption and application by the promoter of such improvements in the rails, and in their situation, and in the sub-structure upon which they rest, as the Local Government may require; [33 & 34 Vic., c. 78, s. 28, and Provisional Order Clauses 8 and 10.]

(g) the portion of the road or roads traversed by the tramway to be kept in repair by the promoter, the maintenance by the promoter to the satisfaction of the Local Government or the road-authority, or both, of that portion of the road or roads, and the liability of the promoter, on the requisition of the Local Government, from time to time to adopt and apply such improvements in the tramway as the Local Government may consider necessary or desirable for the safety and convenience of the public, and to alter the position or level of the tramway to suit future alterations in the road or roads; [33 & 34 Vic., c. 78, s. 28, and Provisional Order Clauses 8, 11 & 12.]

(h) the application of material excavated by the promoter in the construction or maintenance of the tramway; [33 & 34 Vic., c. 78, s. 27, and Provisional Order Clause 17.]

(i) the provision of such crossings, passing-places, sidings, junctions and other works, in addition to those specified in or authorised by the order, as may from time to time be necessary or convenient to the efficient working of the tramway; [Provisional Order Clause 15.]

(j) the powers which may from time to time be exercised by the Local Government, the local authority, the road-authority or any person in respect of sewers, drains, telegraph-lines, gas-pipes or water-pipes in or

on land occupied by the tramway; the notice (if any) to be given of the intended exercise of those powers; the manner in which the powers shall be exercised; and the extent to which the tramway and the traffic thereon may be interfered with in the exercise thereof;

[33 & 34 Vic., c. 78, ss. 30 & 31.]

(k) the conditions subject to which the promoter may from time to time interfere with, or alter or require the alteration of the position of, drains (not being sewers or main drains), telegraph-lines, gas-pipes or water-pipes;

[Provisional Order Clause 16.]

(l) the provision of a temporary tramway in place of a part of a tramway which has been removed, or of which the use has been discontinued, by reason of the execution of any work affecting a road along which the part of the tramway was laid;

[33 & 34 Vic., c. 78, s. 34; and Provisional Order Clauses 25, 26 & 27.]

(m) the motive-power to be used on the tramway, and the conditions on which steam-power or any other mechanical power may be used;

[33 & 34 Vic., c. 78, s. 34; Schedule A to form of Provisional Order; and Regulations and Bye-laws of the Board of Trade with respect to the use of steam-power on tramways.]

(n) the nature, dimensions, fittings, appliances and apparatus of the carriages to be used on the tramway, and the inspection and examination thereof by officers of the Local Government or the local authority, and the liability of the promoter or lessee, on the requisition of the Local Government, from time to time, to adopt and apply such improvements in the carriages, and in the fittings, appliances and apparatus, as the Local Government may consider necessary or desirable for the safety and convenience of the public;

[33 & 34 Vic., c. 78, s. 10, and Provisional Order Clauses 33 to 36 and 38 to 43.]

(o) the traffic which may be carried on the tramway, the traffic which the promoter or lessee shall be bound to carry, and the traffic which he may refuse to carry; the tolls to be leviable by the promoter or lessee, and the periodical revision thereof by the Local Government; and the regulation of the traffic and of the levy of the tolls;

[Provisional Order Clause 37.]

(p) the use of the tramway free of toll by the local authority, with its own carriages, for specified purposes, during specified hours, with power to the local authority to make such sidings and other works as may be necessary for communication between its premises and the tramway;

[33 & 34 Vic., c. 78, s. 44, and Provisional Order Clause 48.]

(q) the conditions subject to which the promoter may transfer the undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise; and the conditions subject to which the local authority may be the transferee;

[33 & 34 Vic., c. 78, s. 28, proviso.]

(r) the performance by the Local Government or by the local authority or road-authority of any work required by the Act or the order to be done by the promoter; and

[Provisional Order Clauses 10, 11, 26, 27 and 40.]

(s) the penalty to be incurred by the promoter or lessee for failure to observe any condition or direction contained in the order, and the application of the penalty when recovered.

[Report of House of Lords Committee, 1879, para. 11.]

(3) The Local Government may, in providing in the order for the acquisition of land for the purposes of a tramway of which the promoter is not a company, direct that land may be acquired for the promoter under the provisions of the Land Acquisition Act, 1870, in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a company were the promoter.

X of 1870.

(4) The order shall imply the condition—

(a) in the case of a tramway of which a local authority is the promoter, that a lease thereof shall be granted only in manner by this Act provided, and

(b) in the case of a tramway of which a local authority is not the promoter, that a lease thereof shall be only of the right of user and of demanding and taking the authorised tolls, and shall not confer or impose on the lessee any of the powers or duties of the promoter in respect of the construction or maintenance of the tramway.

[33 & 34 Vic., c. 78, s. 16.]

Further orders.

8. *(1)* The Local Government may, on the application of the promoter, revoke, amend, extend or vary the order by a further order.

(2) An application for a further order shall be made in the same manner and subject to the same conditions as an application for an order.

(3) The Local Government may, in its discretion, either grant or reject the application.

(4) If it grants the application, it shall make the further order in the same manner as an order, except that no addition to, or modification of, the rights, powers and authorities asked for in the application, or restriction or condition with respect thereto, shall be made or imposed by the further order without the consent in writing of the promoter.

[33 & 34 Vic., c. 78, s. 17.]

Power to authorise joint work by local authorities.

9. *(1)* Subject to, and in accordance with, the provisions of this Act, the Local Government may, on a joint application, or on two or more separate applications, settle and make an order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof.

(2) All the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of the tramway, and the form of the order may be adapted to the circumstances of the case.

[33 & 34 Vic., c. 78, s. 18.]

Cesser of powers given by an order.

10. *(1)* If a promoter authorised by an order to construct a tramway—

(a) does not within the time specified in the order substantially commence the construction of the tramway, or

(b) having commenced the construction, suspends it without a reason sufficient in the opinion of the Local Government to warrant the suspension, or

(c) does not within the time specified in the order complete the tramway and open it for public traffic,—

the following consequences shall ensue:—

(i) the powers given by the order to the promoter for constructing the tramway and otherwise in relation thereto shall, unless the Local Government, by special direction in writing, prolongs the time or condones the suspension, cease to be exercised except as to so much of the tramway as is then completed;

(ii) as to so much of the tramway as is then completed, the Local Government may either permit, or refuse to permit, the powers given by the order to continue;

(iii) if the Local Government refuses to permit the powers to continue, then so much of the tramway as is then completed may be dealt with, under the provisions of this Act relating to the discontinuance of tramways, as a tramway of which the discontinuance has been proved to the satisfaction of the Local Government.

[Sections 19 & 20 of this Bill.]

(2) A notification published by the Local Government in the official Gazette to the effect that on a date specified in the notification the construction of a tramway had not been substantially commenced or a tramway had not been completed and opened for public traffic, or that the construction of a tramway had been suspended without sufficient reason, shall, for the purposes of this section, be conclusive proof of the matter stated therein.

Construction and Maintenance of Tramways.

[33 & 34 Vic., c. 78, s. 25.]

Mode of formation of tramway.

11. A tramway shall be constructed and maintained in the manner provided by the order.

[33 & 34 Vic., c. 78, s. 35, & Act IV, 1879, s. 5.]

Inspection of tramway before opening.

12. A tramway, or portion or extension of, or addition to, a tramway, shall not be opened for public traffic until an engineer appointed in this behalf by the Local Government has inspected it and certified it to be fit for such traffic.

[33 & 34 Vic., c. 78, s. 29.]

Agreement between road-authority and promoter as to repair of roadway.

13. The road-authority and the promoter may from time to time enter into agreements with respect to the keeping in repair of the whole or a part of a road traversed by a tramway, and with respect to the proportion to be paid by either of them of the expense of keeping the road or part in repair.

Traffic on Tramways.

[33 & 34 Vic., c. 78, ss. 34 & 62, and Act XXII, 1883, s. 8.]

Rights of promoters and the public over tramways.

14. *(1)* The promoter of a tramway shall, subject to the provisions of sub-section *(2)* and to the other provisions of this Act and of the order, have the exclusive use of the tramway for carriages with flange-wheels or other wheels suitable to run on the rail described in the order as the rail to be used on the tramway:

Provided that nothing in this Act or the order or in any rule made under the Act shall affect the right of any person authorised to use a tramway or railway to pass across a tramway constructed under this Act with carriages having wheels suitable to run on the rail thereof.

(2) The public shall have a right to pass along or across any part of a road along or across which a tramway is constructed, whether on or off the tramway, with carriages not having flange-wheels or other wheels suitable to run on the rail of the tramway: provided—

(a) that this sub-section shall not apply where the tramway is constructed on land the right to the exclusive possession of which has been acquired by the promoter, and

(b) that the Local Government may by an order authorise the construction of a tramway on any part of a road with rails raised above the surface of the road, if it is satisfied that the convenience of the public will not be injuriously affected thereby.

[33 & 34 Vic., c. 78, s. 45.]

Tolls leviable by promoter or lessee.

15. *(1)* The promoter or lessee may demand and take, in respect of the tramway, tolls not exceeding the limits specified in or determinable under the order, or if the order contains no provision in this behalf, then such sums as may from time to time be fixed by the promoter or lessee with the previous sanction of the Local Government.

[33 & 34 Vic., c. 78, s. 53; and Act XXII, 1883, s. 13.]

(2) A list of all the tolls authorised to be levied shall be exhibited, in such languages as the District Magistrate may direct, in a conspicuous place inside and outside each of the carriages used upon the tramway.

Carriage of dangerous or offensive goods.

16. *(1)* A person shall not be entitled to carry, or to require to be carried, on a tramway constructed under this Act, any goods of a dangerous or offensive nature.

(2) A person taking such goods with him on the tramway shall, before entering the carriage, give notice of their nature to the servant of the promoter or lessee in charge of the carriage.

(3) A person sending such goods by the tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the servant of the promoter or lessee with whom he leaves them for the purpose of their being sent by the tramway.

(4) Any servant of the promoter or lessee may refuse to carry upon the tramway a parcel which he suspects to contain goods of a dangerous or offensive nature, and, if any such parcel has been received for the purpose of being carried upon the tramway, may stop the transit thereof until he is satisfied as to the nature of its contents.

Licenses to use Tramways.

[33 & 34 Vic., c. 78, s. 35.]

Grant to third parties of licenses to use tramway in certain events.

17. If, at any time after a tramway or part of a tramway has been for three years opened for public traffic in a circle, the local authority of the circle represents in writing to the Local Government that the public is deprived of the full benefit of the tramway or of the part thereof, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, grant a license to any person to use the tramway conformably to this Act and the order and to the rules made under the Act, subject to the following provisions, namely:—

(a) the license shall be for a period not less than one year or more than three years from the date of the license, but the Local Government may in its discretion renew it;

(b) the license shall be to use the whole of the tramway for the time being opened for public traffic, or such part or parts of the tramway as the Local Government, having regard to the cause for granting the license, thinks fit;

(c) the license shall specify the number of carriages which the licensee shall run upon the tramway, the mode in which, and times at which, the carriages shall be run, the tolls to be paid to the promoter or lessee by the licensee for the use of the tramway, and the tolls, being those for the time being leviable by the promoter or lessee, which the licensee may demand and take for the use of his carriages;

(d) the licensee and his officers and servants shall permit one person, duly authorised for that purpose by the promoter or lessee, to travel free of toll in or upon each carriage of the licensee run upon the tramway for the whole or any part of a journey; and

(e) the Local Government may revoke, alter or modify the license for any cause sufficient in its opinion to warrant the revocation, alteration or modification thereof.

[33 & 34 Vic., c. 78, s. 37.]

Licensee to give to promoter or lessee an account of traffic.

18. A licensee shall, on demand, give to an officer or servant authorised in that behalf by the promoter or lessee an exact account in writing, signed by the licensee, of the number of passengers, or number or quantity of goods, conveyed by any and every carriage used by him on the tramway.

Discontinuance of Tramways.

[33 & 34 Vic., c. 78, s. 41.]

Cesser of powers of promoter and lessee on discontinuance of tramway.

19. If it is proved to the satisfaction of the Local Government, at any time after the opening of a tramway for public traffic, that the working of the tramway, or any part thereof, has been discontinued, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance, the Local Government, if it thinks fit, may, by notification in the official Gazette, declare that the powers of the promoter and of the lessee, if any, in respect of the tramway or the part thereof so discontinued, shall, from the date of the notification, be at an end, and thereupon the said powers shall cease and determine, except in so far as they may be purchased by a local authority in manner by this Act provided.

[Section 22 of this Bill.]

[33 & 34 Vic., c. 78, s. 41.]

Powers of road-authority on cesser of powers of promoter.

20. *(1)* Where a notification has been published under section 19, the road-authority may, at any time after the expiration of two months from the date of the notification, remove the tramway or part of the tramway so discontinued, and use the materials thereof in re-instating the road.

(2) The promoter shall pay to the road-authority the cost incurred by that authority in removing the tramway or the part thereof and in re-instating the road.

(3) The cost shall be certified by an officer of the road-authority, and his certificate, countersigned by the District Magistrate, shall be conclusive proof as to the cost incurred.

(4) If the promoter does not pay the amount so certified within one month after the delivery to him of the certificate or of a copy thereof, the road-authority may, without any previous notice to the promoter and without prejudice to any other remedy which it may have for the recovery of the amount, sell and dispose of such materials of the tramway or part thereof removed as it has not used in re-instating the road, either by public auction or by private sale, and for such sum or sums, and to such person or persons, as it thinks fit, and may, out of the proceeds of the sale, pay and reimburse itself the amount of the cost aforesaid and of the expenses of the sale, and shall pay over the residue (if any) of the proceeds of the sale to the promoter.

[Section 22 of this Bill.]

Insolvency of Promoter.

[33 & 34 Vic., c. 78, s. 42.]

Proceedings in case of insolvency of promoter.

21. *(1)* If, at any time after the opening of a tramway in a circle for public traffic, it appears to the road-authority or local authority of the circle that the promoter of the tramway is insolvent, so that he is unable to maintain the tramway, or work it with advantage to the public, and either of those authorities makes a representation to that effect to the Local Government, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, declare, by notification in the official Gazette, that the powers of the promoter shall, at the expiration of six months from the publication of the notification, be at an end; and the powers of the promoter shall cease and determine at the expiration of that period, except in so far as they may be purchased by a local authority in manner by this Act provided.

[Section 22 of this Bill.]

(2) Where a notification has been published under sub-section *(1)*, the road-authority may, at any time after the expiration of six months from the date thereof, remove the tramway in the same manner, and subject to the same provisions as to the payment of the cost of the removal, and to the same remedy for recovery of the cost, in every respect as in cases of removal under section 20.

Purchase of Tramways.

[33 & 34 Vic., c. 78, s. 43.]

Future purchase of undertaking by local authority.

22. *(1)* Where the promoter of a tramway in a circle is not the local authority, the local authority, with the previous sanction of the Local Government, may—

(a) within such limits of time as may be specified in this behalf in the order, or

(b) if a time was not specified in the order, then within six months after the expiration of a period of twenty-one years from the date of the order, and within six months after the expiration of every subsequent period of seven years, or

(c) within two months after the publication of a notification under section 19 or within six months after the publication of a notification under section 21,—

by notice in writing, require the promoter to sell to the local authority his undertaking or the part thereof which is within the circle of the local authority; and thereupon the promoter shall sell the same upon the terms specified in the order, or, if the terms were not specified in the order, then upon the terms of paying the then value of the undertaking or of the part thereof, exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatsoever.

(2) A requisition shall not be made under sub-section *(1)* unless the making thereof has been approved by the local authority in manner prescribed.

(3) When a sale has been made under this section, all the rights, powers and authorities of the promoter in respect of the undertaking or part thereof sold, or, where a notification has been published under section 19 or section 21, all the rights, powers and authorities of the promoter previous to the publication of the notification in respect of the undertaking or part thereof sold, shall be transferred to the authority to whom the undertaking or part has been sold, and shall vest in, and may be exercised by, that authority in the same manner as if the tramway had been constructed by it under an order made under this Act.

(4) Subject to, and in accordance with, the preceding provisions of this section, two or more local authorities may jointly purchase an undertaking or so much thereof as is within their circles.

[33 & 34 Vic., c. 78, s. 19.]

Working of Tramways owned by Local Authorities.

Lease of, or working of, tramway by local authority.

23. *(1)* When a local authority has under the authority of an order completed a tramway, or has under the provisions of this Act or of an order acquired possession of a tramway, it may, by a lease to be approved by the Local Government, let to any person the right of user of the tramway and of demanding and taking the authorised tolls.

(2) On the determination of a lease, the local authority may from time to time let the right for such further term and on such conditions as the Local Government may approve.

(3) Every lease made under this section shall imply a condition of re-entry if at any time after the making thereof it is proved to the satisfaction of the Local Government that the lessee has discontinued the working of the tramway leased, or of any part thereof, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance.

(4) Notice of the intention of the local authority to make a lease shall be given in manner prescribed.

(5) If the local authority cannot by means of a lease obtain what it deems to be a fair rent for the tramway, it may itself, with the previous sanction of the Local Government and for such term as the Local Government directs, place and run carriages upon the tramway, and demand and take the authorised tolls in respect of the use of the carriages.

Rules.

[33 & 34 Vic., c. 78, ss. 46 & 48, and Act XXII, 1883, s. 20.]

Power to make rules.

24. *(1)* In addition to any other power to make rules expressly or by implication conferred by this Act, the Local Government may make rules consistent with this Act—

(a) as to the form in which an application for an order shall be made;

(b) as to the costs to be paid by an applicant in respect of an order, and the time when, and the place where, those costs shall be paid;

(c) as to the payment of money or lodgment of securities, by way of deposit, by the applicant for an order before the order is published under section 6, sub-section *(4)*, or a further order is made under section 8; the investment of money so paid; the disposal of interest or dividends from time to time accruing due on money or securities so paid, lodged or invested; the application of the money or securities or the produce thereof to the discharge of any liability incurred by the promoter, and the forfeiture, repayment or return of the money or securities;

(d) as to the plans and sections of any works to be deposited by applicants for orders or by promoters;

(e) for regulating the use of steam-power or any other mechanical power on a tramway;

(f) as to any matter specified in section 7, sub-section *(2)*, clauses *(c)*, *(d)*, *(e)*, *(j)* and *(k)*, as a matter which may be provided for in an order, when that matter has not been so provided for, or has not, in the opinion of the Local Government, been effectually so provided for;

(g) as to any matter respecting which rules may be made under this section by a local authority or a promoter or lessee; and,

(h) generally, as to any other matter or thing in respect of which it may seem to the Local Government to be expedient to make rules for the purpose of carrying this Act into execution.

[33 & 34 Vic., c. 78, s. 46; and Act XXII, 1883, s. 20.]

(2) A local authority may, from time to time, with the previous sanction of the Local Government, make rules, consistent with this Act and the order and any rules made by the Local Government under the Act, for regulating—

(a) the rate of speed to be observed in travelling upon a tramway within the circle of the local authority;

(b) the use of animal power on the tramway;

(c) the distances at which carriages using the tramway shall be allowed to follow one after the other;

(d) the stopping of carriages using the tramway;

(e) the traffic on roads along or across which the tramway is laid;

(f) the number of passengers which may be carried in any carriage;

[33 & 34 Vic., c. 78, s. 48.]

(g) the licensing and control of drivers, conductors and other persons having charge of the carriages of the promoter or lessee or a licensee; and,

[Act XXII, 1883, s. 20.]

(h) generally, the mode of use of the tramway.

[33 & 34 Vic., c. 78, s. 48, and Act XXII, 1883, s. 20.]

(3) The promoter or lessee of a tramway may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act and the order and any rules made under the Act—

(a) for preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to him; and

(b) for regulating the travelling in any carriage belonging to him.

[33 & 34 Vic., c. 78, s. 47.]

Power to impose penalty by rule.

25. The authority making any rule under section 24 may direct that a breach of it shall be punishable with fine which may extend—

[Act XXII, 1883, s. 149.]

(a) if the authority making the rule is the Local Government, to two hundred rupees, and

[Act XXII, 1883, s. 20, sub-section (9).]

[Act XXII, 1883, s. 14.]

[33 & 34 Vic., c. 78, s. 47.]

(b) if that authority is a local authority or a promoter or lessee, to twenty rupees;

and, when the breach is a continuing breach, with a further fine which may extend—

(c) if the authority making the rule is the Local Government, to fifty rupees, and

(d) if that authority is a local authority or a promoter or lessee, to five rupees,

for every day after the first during which the breach continues.

Procedure for making and publication of, rules.

26. *(1)* Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by a local authority or by a promoter or lessee, in manner prescribed.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made.

(6) The Local Government may cancel any rule made by a local authority or by a promoter or lessee under section 24.

Offences.

Penalty for failure of promoter, lessee or licensee to comply with Act or order.

27. If a promoter—

[Act XXII, 1883, s. 14.]

(a) constructs or maintains a tramway otherwise than in accordance with the order;

(b) opens the tramway for traffic, or permits it to be so opened, before it has been inspected and certified in manner required by section 12; or

(c) fails to observe any requirement or condition of the order for neglect or breach whereof no penalty has been expressly provided in the order;

or if a promoter, lessee or licensee runs a carriage on a tramway otherwise than in accordance with the order;—

he shall (without prejudice to the enforcement of specific performance of the requirements of this Act or of the order, or to any other remedy which may be obtained against him in a Court of Civil Judicature), on the complaint of the Local Government or of the local authority or road-authority or of any person injuriously affected thereby, be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for every day after the first during which the offence continues to be committed.

Penalty for obstructing promoter in exercise of his powers.

28. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing or maintaining a tramway, or injures or destroys any mark made for the purpose of setting out the line of the tramway, he shall be punished with fine which may extend to fifty rupees.

[33 & 34 Vic., c. 78, s. 49, and Act XXII, 1883, s. 15.]

Penalty for interfering with tramway.

29. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully does any of the following things, namely:—

[33 & 34 Vic., c. 78, s. 50, and Act XXII, 1883, s. 16.]

(a) interferes with, removes or alters any part of a tramway constructed under this Act, or of the works connected therewith;

(b) places or throws upon or across any such tramway any wood, stone, refuse or other thing;

(c) does anything in such a manner as to obstruct any carriage using any such tramway; or

(d) abets within the meaning of the Indian Penal Code the doing of, or attempts to do, anything mentioned in clause *(a)*, clause *(b)* or clause *(c)*,

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he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punished with fine which may extend to one hundred rupees.

Penalty for using tramway with carriage having flange-wheels.

30. If any person, except under a lease from, or by agreement with, the promoter, or under license from the Local Government granted under this Act, uses on a tramway, otherwise than as permitted by section 14, a carriage having flange-wheels or other wheels suitable to run on the rail of the tramway, he shall be punished with fine which may extend to two hundred rupees.

[33 & 34 Vic., c. 78, s. 54.]

Penalty for evading payment of proper toll.

31. *(1)* If any person travelling or having travelled in a carriage of the promoter or lessee or a licensee evades or attempts to evade payment of toll, or if any person having paid toll for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional toll for the additional distance or attempts to evade payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid toll to quit the carriage, he shall be punished with fine which may extend to ten rupees.

[33 & 34 Vic., c. 78, s. 51, and Act XXII, 1883, s. 18.]

(2) When a person commits an offence under this section and refuses, on demand of a servant of the promoter, lessee or licensee, to give his name and residence, or gives a name or residence which the servant has reason to believe to be false, he may be arrested and taken to the nearest police-station by the servant or any person whom the servant may call in for his assistance.

[33 & 34 Vic., c. 78, s. 52, Act XXII, 1883, s. 19, and Act X, 1882, s. 57.]

(3) When the person is taken to the police-station, he shall with the least possible delay be forwarded to the nearest Magistrate unless 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.

[33 & 34 Vic., c. 78, s. 53, and Act XXII, 1883, s. 17.]

Penalty for taking or sending dangerous or offensive goods without giving notice.

32. If any person takes or sends by a tramway any goods of a dangerous or offensive nature without giving the notice required by section 16, he shall be punished with fine which may extend to fifty rupees.

[36 & 34 Vic., c. 78, s. 38.]

Penalty for licensee not giving to promoter or lessee an account of traffic or giving false account.

33. *(1)* If a licensee fails on demand to give the account mentioned in section 18, or, with intent to evade the payment of tolls, gives a false account when he is called upon to give an account under that section, he shall be punished with fine which may extend to fifty rupees.

(2) The fine shall be in addition to any tolls payable by the licensee to the promoter or lessee in respect of the passengers or goods conveyed by the carriage or carriages used by the licensee on the tramway.

[Act XIII, 1884, s. 158.]

Saving of prosecutions under other laws.

34. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules made under it: Provided that a person shall not be punished twice for the same offence.

Settlement of Differences.

[33 & 34 Vic., c. 78, s. 55.]

Differences between promoters or lessees and authorities.

35. *(1)* If any difference arises between the promoter or lessee on the one hand and the Local Government, or the local authority, or the road-authority, or a person having the charge of any sewers, drains, telegraph lines, gas-pipes or water-pipes, on the other hand, with respect to any interference or control exercised or claimed to be exercised by, or on behalf of, either party by virtue of this or any other Act, or of the order, or of rules made under this Act, or with respect to the propriety of, or the mode of, the execution of any work, or with respect to any compensation to be made by or to the promoter or lessee, or on the question whether any work is such as ought reasonably to satisfy the Local Government or the road-authority or both, or with respect to any other subject or thing regulated by, or comprised in, this Act or the order or rules made under the Act, and not otherwise expressly provided for therein, the matter in difference shall, on the application of either party, be settled by a referee.

(2) Where the difference is between the promoter or lessee on the one hand and the Local Government, either as such or as the road-authority, on the other, the referee shall be the District Court within the jurisdiction of which the tramway is situate, or, where the tramway is within the jurisdiction of more than one District Court, the District Court within the jurisdiction of which the greater part of the tramway is situate.

(3) In other cases, the referee shall be appointed by the Local Government.

(4) The powers and procedure of the referee may be prescribed.

(5) The decision of the referee shall be binding and conclusive on both parties.

Recovery of Tolls.

[33 & 34 Vic., c. 78, s. 56; & Act XIII, 1884, s. 61.]

Recovery of moneys due from promoters and, in certain cases, from lessees.

36. Any of the following moneys, namely, any rent due to a local authority from a lessee, any penalty recoverable from a promoter or lessee under an order, any sum payable by a promoter or lessee under an award of a referee, the cost of the performance under this Act by the Local Government or by a local authority or road-authority of any work required by this Act or an order to be done by a promoter, and the cost incurred by a road-authority in removing a tramway and reinstating a road under this Act, may, without prejudice to any other remedy the authority to which the money is due may have by suit or otherwise, be recovered by that authority, on application made in this behalf to the Collector, as if the sum due were an arrear of land-revenue due by the promoter or lessee or his surety (if any):

Provided that nothing in this section shall authorise the arrest of the promoter or lessee or his surety in execution of any process issued by the Collector.

[Act XIII, 1884, s. 172.]

Recovery of tolls from licensees.

37. *(1)* If a licensee fails to pay on demand the tolls due for the use of a tramway, the promoter or lessee to whom the tolls are due may, without prejudice to the remedy which he may have by suit, apply to a Magistrate to recover the amount of the tolls, and the Magistrate may, after giving notice to the licensee if possible and allowing him an opportunity of being heard, proceed to recover the amount by distress and sale of any carriages or other moveable property of the licensee which may be found on the tramway or on premises connected therewith.

(2) When a licensee has failed to pay on demand the tolls due from him, the promoter or lessee to whom the tolls are due may seize any carriage or other moveable property of the licensee on the tramway or on premises connected therewith, and detain the same for forty-eight hours unless the tolls are sooner paid.

(3) When application is made to a Magistrate under sub-section *(1)*, he may make an interim order of distraint pending his final decision.

[Act XIII, 1884, s. 173.]

Recovery of tolls from passengers.

38. Any toll due to a promoter, lessee or licensee from a passenger may be recovered either by suit or, on application to a Magistrate having jurisdiction within any local area in which any part of the tramway is laid, by distress and sale of any moveable property belonging to the passenger within the local limits of the jurisdiction of the Magistrate.

Savings.

[33 & 34 Vic., c. 78, s. 57, and Act XXII, 1883, s. 9.]

Promoter to have right of user only.

39. *(1)* Notwithstanding anything contained in this Act or in an order, a promoter shall not acquire any right other than that of user only over a road along or across which he lays a tramway, nor shall anything contained in this Act or in an order exempt the promoter of a tramway, or any other person using the tramway, from the payment of such charges as may lawfully be levied in respect of the use of a road or bridge along or across which the tramway is laid.

[Act VIII, 1861.]

[Act XVII, 1879, s. 18.]

(2) The Local Government may, if it thinks fit, fix rates at which a promoter, lessee or licensee

may compound for the charges payable in respect of the use of a road or bridge.

[33 & 34 Vic., c. 78, ss. 32 & 60.]

Saving of power over roads traversed by tramways

40. *(1)* Nothing in this Act or in an order shall take away or abridge any power which a road-authority, local authority or other person has by law to break up, widen, alter, divert or improve a road, railroad or tramway along or across which a tramway is laid.

(2) The road-authority, local authority or other person executing any work referred to in sub-section *(1)* shall not be liable to pay to a promoter, lessee or licensee any compensation for injury done to a tramway by the execution of the work or for loss of traffic occasioned by the reasonable use of any power lawfully exercised for the execution thereof.

33 & 34 Vic., c. 78, s. 61; and Act XXII, 1883, s. 10.]

Saving of power of local authority and police to regulate traffic on roads.

41. Nothing in this Act or in an order shall affect the powers of a local authority or of a magistrate or police-officer to regulate the passage of traffic along or across a road along or across which a tramway is laid; and the authority, magistrate or officer aforesaid may exercise its or his powers as well on as off the tramway and with respect as well to the traffic of a promoter, lessee or licensee as to the traffic of other persons.

Supplemental Provisions.

[33 & 34 Vic., c. 78, ss. 40 & 55.]

Promoters, lessees and licensees to be responsible for all injuries.

42. A promoter, lessee or licensee shall be answerable for all injuries happening through his act or default, or through the act or default of any person in his employment, by reason or in consequence of any of his carriages or works, and shall save harmless all authorities and persons collectively and individually, and their officers and servants, from all damages and costs in respect of injuries so happening.

[Act XXII, 1883, s. 21.]

Want of funds not a sufficient reason for default.

43. For the purposes of this Act, want of funds shall not be deemed to be a sufficient reason for the suspension of the construction, or the discontinuance of the working, of a tramway by a promoter or lessee.

[Act XXII, 1883, s. 22.]

Power to exempt from municipal taxation.

44. When a tramway is constructed under this Act within the limits of a municipality, the Local Government may exempt the animals, plant, rolling-stock, yards, workshops, engine-sheds and depôts of the promoter or lessee, for such period as it thinks fit, from all or any municipal taxes leviable within those limits.

[33 & 34 Vic., c. 78, s. 20.]

Application by local authorities of local funds to tramways.

45. The fund to or with the control or management of which the local authority of a municipality, cantonment or district is entitled or entrusted shall, notwithstanding anything in any Act respecting the purposes to which that fund may be applied, be applicable, subject to the control of the Local Government, to the payment of expenses incidental to the exercise of the powers and functions which may be vested in or exercised by a local authority under this Act.

Extension of Act to existing tramways

46. The Local Government may, with the consent of the local authority and road-authority and of the promoter, extend any part of this Act or of any rules made thereunder, either with or without modification, to the whole or any part of a tramway constructed, or authorised to be constructed, before the passing of this Act, and to any extension of, or addition to, any such tramway, and may withdraw any part of the Act so extended.

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Meaning of "tramway" in Railway Act.

47. In section 54 of the Indian Railway Act, 1879, the word "tramway" shall have the meaning assigned to it by section 3 of this Act.

[Act XXII, 1884, s. 173.]

Powers of Local Government exerciseable from time to time.

48. All powers conferred by this Act on a Local Government may be exercised from time to time as occasion requires.

STATEMENT OF OBJECTS AND REASONS.

THE introduction of this Bill has been rendered necessary by the projected construction of tramways in parts of India beyond the reach of a local legislature. In 1873 a special Act was passed by the Governor General in Council to authorise the making, and regulate the working, of tramways in Rangoon. Since that year application has been made for special Acts for tramways in Lahore and Amritsar, and legislation would probably be found to be necessary to regulate the use of tramways in other large towns in which their construction has been approved by, or is under the consideration of, the local authorities.

2. The Bill has been drawn on the lines of the Tramways Act, 1870 (33 & 34 Vic., c. 78), and of the provisional orders and rules made by the Board of Trade under that statute. These orders and rules, and the fullest discussion on almost all points connected with the subject of tramways, will be found in Mr. Sutton's "Tramway Acts of the United Kingdom."

3. The Bill extends in the first instance to the whole of British India except the territories comprised within the sphere of a local legislature, and is extendible to those territories by the Local Government.

4. "Orders" take the place of the "provisional orders" of the English statute, but differ from those orders in not being "provisional" and not being confirmed by a subsequent Act of the Legislature. They also differ from provisional orders in that they must be consistent with the Act and cannot vary or except any part of it.

5. Sections 4 to 6 of the Bill prescribe the conditions on which, and the manner in which, an order may be made; and section 7 specifies the matters for which provision may be made in an order. A reference to the authorities cited against the several clauses of that section will show how those matters are now provided for in the United Kingdom. If an order is found on experience to be defective, it can be supplemented by a further order on the application of the person in whose favour the original order was made (section 8), or, in certain particulars, by rules (section 24).

6. When the order has been made, the tramway must be constructed, maintained and worked in the manner provided by the order (sections 11 and 27). If the tramway is constructed by a local authority, it will ordinarily be worked by a lessee (section 23). If it is constructed by a private speculator, it may be worked by him or by a lessee to whom he has let the right of user and of demanding and taking the authorised tolls (section 7, sub-section *(4)*). If the owner of the tramway or his lessee so works the tramway that the public is deprived of the full benefit of it, the Local Government may grant a license to any person to use the tramway on the payment of tolls to the owner or the lessee (section 17). If the owner discontinues the working of the tramway (section 19) or through want of funds is unable to maintain the tramway or work it with advantage to the public (section 21), the Local Government may revoke his powers. When the powers of the owner are so revoked, the tramway may either be removed by the authority which has charge of the road on which the tramway is laid (section 20 and section 21, sub-section *(2)*), or it may be purchased by the local authority (section 22).

7. Section 22 provides for tramways which have been constructed by companies and private persons being purchased by local authorities on the expiration of the periods, and upon the terms, specified in the order, or, if the periods and terms were not specified in the order, then on the expiration of the periods, and upon the terms, prescribed in the English statute.

8. When a tramway is purchased by a local authority, it will ordinarily be worked by a lessee. There may, however, be cases in which the authority would be unable to let a tramway for an adequate consideration. It has been provided, therefore (section 23), that in those cases the Local Government may authorise the local authority itself to engage in the business of running carriages.

9. Differences between owners or lessees of tramways and the Local Government or local authorities are to be settled by a referee (section 35), who, if the Local Government is directly interested, is to be the District Judge. The decision of the referee will be final.

10. Sections 36 to 38 provide for the recovery by suit or summary process of moneys due to and from owners, lessees and licensees of tramways.

11. Sections 39 to 41 contain the savings usually found in enactments and agreements relating to the construction of tramways, and section 44 enables the Local Government to exempt from local taxation the animals, plant, rolling-stock and premises of owners and lessees of tramways constructed within the limits of municipalities.

12. Section 46 enables the Local Government, with the consent of the owner and the [illegible] authority, to extend any part of the Act, with or without modification, to a tramway or any part of a tramway constructed, or authorised to be constructed, before the passing of the Act.

The 22nd October, 1885.

C. P. ILBERT.

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

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, NOVEMBER 14, 1885.

☞ 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 22nd October, 1885 :—

No. 18 OF 1885.

THE INDIAN TRAMWAYS BILL, 1885.

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A Bill to facilitate the construction and to regulate the working of Tramways.

WHEREAS it is expedient to facilitate the construction and to regulate the working of tramways; It is hereby enacted as follows:—

Preliminary.

Short title and commencement.

1. (*1*) This Act may be called the Indian Tramways Act, 1886; and

(*2*) It shall come into force at once.

Local extent.

2. (*1*) It extends in the first instance to the whole of British India, except the territories administered by the Governor of Fort Saint George in Council, the Governor of Bombay in Council, and the Lieutenant-Governor of Bengal.

(*2*) But the Governor of Fort Saint George in Council, the Governor of Bombay in Council or the Lieutenant-Governor of Bengal may, by notification in the official Gazette, extend this Act to the whole or any part of the territories under his administration.

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

[Act XIII, 1885, s. 3, clause (7).] (*1*) "local authority" means a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund:

[Act XXII, 1883, s. 2.] (*2*) "road" means the way of a road, street, thoroughfare, passage or place along or across which a tramway authorised under this Act is, or is intended to be, laid, and includes the surface soil and sub-soil of a road, and the footway and drains of a road, and any bridge, culvert or causeway forming part of a road:

[33 & 34 Vic., c. 78, s. 3.] (*3*) "road-authority", in relation to a road, means—

(*a*) if a local authority maintains and repairs the road, then that authority:

(*b*) if a local authority does not maintain and repair the road, and the road is neither vested in Her Majesty nor maintained and repaired by the Government, then the person in whom the road is vested; and

(*c*) if a local authority does not maintain and repair the road, and the road is vested in Her Majesty or maintained and repaired by the Government, then the Local Government:

[33 & 34 Vic. c. 78, s. 3.] (*4*) "circle", in relation to a local authority or road-authority, means the area within the control of that authority:

[Act XXII, 1883, s. 2.] (*5*) "tramway" means a tramway, or any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway:

(*6*) "order" means an order authorising the construction of a tramway under this Act, and includes a further order substituted for, or amending, extending or varying, that order:

[33 & 34 Vic., c. 78, ss. 4, 24, 43 & 44; and Act XXII, 1883. Schedule, Articles 1 and 26.] (*7*) "promoter" means a local authority or person in whose favour an order has been made, and includes a local authority or person on whom the rights and liabilities conferred and imposed on the promoter by this Act and the order and any rules made under the Act, as to the construction, maintenance and use of the tramway, have devolved.

(*8*) "undertaking" includes all moveable and immoveable property of the promoter suitable to and used by him for the purposes of the tramway:

(*9*) "carriage", in the case of a tramway on which steam-power or any other mechanical power is used, includes an engine worked on the tramway for the purpose of producing that power:

(*10*) "toll" includes any charge leviable in respect of the use of a tramway:

(*11*) "lessee" means a person to whom a lease has been granted of the right of user of a tramway and of demanding and taking the authorised tolls:

(*12*) "District Magistrate" includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area all or any of the functions of a District Magistrate under this Act;

(*13*) "Collector" means the chief officer in charge of the revenue administration of a district, and includes an officer empowered by the Local Government by name or by virtue of his office to discharge within any local area the functions of a Collector under this Act; and

(*14*) "prescribed" means prescribed by rules made by the Local Government under this Act.

Orders authorising the Construction of Tramways.

[33 & 34 Vic., c. 78, s. 4.] **4.** (*1*) The Local Government may make an order authorising the construction of a tramway in a circle on the application of— Application for and consent necessary to making of order.

(*a*) the local authority of the circle, with, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, the consent of the road-authority in respect of that road or part; or

(*b*) any person with the consent of the local authority and, where that authority is not the road-authority of a road or part of a road to be traversed by the tramway, of the road-authority in respect of that road or part:

Provided that, if any part of the proposed tramway is to traverse land which is not included within the limits of a municipality or of a cantonment, the Local Government shall not make the order without the previous sanction of the Governor General in Council.

(*2*) A local authority shall not make an application for an order, or be deemed to consent to an application being made by any person for an order, unless the making of the application or the giving of the consent has been approved by the local authority in manner prescribed.

[33 & 34 Vic., c. 78, s. 5.] **5.** When it is proposed to lay a tramway in two or more circles, and a local authority or road-authority having control in either or any of the circles does not consent thereto, the Local Government may, nevertheless, make an order authorising the construction of the tramway in the circle, if, after considering the objections of the dissenting authority, and the benefit which the public is likely to derive from the tramway being laid in the circle of that authority, it is satisfied that the construction of the tramway therein is expedient. Consent of local or road authority not necessary in certain cases.

[33 & 34 Vic., c. 78, ss. 7 & 8; & Act XV, 1873, s. 68.] **6.** (*1*) The Local Government on receiving an application shall consider it, and, if satisfied as to the propriety of proceeding thereon, publish in the official Gazette, and in such other manner as it deems sufficient for giving information to persons interested, a draft of a proposed order authorising the construction of the tramway. Procedure for making order.

(*2*) A notice shall be published with the draft stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the Local Government on or before a date to be specified in the notice, be received and considered.

(*3*) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the Local Government is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may settle and make an order accordingly.

(*4*) Every order authorising the construction of a tramway shall be published in the official Gazette in English, and in the other prescribed language or languages, if any, and that publication shall be conclusive proof that the order has been made as required by this section.

[33 & 34 Vic., c. 78, s. 8.] **7.** (*1*) An order made under section 6 shall empower the promoter therein specified to construct and maintain the tramway therein described in the manner therein provided, and shall specify the time within which the tramway shall be commenced and the time within which it shall be completed and opened for public traffic. Contents of order.

[See 33 & 34 Vic., c. 78, s. 18, and s. 10 of this Bill.]

(*2*) The order may also provide, in manner consistent with this Act, for all or any of the following, among other matters, that is to say:—

[Provisional Order Clause 21.] (*a*) a period before the expiration of which the tramway shall not be commenced, and the conditions subject to which the local authority, when it is not itself the promoter, may, within that period, elect to be substituted in the place of the promoter in respect of the undertaking or of so much thereof as is within its circle; and the limits of time within which, and the terms upon which, the local authority may, after the tramway has been constructed, require the promoter to sell to it the undertaking or so much thereof as is within its circle;

[33 & 34 Vic., c. 78, s. 13.]

(*b*) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purposes; [33 & 34 Vic. c. 78, ss. 8 & 15; Provisional Order Clauses 2 and 5; and Report of House of Lords Committee, 1879, paragraph 11.]

[33 & 34 Vic., c. 78, ss. 26 & 27, and Provisional Order Clause 9.]

(*c*) the conditions subject to which roads may be opened and broken up for the purposes of the construction or maintenance of the tramway or any part thereof, and the method of, and materials to be used in, the re-instating of the roads, and the approval of the method and materials by the Local Government or the road-authority before the commencement of the work;

[33 & 34 Vic., c. 78, s. 26.]

(*d*) the conditions on which the tramway may be constructed over a bridge or across a railway or tramway when the carriageway over the bridge is to form part of the tramway or when the tramway is to cross a railway or another tramway on the level;

[33 & 34 Vic., c. 78, s. 9, and Provisional Order Clause 13.]

(*e*) the space which shall ordinarily intervene between the outside of the carriageway on either side of a road whereon the tramway is to be constructed and the nearest rail of the tramway, and the conditions on which a smaller space may be permitted;

[33 & 34 Vic., c. 78, s. 25, and Provisional Order Clauses 8 and 10.]

(*f*) the gauge of the tramway; the rails to be used, and the mode in which, and the level at which, they shall be laid and maintained; and the adoption and application by the promoter of such improvements in the rails, and in their situation, and in the substructure upon which they rest, as the Local Government may require;

[33 & 34 Vic., c. 78, s 28, and Provisional Order Clauses 8, 11 & 12.]

(*g*) the portion of the road or roads traversed by the tramway to be kept in repair by the promoter, the maintenance by the promoter to the satisfaction of the Local Government or the road-authority, or both, of that portion of the road or roads, and the liability of the promoter, on the requisition of the Local Government, from time to time to adopt and apply such improvements in the tramway as the Local Government may consider necessary or desirable for the safety and convenience of the public, and to alter the position or level of the tramway to suit future alterations in the road or roads;

[32 & 34 Vic., c. 78, s. 27, and Provisional Order Clause 17.]

(*h*) the application of material excavated by the promoter in the construction or maintenance of the tramway;

[Provisional Order Clause 15.]

(*i*) the provision of such crossings, passing-places, sidings, junctions and other works, in addition to those specified in or authorised by the order, as may from time to time be necessary or convenient to the efficient working of the tramway;

[33 & 34 Vic., c. 78, s. 32, and Provisional Order Clause 18.]

(*j*) the powers which may from time to time be exercised by the Local Government, the local authority, the road-authority or any person in respect of sewers, drains, telegraph-lines, gas-pipes or water-pipes in

[33 & 34 Vic., c. 78, s. 43.]

or on land occupied by the tramway; the notice (if any) to be given of the intended exercise of those powers; the manner in which the powers shall be exercised; and the extent to which the tramway and the traffic thereon may be interfered with in the exercise thereof;

[33 & 34 Vic., c. 78, ss. 30 & 31.]

(*k*) the conditions subject to which the promoter may from time to time interfere with, or alter or require the alteration of the position of, drains (not being sewers or main drains), telegraph-lines, gas-pipes or water-pipes;

[Provisional Order Clause 16.]

(*l*) the provision of a temporary tramway in place of a part of a tramway which has been removed, or of which the use has been discontinued, by reason of the execution of any work affecting a road along which the part of the tramway was laid;

[33 & 34 Vic., c. 78, s. 34; and Provisional Order Clauses 25, 26 & 27.]

(*m*) the motive power to be used on the tramway, and the conditions on which steam-power or any other mechanical power may be used;

[33 & 34 Vic., c. 78, s. 34; Schedule A to form of Provisional Order; and Regulations and Bye-laws of the Board of Trade with respect to the use of ste m-power on tramways.]

(*n*) the nature, dimensions, fittings, appliances and apparatus of the carriages to be used on the tramway, and the inspection and examination thereof by officers of the Local Government or the local authority, and the liability of the promoter or lessee, on the requisition of the Local Government, from time to time, to adopt and apply such improvements in the carriages, and in the fittings, appliances and apparatus as the Local Government may consider necessary or desirable for the safety and convenience of the public;

[33 & 34 Vic., c. 78, s.10, and Provisional Order Clauses 33 to 36 and 38 to 43.]

(*o*) the traffic which may be carried on the tramway, the traffic which the promoter or lessee shall be bound to carry, and the traffic which he may refuse to carry; the tolls to be leviable by the promoter or lessee, and the periodical revision thereof by the Local Government; and the regulation of the traffic and of the levy of the tolls;

[Provisional Order Clause 37.]

(*p*) the use of the tramway free of toll by the local authority, with its own carriages, for specified purposes, during specified hours, with power to the local authority to make such sidings and other works as may be necessary for communication between its premises and the tramway;

[33 & 34 Vic., c. 78, s. 44, and Provisional Order Clause 48.]

(*q*) the conditions subject to which the promoter may transfer the undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise; and the conditions subject to which the local authority may be the transferee;

[33 & 34 Vic., c. 78, s. 28, Proviso.]

(*r*) the performance by the Local Government or by the local authority or road-authority of any work required by the Act or the order to be done by the promoter; and

[Provisional Order Clauses 10, 11, 26, 27 and 40.]

(*s*) the penalty to be incurred by the promoter or lessee for failure to observe any condition or direction contained in the order, and the application of the penalty when recovered.

[Report of House of Lords Committee, 1879, para. 11.]

(*3*) The Local Government may, in providing in the order for the acquisition of land for the purposes of a tramway of which the promoter is not a company, direct that land may be acquired for the promoter under the provisions of the Land Acquisition Act, 1870, in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a company were the promoter. X of 1870.

(*4*) The order shall imply the condition—

(*a*) in the case of a tramway of which a local authority is the promoter, that a lease thereof shall be granted only in manner by this Act provided, and

(*b*) in the case of a tramway of which a local authority is not the promoter, that a lease thereof shall be only of the right of user and of demanding and taking the authorised tolls, and shall not confer or impose on the lessee any of the powers or duties of the promoter in respect of the construction or maintenance of the tramway.

[33 & 34 Vic., c. 78, s. 16.]

8. (*1*) The Local Government may, on the application of the promoter, revoke, amend, extend or vary the order by a further order.

Further orders.

(*2*) An application for a further order shall be made in the same manner and subject to the same conditions as an application for an order.

(*3*) The Local Government may, in its discretion, either grant or reject the application.

(*4*) If it grants the application, it shall make the further order in the same manner as an order except that no addition to or modification of the rights, powers and authorities asked for in the application, or restriction or condition with respect thereto, shall be made or imposed by the further order without the consent in writing of the promoter.

[33 & 34 Vic., c. 78, s. 17.]

9. (*1*) Subject to, and in accordance with, the provisions of this Act, the Local Government may, on a joint application, or on two or more separate applications, settle and make an order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof.

Power to authorise Joint work by local authorities.

(*2*) All the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of the tramway, and the form of the order may be adapted to the circumstances of the case.

[33 & 34 Vic., c. 78, s. 18.]

10. (*1*) If a promoter authorised by an order to construct a tramway—

Cesser of powers given by an order.

(*a*) does not within the time specified in the order substantially commence the construction of the tramway, or

(*b*) having commenced the construction, suspends it without a reason sufficient in the opinion of the Local Government to warrant the suspension, or

(*c*) does not within the time specified in the order complete the tramway and open it for public traffic,—

the following consequences shall ensue:—

(i) the powers given by the order to the promoter for constructing the tramway and otherwise in relation thereto shall, unless the Local Government, by special direction in writing, prolongs the time or condones the suspension, cease to be exercised except as to so much of the tramway as is then completed;

(ii) as to so much of the tramway as is then completed, the Local Government may either permit, or refuse to permit, the powers given by the order to continue;

(iii) if the Local Government refuses to permit the powers to continue, then so much of the tramway as is then completed may be dealt with, under the provisions of this Act relating to the discontinuance of tramways, as a tramway of which the discontinuance has been proved to the satisfaction of the Local Government.

[Sections 19 & 20 of this Bill.]

(*2*) A notification published by the Local Government in the official Gazette to the effect that on a date specified in the notification the construction of a tramway had not been substantially commenced or a tramway had not been completed and opened for public traffic, or that the construction of a tramway had been suspended without sufficient reason, shall, for the purposes of this section, be conclusive proof of the matter stated therein.

Construction and Maintenance of Tramways.

[33 & 34 Vic., c. 78, s. 25.]

11. A tramway shall be constructed and maintained in the manner provided by the order.

Mode of formation of tramway.

[33 & 34 Vic., c. 78, s. 25, & Act IV, 1879, s. 5.]

12. A tramway, or portion or extension of, or addition to, a tramway, shall not be opened for public traffic until an engineer appointed in this behalf by the Local Government has inspected it and certified it to be fit for such traffic.

Inspection of tramway before opening.

[33 & 34 Vic., c. 78, s. 29.]

13. The road-authority and the promoter may from time to time enter into agreements with respect to the keeping in repair of the whole or a part of a road traversed by a tramway, and with respect to the proportion to be paid by either of them of the expense of keeping the road or part in repair.

Agreement between road-authority and promoter as to repair of roadway.

Traffic on Tramways.

[33 & 34 Vic., c. 78, ss. 34 & 62, and Act XXII, 1888, s. 8.]

14. (*1*) The promoter of a tramway shall, subject to the provisions of sub-section (*2*) and to the other provisions of this Act and of the order, have the exclusive use of the tramway for carriages with flange-wheels or other wheels suitable to run on the rail described in the order as the rail to be used on the tramway:

Rights of promoter and the public over tramways.

Provided that nothing in this Act or the order or in any rule made under the Act shall affect the right of any person authorised to use a tramway or railway to pass across a tramway constructed under this Act with carriages having wheels suitable to run on the rail thereof.

(*2*) The public shall have a right to pass along or across any part of a road along or across which a tramway is constructed, whether on or off the tramway, with carriages not having flange-wheels or other wheels suitable to run on the rail of the tramway: provided—

(*a*) that this sub-section shall not apply where the tramway is constructed on land the right to the exclusive possession of which has been acquired by the promoter, and

(*b*) that the Local Government may by an order authorise the construction of a tramway on any part of a road with rails raised above the surface of the road, if it is satisfied that the convenience of the public will not be injuriously affected thereby.

[33 & 34 Vic., c. 78, s. 45.]

15. (*1*) The promoter or lessee may demand and take, in respect of the tramway, tolls not exceeding the limits specified in or determinable under the order, or if the order contains no provision in this behalf, then such sums as may from time to time be fixed by the promoter or lessee with the previous sanction of the Local Government.

Tolls leviable by promoter or lessee.

[33 & 34 Vic., c. 78, s. 53; and Act XXII, 1883, s. 13.]

(*2*) A list of all the tolls authorised to be levied shall be exhibited, in such languages as the District Magistrate may direct, in a conspicuous place inside and outside each of the carriages used upon the tramway.

16. (*1*) A person shall not be entitled to carry, or to require to be carried, on a tramway constructed under this Act, any goods of a dangerous or offensive nature.

Carriage of dangerous or offensive goods.

(*2*) A person taking such goods with him on the tramway shall, before entering the carriage, give notice of their nature to the servant of the promoter or lessee in charge of the carriage.

(*3*) A person sending such goods by the tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the servant of the promoter or lessee with whom he leaves them for the purpose of their being sent by the tramway.

(*4*) Any servant of the promoter or lessee may refuse to carry upon the tramway a parcel which he suspects to contain goods of a dangerous or offensive nature, and, if any such parcel has been received for the purpose of being carried upon the tramway, may stop the transit thereof until he is satisfied as to the nature of its contents.

Licenses to use Tramways.

[33 & 34 Vic., c. 78, s. 35.]

17. If, at any time after a tramway or part of a tramway has been for three years opened for public traffic in a circle, the local authority of the circle represents in writing to the Local Government that the public is deprived of the full benefit of the tramway or of the part thereof, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, grant a license to any person to use the tramway conformably to this Act and the order and to the rules made under the Act, subject to the following provisions, namely:—

Grant to third parties of licenses to use tramway in certain events.

(*a*) the license shall be for a period not less than one year or more than three years from the date of the license, but the Local Government may in its discretion renew it;

(*b*) the license shall be to use the whole of the tramway for the time being opened for public traffic, or such part or parts of the tramway as the Local Government, having regard to the cause for granting the license, thinks fit;

(*c*) the license shall specify the number of carriages which the licensee shall run upon the tramway, the mode in which and times at which, the carriages shall be run, the tolls to be paid to the promoter or lessee by the licensee for the use of the tramway, and the tolls, being those for the time being leviable by the promoter or lessee, which the licensee may demand and take for the use of his carriages;

(*d*) the licensee and his officers and servants shall permit one person, duly authorised for that purpose by the promoter or lessee, to travel free of toll in or upon each carriage of the licensee run upon the tramway for the whole or any part of a journey; and

(*e*) the Local Government may revoke, alter or modify the license for any cause sufficient in its opinion to warrant the revocation, alteration or modification thereof.

[33 & 34 Vic., c. 78, s. 37.]

Licensee to give to promoter or lessee an account of traffic.

18. A licensee shall, on demand, give to an officer or servant authorised in that behalf by the promoter or lessee an exact account in writing, signed by the licensee, of the number of passengers, or number or quantity of goods, conveyed by any and every carriage used by him on the tramway.

Discontinuance of Tramways.

[33 & 34 Vic., c. 78, s. 41.]

Cesser of powers of promoter and lessee on discontinuance of tramway.

19. If it is proved to the satisfaction of the Local Government, at any time after the opening of a tramway for public traffic, that the working of the tramway, or any part thereof, has been discontinued, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance, the Local Government, if it thinks fit, may, by notification in the official Gazette, declare that the powers of the promoter and of the lessee, if any, in respect of the tramway or the part thereof so discontinued, shall, from the date of the notification, be at an end, and thereupon the said powers shall cease and determine, except in so far as they may be purchased by a local authority in manner by this Act provided.

[Section 22 of this Bill.]

[33 & 34 Vic., c. 78, s. 41.]

Powers of road-authority on cesser of powers of promoter.

20. (*1*) Where a notification has been published under section 19, the road-authority may, at any time after the expiration of two months from the date of the notification, remove the tramway or part of the tramway so discontinued, and use the materials thereof in re-instating the road.

(*2*) The promoter shall pay to the road-authority the cost incurred by that authority in removing the tramway or the part thereof and in re-instating the road.

(*3*) The cost shall be certified by an officer of the road authority, and his certificate, countersigned by the District Magistrate, shall be conclusive proof as to the cost incurred.

(*4*) If the promoter does not pay the amount so certified within one month after the delivery to him of the certificate or of a copy thereof, the road-authority may, without any previous notice to the promoter and without prejudice to any other remedy which it may have for the recovery of the amount, sell and dispose of such materials of the tramway or part thereof removed as it has not used in re-instating the road, either by public auction or by private sale, and for such sum or sums, and to such person or persons, as it thinks fit, and may, out of the proceeds of the sale, pay and reimburse itself the amount of the cost aforesaid and of the expenses of the sale, and shall pay over the residue (if any) of the proceeds of the sale to the promoter.

[Section 36 of this Bill.]

Insolvency of Promoter.

[33 & 34 Vic., c. 78, s. 42.]

Proceedings in case of insolvency of promoter.

21. (*1*) If, at any time after the opening of a tramway in a circle for public traffic, it appears to the road-authority or local authority of the circle that the promoter of the tramway is insolvent, so that he is unable to maintain the tramway, or work it with advantage to the public, and either of those authorities makes a representation to that effect to the Local Government, the Local Government may, if after such enquiry as it deems necessary it is satisfied as to the truth of the representation, declare, by notification in the official Gazette, that the powers of the promoter shall, at the expiration of six months from the publication of the notification, be at an end; and the powers of the promoter shall cease and determine at the expiration of that period, except in so far as they may be purchased by a local authority in manner by this Act provided.

[Section 22 of this Bill.]

(*2*) Where a notification has been published under sub-section (*1*), the road-authority may, at any time after the expiration of six months from the date thereof, remove the tramway in the same manner, and subject to the same provisions as to the payment of the cost of the removal, and to the same remedy for recovery of the cost, in every respect as in cases of removal under section 20.

Purchase of Tramways.

[33 & 34 Vic., c. 78, s. 43.]

Future purchase of undertaking by local authority.

22. (*1*) Where the promoter of a tramway in a circle is not the local authority, the local authority, with the previous sanction of the Local Government, may—

(*a*) within such limits of time as may be specified in this behalf in the order, or

(*b*) if a time was not specified in the order, then within six months after the expiration of a period of twenty-one years from the date of the order, and within six months after the expiration of every subsequent period of seven years, or

(*c*) within two months after the publication of a notification under section 19 or within six months after the publication of a notification under section 21,—

by notice in writing, required the promoter to sell to the local authority his undertaking or the part thereof which is within the circle of the local authority; and thereupon the promoter shall sell the same upon the terms specified in the order, or, if the terms were not specified in the order, then upon the terms of paying the then value of the undertaking or of the part thereof, exclusive of any allowance for past or future profits of the undertaking or any compensation for compulsory sale or other consideration whatsoever.

(*2*) A requisition shall not be made under sub-section (*1*) unless the making thereof has been

approved by the local authority in manner prescribed.

(*3*) When a sale has been made under this section, all the rights, powers and authorities of the promoter in respect of the undertaking or part thereof sold, or, where a notification has been published under section 19 or section 21, all the rights, powers and authorities of the promoter previous to the publication of the notification in respect of the undertaking or part thereof sold, shall be transferred to the authority to whom the undertaking or part has been sold, and shall vest in, and may be exercised by, that authority in the same manner as if the tramway had been constructed by it under an order made under this Act.

(*4*) Subject to, and in accordance with, the preceding provisions of this section, two or more local authorities may jointly purchase an undertaking or so much thereof as is within their circles.

Working of Tramways owned by Local authorities.

[33 & 34 Vic., c. 78, s. 19.]

Lease of, or working of, tramway by local authority.

23. (*1*) When a local authority has under the authority of an order completed a tramway, or has under the provisions of this Act or of an order acquired possession of a tramway, it may, by a lease to be approved by the Local Government, let to any person the right of user of the tramway and of demanding and taking the authorised tolls.

(*2*) On the determination of a lease, the local authority may from time to time let the right for such further term and on such conditions as the Local Government may approve.

(*3*) Every lease made under this section shall imply a condition of re-entry if at any time after the making thereof it is proved to the satisfaction of the Local Government that the lessee has discontinued the working of the tramway leased, or of any part thereof, for the space of three months, without a reason sufficient, in the opinion of the Local Government, to warrant the discontinuance.

(*4*) Notice of the intention of the local authority to make a lease shall be given in manner prescribed.

(*5*) If the local authority cannot by means of a lease obtain what it deems to be a fair rent for the tramway, it may itself, with the previous sanction of the Local Government and for such term as the Local Government directs, place and run carriages upon the tramway, and demand and take the authorised tolls in respect of the use of the carriages.

Rules.

[33 & 34 Vic., c. 78, ss. 46 & 47, and Act XXII, 1883, s. 20.]

Power to make rules.

24. (*1*) In addition to any other power to make rules expressly or by implication conferred by this Act, the Local Government may make rules consistent with this Act—

(*a*) as to the form in which an application for an order shall be made;

(*b*) as to the costs to be paid by an applicant in respect of an order, and the time when, and the place where, those costs shall be paid;

(*c*) as to the payment of money or lodgment of securities, by way of deposit, by the applicant for an order before the order is published under section 6, sub-section (*4*), or a further order is made under section 8; the investment of money so paid; the disposal of interest or dividends from time to time accruing due on money or securities so paid, lodged or invested; the application of the money or securities or the produce thereof to the discharge of any liability incurred by the promoter, and the forfeiture, repayment or return of the money or securities;

(*d*) as to the plans and sections of any works to be deposited by applicants for orders or by promoters;

(*e*) for regulating the use of steam-power or any other mechanical power on a tramway;

(*f*) as to any matter specified in section 7, sub-section (*2*), clauses (*c*), (*d*), (*e*), (*f*) and (*k*), as a matter which may be provided for in an order, when that matter has not been so provided for, or has not, in the opinion of the Local Government, been effectually so provided for;

(*g*) as to any matter respecting which rules may be made under this section by a local authority or a promoter or lessee; and

(*h*) generally, as to any other matter or thing in respect of which it may seem to the Local Government to be expedient to make rules for the purpose of carrying this Act into execution.

[33 & 34 Vic., c. 78, s. 46; and Act XXII, 1883, s. 20.]

(*2*) A local authority may, from time to time, with the previous sanction of the Local Government, make rules, consistent with this Act and the order and any rules made by the Local Government under the Act, for regulating—

(*a*) the rate of speed to be observed in travelling upon a tramway within the circle of the local authority;

(*b*) the use of animal power on the tramway;

(*c*) the distances at which carriages using the tramway shall be allowed to follow one after the other;

(*d*) the stopping of carriages using the tramway;

(*e*) the traffic on roads along or across which the tramway is laid;

(*f*) the number of passengers which may be carried in any carriage;

(*g*) the licensing and control of drivers, conductors and other persons having charge of the carriages of the promoter or lessee or a licensee; and

[33 & 34 Vic., c. 78, s. 48.]

(*h*) generally, the mode of use of the tramway.

[Act XXII, 1883, s. 20.]

(*3*) The promoter or lessee of a tramway may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act and the order and any rules made under the Act—

[33 & 34 Vic., c. 78, s. 46 and Act XXII, 1883, s. 20.]

(*a*) for preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to him; and

(*b*) for regulating the travelling in any carriage belonging to him.

Power to impose penalty by rule.

25. The authority making any rule under section 24 may direct that a breach of it shall be punishable with fine which may extend—

[33 & 34 Vic., c. 78, s. 48.]

(*a*) if the authority making the rule is the Local Government, to two hundred rupees, and

[Act XXII, 1883, s. 14.]

[Act XXII, 1883, s. 20, sub-section (3).]

(*b*) if that authority is a local authority or a promoter or lessee, to twenty rupees;

and, when the breach is a continuing breach, with a further fine which may extend—

[Act XXII, 1883, s. 14.]

(*c*) if the authority making the rule is the Local Government, to fifty rupees, and

[33 & 34 Vic., c. 78, s. 47.]

(*d*) if that authority is a local authority or a promoter or lessee, to five rupees,

for every day after the first during which the breach continues.

Procedure for making, and publication of, rules.

26. (*1*) Every authority having power to make rules under any section of this act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(*2*) The publication shall be made, in the case of rules made by the Local Government, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by a local authority or by a promoter or lessee, in manner prescribed.

(*3*) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(*4*) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*5*) The publication in the official Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made.

(*6*) The Local Government may cancel any rule made by a local authority or by a promoter or lessee under section 24.

Offences.

Penalty for failure of promoter, lessee or licensee to comply with Act or order.

27. If a promoter—

(*a*) constructs or maintains a tramway otherwise than in accordance with the order;

[Act XXII, 1883, s. 14.]

(*b*) opens the tramway for traffic, or permits it to be so opened, before it has been inspected and certified in manner required by section 12; or

(*c*) fails to observe any requirement or condition of the order for neglect or breach whereof no penalty has been expressly provided in the order;

or if a promoter, lessee, or licensee runs a carriage on a tramway otherwise than in accordance with the order;—

he shall (without prejudice to the enforcement of specific performance of the requirements of this Act or of the order, or to any other remedy which may be obtained against him in a Court of Civil Judicature), on the complaint of the Local Government or of the local authority or road-authority or of any person injuriously affected thereby, be punished with fine which may extent to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for every day after the first during which the offence continues to be committed.

Penalty for obstructing promoter in exercise of his powers.

[33 & 34 Vic., c. 78, s. 53, and Act XXII, 1883, s. 17.]

28. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing or maintaining a tramway, or injures or destroys any mark made for the purpose of setting out the line of the tramway, he shall be punished with fine which may extend to fifty rupees.

Penalty for interfering with tramway.

[33 & 34 Vic., c. 78, s. 50, and Act XXII, 1883, s. 16.]

29. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully does any of the following things, namely:—

(*a*) interferes with, removes or alters any part of a tramway constructed under this Act, or of the works connected therewith;

(*b*) places or throws upon or across any such tramway any wood, stone, refuse or other thing;

(*c*) does anything in such a manner as to obstruct any carriage using any such tramway; or

(*d*) abets within the meaning of the Indian Penal Code the doing of, or attempts to do, anything mentioned in clause (*a*), clause (*b*) or clause (*c*),

XLV of 1860.

he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punished with fine which may extend to one hundred rupees.

Penalty for using tramway with carriage having flange-wheels.

[33 & 34 Vic., c. 78, s. 54.]

30. If any person, except under a lease from, or by agreement with, the promoter, or under license from the Local Government granted under this Act, uses on a tramway, otherwise than as permitted by section 14, a carriage having flange-wheels or other wheels suitable to run on the rail of the tramway, he shall be punished with fine which may extend to two hundred rupees.

Penalty for evading payment of proper toll.

[33 & 34 Vic., c. 78, s. 51, and Act XXII, 1883, s. 18.]

31. (*1*) If any person travelling or having travelled in a carriage of the promoter or lessee or a licensee evades or attempts to evade payment of toll, or if any person having paid toll for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional toll for the additional distance or attempts to evade payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid toll to quit the carriage, he shall be punished with fine which may extend to ten rupees.

[33 & 34 Vic., c. 78, s. 52, Act XXII, 1883, s. 19, and Act X, 1882, s. 57.]

(*2*) When a person commits an offence under this section and refuses, on demand of a servant of the promoter, lessee or licensee, to give his name and residence, or gives a name or residence which the servant has reason to believe to be false, he may be arrested and taken to the nearest police-station by the servant or any person whom the servant may call in for his assistance.

(*3*) When the person is taken to the police-station, he shall with the least possible delay be forwarded to the nearest Magistrate unless 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.

Penalty for taking or sending dangerous or offensive goods without giving notice.

32. If any person takes or sends by a tramway any goods of a dangerous or offensive nature without giving the notice required by section 16, he shall be punished with fine which may extend to fifty rupees.

[33 & 34 Vic., c. 78, s. 38.]

Penalty for licensee not giving to promoter or lessee an account of traffic or giving false account.

33. (*1*) If a licensee fails on demand to give the account mentioned in section 18, or, with intent to evade the payment of tolls, gives a false account when he is called upon to give an account under that section, he shall be punished with fine which may extend to fifty rupees.

(*2*) The fine shall be in addition to any tolls payable by the licensee to the promoter or lessee in respect of the passengers or goods conveyed by the carriage or carriages used by the licensee on the tramway.

[Act XIII, 1884, s. 158.]

Saving of prosecutions under other laws.

34. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules made under it: Provided that a person shall not be punished twice for the same offence.

Settlement of Differences.

Differences between promoters or lessees and authorities.

35. (*1*) If any difference arises between the promoter or lessee on the one hand and the Local Government, or the local authority, or the road-authority, or a person having the charge of any sewers, drains, telegraph lines, gas-pipes or water-pipes, on the other hand, with respect to any interference or control exercised or claimed to be exercised by, or on behalf of, either party by virtue of this or any other Act, or of the order, or of rules made under this Act, or with respect to the propriety of, or the mode of, the execution of any work, or with respect to any compensation to be made by or to the promoter or lessee, or on the question whether any work is such as ought reasonably to satisfy the Local Government or the road-authority or both, or with respect to any other subject or thing regulated by, or comprised in, this Act or the order or rules made under the Act, and not otherwise expressly provided for therein, the matter in difference shall, on the application of either party, be settled by a referee.

(*2*) Where the difference is between the promoter or lessee on the one hand and the Local Government either as such or as the road-authority, on the other, the referee shall be the District Court within the jurisdiction of which the tramway is situate, or, where the tramway is within the jurisdiction of more than one District Court, the District Court within the jurisdiction of which the greater part of the tramway is situate.

(*3*) In other cases, the referee shall be appointed by the Local Government.

(*4*) The powers and procedure of the referee may be prescribed.

(*5*) The decision of the referee shall be binding and conclusive on both parties.

Recovery of Tolls.

Recovery of moneys due from promoters and, in certain cases, from lessees.

[33 & 34 Vic., c. 78, s. 56; & Act XIII, 1884, s. 61.]

36. Any of the following moneys, namely, any rent due to a local authority from a lessee, any penalty recoverable from a promoter or lessee under an order, any sum payable by a promoter or lessee under an award of a referee, the cost of the performance under this Act by the Local Government or by a local authority or road-authority of any work required by this Act or an order to be done by a promoter, and the cost incurred by a road-authority in removing a tramway and reinstating a road under this Act, may, without prejudice to any other remedy the authority to which the money is due may have by suit or otherwise, be recovered by that authority, on application made in this behalf to the Collector, as if the sum due were an arrear of land-revenue due by the promoter or lessee or his surety (if any):

Provided that nothing in this section shall authorise the arrest of the promoter or lessee or his surety in execution of any process issued by the Collector.

[Act XIII, 1884, s. 172.]

Recovery of tolls from licensees.

37. (*1*) If a licensee fails to pay on demand the tolls due for the use of a tramway, the promoter or lessee to whom the tolls are due may, without prejudice to the remedy which he may have by suit, apply to a Magistrate to recover the amount of the tolls, and the Magistrate may, after giving notice to the licensee if possible and allowing him an opportunity of being heard, proceed to recover the amount by distress and sale of any carriages or other moveable property of the licensee which may be found on the tramway or on premises connected therewith.

(*2*) When a licensee has failed to pay on demand the tolls due from him, the promoter or lessee to whom the tolls are due may seize any carriage or other moveable property of the licensee on the tramway or on premises connected therewith, and detain the same for forty-eight hours unless the tolls are sooner paid.

(*3*) When application is made to a Magistrate under sub-section (*1*), he may make an interim order of distraint pending his final decision.

[Act XIII, 1884, s. 173.]

Recovery of tolls from passengers.

38. Any toll due to a promoter, lessee or licensee from a passenger may be recovered either by suit or, on application to a Magistrate having jurisdiction within any local area in which any part of the tramway is laid, by distress and sale of any moveable property belonging to the passenger within the local limits of the jurisdiction of the Magistrate.

Savings.

[33 & 34 Vic., c. 78, s. 57 and Act XXII, 1883, s. 9.]

Promoter to have right of user only.

39. (*1*) Notwithstanding anything contained in this Act or in an order, a promoter shall not acquire any right other than that of user only over a road along or across which he lays a tramway, nor shall anything contained in this Act or in an order exempt the promoter of a tramway, or any other person using the tramway, from the payment of such charges as may lawfully be levied in respect of the use of a road or bridge along or across which the tramway is laid.

[Act VIII, 1851.]

[Act XVII, 1878, s. 18.]

(*2*) The Local Government may, if it thinks fit, fix rates at which a promoter, lessee or licensee

may compound for the charges payable in respect of the use of a road or bridge.

[33 & 34 Vic, c. 78. ss. 32 & 60.]

Saving of power over roads traversed by tramway.

40. (*1*) Nothing in this Act or in an order shall take away or abridge any power which a road-authority, local authority or other person has by law to break up, widen, alter, divert or improve a road, railroad or tramway along or across which a tramway is laid.

(*2*) The road-authority, local authority or other person executing any work referred to in sub-section (*1*) shall not be liable to pay to a promoter, lessee or licensee any compensation for injury done to a tramway by the execution of the work or for loss of traffic occasioned by the reasonable use of any power lawfully exercised for the execution thereof.

[33 & 34 Vic., c. 78, s. 61; and Act XXII, 1883, s. 10.]

Saving of power of local authority and police to regulate traffic on roads.

41. Nothing in this Act or in an order shall affect the powers of a local authority or of a magistrate or police-officer to regulate the passage of traffic along or across a road along or across which a tramway is laid; and the authority, magistrate or officer aforesaid may exercise its or his powers as well on as off the tramway and with respect as well to the traffic of a promoter, lessee or licensee as to the traffic of other persons.

Supplemental provisions.

[33 & 34 Vic., c. 78, ss. 40 & 55.]

Promoters, lessees and licensees to be responsible for all injuries.

42. A promoter, lessee or licensee shall be answerable for all injuries happening through his act or default, or through the act or default of any person in his employment, by reason or in consequence of any of his carriages or works, and shall save harmless all authorities and persons collectively and individually, and their officers and servants, from all damages and costs in respect of injuries so happening.

[Act XXII, 1883, s. 21.]

Want of funds not a sufficient reason for default.

43. For the purposes of this Act, want of funds shall not be deemed to be a sufficient reason for the suspension of the construction, or the discontinuance of the working, of a tramway by a promoter or lessee.

[Act XXII, 1883, s. 22.]

Power to exempt from municipal taxation.

44. When a tramway is constructed under this Act within the limits of a municipality, the Local Government may exempt the animals, plant, rolling-stock, yards, workshops, engine-sheds and depôts of the promoter or lessee, for such period as it thinks fit, from all or any municipal taxes leviable within those limits.

[33 & 34 Vic., c. 78, s. 20.]

Application by local authorities of local funds to tramways.

45. The fund to or with the control or management of which the local authority of a municipality, cantonment or district is entitled or entrusted shall, notwithstanding anything in any Act respecting the purposes to which that fund may be applied, be applicable, subject to the control of the Local Government, to the payment of expenses incidental to the exercise of the powers and functions which may be vested in or exercised by a local authority under this Act.

Extension of Act to existing tramways.

46. The Local Government may, with the consent of the local authority and road-authority and of the promoter, extend any part of this Act or of any rules made thereunder, either with or without modification, to the whole or any part of a tramway constructed, or authorised to be constructed, before the passing of this Act, and to any extension of, or addition to, any such tramway, and may withdraw any part of the Act so extended.

IV. of 1879.

Meaning of "tramway" in Railway Act.

47. In section 54 of the Indian Railway Act, 1879, the word "tramway" shall have the meaning assigned to it by section 3 of this Act.

[Act XIII, 1884, s. 173.]

Powers of Local Government exercisable from time to time.

48. All powers conferred by this Act on a Local Government may be exercised from time to time as occasion requires.

STATEMENT OF OBJECTS AND REASONS.

THE introduction of this Bill has been rendered necessary by the projected construction of tramways in parts of India beyond the reach of a local legislature. In 1883 a special Act was passed by the Governor General in Council to authorise the making, and regulate the working, of tramways in Rangoon. Since that year application has been made for special Acts for tramways in Lahore and Amritsar, and legislation would probably be found to be necessary to regulate the use of tramways in other large towns in which their constructions has been approved by, or is under the consideration of, the local authorities.

2. The Bill has been drawn on the lines of the Tramways Act, 1870 (33 & 34 Vic., c. 78), and of the provisional orders and rules made by the Board of Trade under that statute. These orders and rules, and the fullest discussion on almost all points connected with the subject of tramways, will be found in Mr. Sutton's "Tramway Acts of the United Kingdom."

3. The Bill extends in the first instance to the whole of British India except the territories comprised within the sphere of a local legislature, and is extendible to those territories by the Local Government.

4. "Orders" take the place of the "provisional orders" of the English statute, but differ from those orders in not being "provisional" and not being confirmed by a subsequent Act of the Legislature. They also differ from provisional orders in that they must be consistent with the Act and cannot vary or except any part of it.

5. Sections 4 to 6 of the Bill prescribe the conditions on which, and the manner in which, an order may be made; and section 7 specifies the matters for which provision may be made in an order. A reference to the authorities cited against the several clauses of that section will show how those matters are now provided for in the United Kingdom. If an order is found on experience to be defective, it can be supplemented by a further order on the

application of the person in whose favour the original order was made (section 8), or, in certain particulars, by rules (section 24).

6. When the order has been made, the tramway must be constructed, maintained and worked in the manner provided by the order (sections 11 and 27). If the tramway is constructed by a local authority, it will ordinarily be worked by a lessee (section 23). If it is constructed by a private speculator, it may be worked by him or by a lessee to whom he has let the right of user and of demanding and taking the authorised tolls (section 7, sub-section (*4*)). If the owner of the tramway or his lessee so works the tramway that the public is deprived of the full benefit of it, the Local Government may grant a license to any person to use the tramway on the payment of tolls to the owner or the lessee (section 17). If the owner discontinues the working of the tramway (section 19) or through want of fund is unable to maintain the tramway or work it with advantage to the public (section 21), the Local Government may revoke his powers. When the powers of the owner are so revoked, the tramway may either be removed by the authority which has charge of the road on which the tramway is laid (section 20 and section 21, sub-section (*2*)), or it may be purchased by the local authority (section 22)).

7. Section 22 provides for tramways which have been constructed by companies and private persons being purchased by local authorities on the expiration of the periods, and upon the terms, specified in the order, or, if the periods and terms were not specified in the order, then on the expiration of the periods, and upon the terms, prescribed in the English statute.

8. When a tramway is purchased by a local authority, it will ordinarily be worked by a lessee. There may, however, be cases in which the authority would be unable to let a tramway for an adequate consideration. It has been provided, therefore (section 23), that in those cases the Local Government may authorise the local authority itself to engage in the business of running carriages.

9. Differences between owners or lessees of tramways and the Local Government or local authorities are to be settled by a referee (section 35), who, if the Local Government is directly interested, is to be the District Judge. The decision of the referee will be final.

10. Sections 36 to 38 provide for the recovery by suit or summary process of moneys due to and from owners, lessees and licensees of tramways.

11. Sections 39 to 41 contain the savings usually found in enactments and agreements relating to the construction of tramways, and section 44 enables the Local Government to exempt from local taxation the animals, plant, rolling-stock and premises of owners and lessees of tramways constructed within the limits of municipalities.

12. Section 46 enables the Local Government, with the consent of the owner and the local authorities, to extend any part of the Act, with or without modification, to a tramway or any part of a tramway constructed, or authorised to be constructed, before the passing of the Act.

The 22nd October, 1885.

C. P. ILBERT.

D. FITZPATRICK,

Secy. to the Govt. of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, DECEMBER 19, 1885.

☞ 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.

LAGISLATIVE 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 December 1885 :—

No. 19 OF 1885.

THE PROVINCIAL SMALL CAUSE COURTS BILL, 1885.

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(*Chapter II.—Constitution of Courts of Small Causes.—Sections 1-8.*)

A Bill to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law relating to Courts of Small Causes established beyond the local limits for the time being of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal and at Madras and Bombay; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (*1*) This Act may be called the Provincial Small Cause Courts Act, 1886.

Short title, local extent and commencement.

XIV of 1874.

(*2*) It extends to the whole of British India except the scheduled districts as defined in the Scheduled Districts Act, 1874; and

(*3*) It shall come into force on the first day of July, 1886.

2. (*1*) The enactments specified in the first schedule to this Act are repealed to the extent mentioned therein.

Repeal.

(*2*) But all Courts constituted, limits fixed, appointments, declarations and rules made, jurisdiction and powers conferred, forms prescribed, directions given and notifications published under Act XI of 1865 (*an Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil jurisdiction of the High Courts of Judicature*) shall, so far as may be, be deemed to have been respectively constituted, fixed, made, conferred, prescribed, given and published under this Act.

(*3*) Any enactment or document referring to the said Act XI of 1865 shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Saving of procedure and jurisdiction in certain cases.

3. Nothing in this Act affects—

[Act XIV, 1882, s. 3.]

(*a*) any proceedings prior to decree in any suit instituted before the day on which this Act comes into force or any proceedings after decree which were commenced before and were pending on that day;

[44 & 45 Vic., c. 58.] [Act XV, 1882, s. 1, and Act XI, 1865, s. 49.] [Act XI, 1865, s. 12. cf. Act IX, 1860.]

(*b*) the provisions of the Army Act, 1881, section 151; or

(*c*) the jurisdiction of a Cantonment Joint Magistrate invested with civil jurisdiction under Act III of 1859, or of a Magistrate having jurisdiction under any law for the time being in force with respect to debts or other claims of a civil nature, or of Village Munsifs or Village Panchâyats under the provisions of the Madras Code.

4. In this Act, unless there is something repugnant in the subject or context,— [New]

Definitions.

Mad. Regs. IV and V of 1816.

(*1*) "Court of Small Causes" means a Court of Small Causes constituted under this Act:

(*2*) "District Court" means a principal Civil Court of original jurisdiction:

(*3*) "district" means the local limits of the jurisdiction of a District Court:

(*4*) "value", used with reference to a suit, means the amount or value of the subject-matter of the suit: and

(*5*) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund.

CHAPTER II.

CONSTITUTION OF COURTS OF SMALL CAUSES.

5. (*1*) The Local Government, with the previous sanction of the Governor General in Council, may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration. [Act XI, 1865, s. 3.]

Establishment of Courts of Small Causes, and local limits of their jurisdiction.

(*2*) The local limits of the jurisdiction of the Court shall be such as the Local Government may define.

6. (*1*) When a Court of Small Causes has been established, the Local Government shall, by order in writing, appoint a Judge of the Court. [Act XI, 1865, s. 13.]

Judge.

(*2*) The Judge may be the Judge of one Court of Small Causes or of two or more such Courts, as the Local Government directs.

7. (*1*) A Judge who is the Judge of two or more such Courts may fix the times at which he will sit in each of the Courts of which he is Judge. [Act XI, 1865, s. 14.]

Appointment of times of sitting in certain circumstances.

(*2*) Notice of the times shall be published in such manner as the High Court directs.

8. (*1*) The Local Government, with the previous sanction of the Governor General in Council, may, by order in writing, appoint an Additional Judge of a Court of Small Causes. [Act XI, 1865, s. 15, and Act XVII, 1875, s. 94.]

Additional Judge.

(*2*) The Additional Judge shall discharge such of the functions of the Judge as the Judge directs. [Act VI, 1871, s. 7.]

The Provincial Small Cause Courts Bill, 1885.

(*Chapter II.—Constitution of Courts of Small Causes.—Sections 9-16.*)

[cf. Act XIV, 1882, s. 25.]

(*3*) The Judge may withdraw from the Additional Judge any business pending before him.

[New.]

(*4*) When the Judge is absent, the Additional Judge may discharge all or any of the functions of the Judge.

[Act XI, 1865, ss. 29, 30 & 31.]

9. The Local Government may, by order in writing, direct that two Judges of Courts of Small Causes, or a Judge and an Additional Judge of a Court of Small Causes, shall sit together for the trial of such suits cognizable by a Court of Small Causes as may be described in the order.

Power to require two Judges to sit as a bench.

[Act XI, 1865, ss. 32, 33 and 34.]

10. (*1*) Where two Judges, or a Judge and an Additional Judge, sitting together under section 9, are of the same opinion as to a decree or order to be made, the decree or order shall follow their opinion.

Decision in case heard by a bench.

(*2*) If they differ as to a question of law or usage having the force of law, or in construing a document the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of the Code of Civil Procedure applicable to a reference to the High Court shall apply.

XIV of 1882.

(*3*) If they differ on any matter other than a matter specified in sub-section (*2*), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an Additional Judge, then the opinion of the Judge sitting with him, shall prevail.

[Act XVIII, 1884, s. 5.]

(*4*) For the purposes of sub-section (*3*), a Judge permanently appointed shall be deemed senior to an officiating Judge.

[Act XI, 1865, ss. 35, 36 and 40.]

11. (*1*) The Judge of a Court of Small Causes shall, if the Local Government directs, appoint an officer to be called the Registrar.

Registrar.

(*2*) The appointment shall be subject to the sanction of the Local Government.

(*3*) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court.

(*4*) The Local Government may, by order in writing, confer upon the Registrar, within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees.

(*5*) The Registrar shall exercise the jurisdiction subject to the general control of the Judge.

[Act XI, 1865, s. 44.]

12. (*1*) Subject to the sanction of the Local Government, the Judge of a Court of Small Causes may appoint an officer to be called the Clerk of the Court.

Clerk of Court.

(*2*) A Registrar of a Court of Small Causes may also be the Clerk of the Court.

13. Subject to the sanction of the Local Government, the Judge of a Court of Small Causes may appoint as many other ministerial officers as may be necessary. [Act XI, 1865, s. 3.]

Other ministerial officers.

14. (*1*) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs. [Act XV, 1882, s. 13.]

Duties of ministerial officers.

(*2*) The High Court may make rules consistent with this Act, and with any other enactment for the time being in force, conferring and imposing on the ministerial officers of a Court of Small Causes such powers and duties of a non-judicial or quasi-judicial nature as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed. [Act XVIII, 1884, s. 14, cl. (*f*).]

15. (*1*) A Judge, Additional Judge or Registrar of a Court of Small Causes may be suspended or removed from office by the Local Government. [cf. Act XVIII, 1884, ss. 31, 36 & 37.]

Suspension and removal of officers.

(*2*) The Judge of a Court of Small Causes may suspend the Registrar of his Court if there appears to him to be urgent necessity for so doing, and may suspend or remove from office, or fine in an amount not exceeding one month's salary, any other ministerial officer of his Court who is guilty of misconduct or neglect in the performance of his duties.

(*3*) A fine imposed under sub-section (*2*) may, if the order imposing it so directs, be recovered by deduction of the amount thereof from any salary which may be or become due to the officer fined. [Act XVI, 1885, s. 19, sub-section (*4*).]

16. (*1*) A Judge, Additional Judge or ministerial officer appointed under this Act shall not, during his tenure of office, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, vakíl, attorney, pleader 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. [Act XV, 1882, s. 15, and Act XI, 1865, s. 17.]

Penalty on Judge or ministerial officer practising or trading.

(*2*) If a Judge, Additional Judge or ministerial officer aforesaid practises, acts or is concerned in any trade or profession, in contravention of the provisions of sub-section (*1*), he shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

XLV of 1860.

(*3*) Nothing in this section shall be deemed to prohibit a Judge, Additional Judge or ministerial officer from being a member of an incorporated or registered company.

The Provincial Small Cause Courts Bill, 1885.

(Chapter IV.—Practice and Procedure of Courts of Small Causes.—Sections 17-24.)

CHAPTER III.

JURISDICTION OF COURTS OF SMALL CAUSES.

17. (*1*) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule to this Act. — Cognizance of suits by Courts of Small Causes.

[Act XV, 1882, ss. 18 and 19.] (*2*) Subject to the exceptions specified in the said schedule, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

[Act XI, 1865, s. 7.] (*3*) Subject to the exceptions aforesaid, the Local Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order.

[Act XI, 1865, s. 12. Act XVII, 1879, s. 6.] **18.** Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes. — Exclusive jurisdiction of Courts of Small Causes.

CHAPTER IV.

PRACTICE AND PROCEDURE OF COURTS OF SMALL CAUSES.

[Act XIV, 1882, s. 5.] **19.** The procedure prescribed in the chapters and sections of the Code of Civil Procedure specified in the second schedule annexed to the said Code, as amended by this Act, shall, so far as those chapters and sections are applicable, be the procedure followed in a Court of Small Causes in all suits cognizable by it: — Application of the Code of Civil Procedure.

XIV of 1882.

Provided that—

(*a*) where the applicant for a review of judgment was the defendant or one of the defendants, the Court shall not grant his application unless, at the time of presenting the application, he deposits in the Court the amount due from him under the decree or order; and

Act XI, 865, s. 21.]

(*b*) where a person to be arrested or property to be attached under section 648 of the said Code resides or is situate within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or Bombay, or of the Recorder of Rangoon, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as the case may be; and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.

[cf. Act XIV, 1882, ss. 86 and 223.]

20. Except in a case of set-off, a written statement shall not be received unless required by the Court. — Exclusion of written statements. [Act XI, 1865, s. 18; and Act XV, 1882, s. 24.]

21. If it appears to a Court of Small Causes that a judgment-debtor under its decree has not, within the local limits of the jurisdiction of the Court, moveable property sufficient to satisfy the decree, it may, on the application of the decreeholder, send the decree for execution to another Court in the manner provided by the Code of Civil Procedure, sections 223 and 224. — Transfer of decrees to other Courts for execution. [Act XI, 1865, s. 20.]

XIV of 1882.

22. Suits cognizable by the Registrar under section 11, sub-section (*1*), shall be tried by him, and decrees passed therein shall be executed by him, in like manner in all respects as the Judge might try the suits, and execute the decrees, respectively: — Trial of suits by Registrar. [Act XI, 1865, s. 41.]

Provided that the Judge may transfer to his own file, or to that of the Additional Judge if an Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar.

23. (*1*) When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may return or reject a plaint for any reason for which the Judge might return or reject it. — Admission, return and rejection of plaints by Registrar. [Act XI, 1865, s. 37.]

(*2*) The Judge may, of his own motion or on the application of a party, return or reject a plaint which has been admitted by the Registrar, or admit a plaint which has been returned or rejected by him:

Provided that, where a party applies for the return or rejection or the admission of a plaint under this sub-section, his application shall be made at the first sitting of the Court after the day on which the Registrar admitted, or returned or rejected, the plaint.

24. (*1*) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorised in that behalf appears before the Registrar and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree, which shall have the same effect as a decree passed by the Judge. — Passing of decrees by Registrar on confession. [Act XI, 1865, ss. 38 and 43.]

(*2*) Where a decree has been passed by the Registrar under sub-section (*1*), the Judge may grant an application for review of judgment and re-hear the suit, on the same conditions, on the

The Provincial Small Cause Courts Bill, 1885.

(Chapter V.—Supplemental Provisions.—Sections 25-34.)

same grounds and in the same manner as if the decree had been passed by himself.

[Act XI, 1865, s. 39.] **25.** (*1*) If the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar shall receive applications for the execution of decrees and orders made by the Court of which he is Registrar or sent to that Court for execution, and may, subject to any instructions which he may have received from the Judge or, with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any orders in respect of the applications which the Judge might make under this Act. — Execution of decrees by Registrar.

(*2*) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub-section (*1*), and the Additional Judge, in the case of any such decree or order made by himself, may, within fifteen days from the date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order, either of his own motion or on the application of a party.

[Act XVIII, 1884, s. 48.] (*3*) The period of fifteen days mentioned in sub-section (*2*) shall be computed in accordance with the provisions of the Indian Limitation Act, 1877.

XV of 1877.

[Act XI, 1865, s. 45.] **26.** The Clerk of the Court shall, subject to the orders of the Judge, and of the Registrar if a Registrar has been appointed, receive plaints and applications, issue summonses and notices, and, unless the High Court has ordered otherwise, take charge and keep an account of all moneys and securities for money paid or delivered into or out of Court. — Functions of Clerk of Court.

[Act XI, 1865, s. 21.] **27.** Save as in this Act expressly provided, a decree or order made under the foregoing provisions of this Act shall be final. — Finality of decrees and orders.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

[Act XVIII, 1884, s. 66.] **28.** The Local Government may fix the place or places, within the local limits of the jurisdiction of a Court of Small Causes, at which the jurisdiction shall be exercised. — Place of sitting.

[Act XI, 1865, ss. 4, 46 and 53; and Act XV, 1882, s. 90.] **29.** A Court of Small Causes shall be subject to the control of the District Court and to the superintendence of the High Court, and shall— — Subordination of Courts of Small Causes.

(*a*) keep such registers, books and accounts as the High Court prescribes; and

(*b*) comply with such requisitions as may be made by the District Court, the High Court or the Local Government for returns and statements in such form and manner as the authority making the requisition directs.

[Act XI, 1865, s. 4.] **30.** A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the Local Government. — Seal.

[Act XI, 1865, s. 3.] **31.** The Local Government may, by order in writing, abolish a Court of Small Causes. — Abolition of Courts of Small Causes.

[Act XI, 1865, s. 51.] **32.** (*1*) Nothing in this Act shall prevent the Local Government from appointing a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other Civil Court subordinate to a District Court, or to be a Magistrate of any class. — Saving of power to appoint Judge of Court of Small Causes to other office.

(*2*) When a Judge or Additional Judge is so appointed, the ministerial officers of his Court shall, subject to such rules as the Local Government may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of his duties as the Judge of the other Civil Court or as a Magistrate.

[New.] **33.** (*1*) So much of Chapters III and IV of this Act as relates to the nature of the suits cognizable by Courts of Small Causes, to the exclusion of the jurisdiction of other Courts in those suits, to the powers and procedure of Courts of Small Causes, and to the finality of the decrees and orders of those Courts, applies to Courts invested under any enactment for the time being in force with the jurisdiction of a Court of Small Causes when the Courts are exercising that jurisdiction. — Application of Act to Courts with jurisdiction of Court of Small Causes.

[New.] (*2*) A Court invested with the jurisdiction of a Court of Small Causes, with respect to the exercise of that jurisdiction, and the same Court, with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure, be deemed to be different Courts.

X V of 1882.

[Act XV, 1882, s. 37.] **34.** In the third division of the second schedule to the Indian Limitation Act, 1877,— — Amendment of Indian Limitation Act.

XV of 1877.

(*a*) before No. 158, the following shall be inserted, namely:—

"157A. For a review of judgment by a Provincial Court of Small Causes, or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	Eight days.	The date of the decree or order."

The Provincial Small Cause Courts Bill, 1885.

(Chapter V.—Supplemental Provisions.—Sections 35-36.—The First Schedule.—Enactments repealed.—The Second Schedule.—Suits excepted from the cognizance of a Court of Small Causes.)

and (*b* in No. 173, the words, figures and letter "No. 157A and" shall be inserted before the word and figures "No. 162."

[Act XVIII, 1884, s. 65.]

35. All powers conferred by this Act may be exercised from time to time as occasion requires.

Powers exercisable from time to time.

[Act XVI, 1885, s. 27.]

36. All orders required by this Act to be made in writing by the Local Government shall be published in the official Gazette, but shall take effect from the date on which they are made.

Publication of certain orders.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

Number and year.	Subject or title.	Extent of repeal.
Act XI of 1865.	Mufassal Small Cause Courts Act.	So much as has not been repealed.
Act VI of 1871.	Bengal Civil Courts Act.	Section 30.
Act III of 1873.	Madras Civil Courts Act.	Section 29, paragraph one.
Act XIV of 1882.	The Code of Civil Procedure.	(*a*) In the second schedule, in the particulars specified against Chapter XLIX, the words and figures "sections 640 to 647 (both inclusive), sections 649 to 652 (both inclusive)," and (*b*) so much of that schedule as extends to Provincial Courts of Small Causes sections 121 to 136 and such portions of sections 137, 447, 453, 454 and 456 as require applications to be supported by affidavit.

THE SECOND SCHEDULE.

SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES.

(1) a suit concerning an act or order purporting to be done or made by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by a Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or concerning an act purporting to be done by any person by order of the Governor General in Council or the Local Government;

(2) a suit concerning an act or order purporting to be done or made by a Court or by a judicial officer acting in the execution of his office, or concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting as aforesaid;

(3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a local authority or Court of Wards, or by an officer or servant of a local authority or Court of Wards in the execution of his office or in the course of his service; [Act XV, 1877, Sch. II, Art. 14.]

(4) a suit for the possession of immoveable property; [Act XV, 1877, Sch. II, Arts. 3, 10, 46, 47, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144 and 148.]

(5) a suit for the partition of immoveable property;

(6) a suit by a mortgagee of immoveable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immoveable property for the redemption of the mortgage; [Act XV, 1877, Sch. II, Arts. 147 and 148.]

(7) a suit for the recovery of, or otherwise concerning, the rent of land used for agricultural purposes, or for the assessment, enhancement, abatement or apportionment of the rent of any immoveable property; [Act XV, 1877, Sch. II, Arts. 110 and 130; Act XI, 1865, s. 6, proviso (1); and I. L. R. 5 Cal. 902.]

(8) a suit concerning the liability of land to be assessed to land-revenue; [Act XV, 1877, Sch. II, Art. 130.]

(9) a suit to restrain waste; [Act XV, 1877, Sch. II, Art. 41.]

(10) a suit for the determination of any other right to or interest in immoveable property; [Act XV, 1877, Sch. II, Arts. 15, 111, 121, 125, 126 and 132.]

(11) a suit for the enforcement of a lien on moveable property, or by a pawnor for the redemption or recovery of a pledge; [Act XV, 1877, Sch. II, Art. 145.]

(12) a suit for the specific performance or rescission of a contract; [Act I, 1877, Chaps. II and IV; and Act XV, 1877, Sch. II, Arts. 113 and 114.]

(13) a suit for the rectification or cancellation of an instrument; [Act I, 1877, Chaps. III and V; and Act XV, 1877, Sch. II, Art. 91.]

(14) a suit to obtain an injunction; [Act I, 1877, Chap. X.]

(15) a suit to enforce a trust;

(16) a suit for a declaratory decree; [Act XV, 1877, Sch. II, Arts. 92, 93, 118, 119, 129, and 131.]

(17) a suit to set aside a sale under a decree or order of a Court or of a revenue-authority, or a sale by a guardian; [Act XV, 1877, Sch. II, Arts. 12 and 41.]

The Provincial Small Cause Courts Bill, 1885.

(Second Schedule.—Suits excepted from the cognizance of a Court of Small Causes.)

[Act XV, 1877, Sch. II, Arts. 13 and 95.]

(18) a suit to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial or quasi-judicial capacity;

[Act XV, 1877, Sch. II, Arts. 1 and 45.]

(19) a suit to contest an award of a revenue-authority under any enactment for the time being in force;

[Act XV, 1877, Sch. II, Art. 11.]

(20) a suit by a person against whom an order is passed under section 280, section 281 or section 282 of the Code of Civil Procedure, to establish his right to, or to the present possession of, the property comprised in the order;

XIV of 1882.

[Act XV, 1877, Sch. II, Art. 43.]

(21) a suit under the Indian Succession Act, 1865, section 320 or section 321, or under the Probate and Administration Act, 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets;

X of 1865. V of 1881.

[Act XV, 1877, Sch. II, Art. 123; and Act XI, 1865, s. 6, proviso (2).]

(22) a suit for a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate;

[Act XV, 1877, Sch. II, Art. 124.]

(23) a suit for the possession of an hereditary office;

[Act XV, 1877, Sch. II, Art. 106; and Act XI, 1865, s. 6, proviso (1).]

(24) a suit—

(*a*) for a dissolution of partnership;

(*b*) for an account of partnership-transactions; or

(*c*) for a balance of partnership-account unless the balance has been struck by the parties or their agents;

[Act XIV, 1882, s. 213.]

(25) a suit for an account of property and its due administration under the decree of a Civil Court;

[Act XV, 1877, Sch. II, Art. 88.]

(26) any other suit for an account;

[9 W. R. 252.]

(27) a suit for a general average loss or for salvage;

(28) a suit for compensation in respect of a collision on the high seas;

[Act XV, 1877, Sch. II, Arts. 86 and 87.]

(29) a suit on a policy of insurance;

[Act XV, 1877, Sch. II, Arts. 19, 23, 24, 25, 26, 27, 28, 36, 42 and 115; and Act XI, 1865, s. 6, proviso (3).]

(30) a suit for compensation—

(*a*) for false imprisonment;

(*b*) for malicious prosecution;

(*c*) for libel;

(*d*) for slander;

(*e*) for adultery or seduction;

(*f*) for breach of promise of marriage;

(*g*) for inducing a person to break a contract made with the plaintiff;

(*h*) for illegal, irregular or excessive distress; or

(*i*) for injury caused by an injunction wrongfully obtained;

(31) a suit for the restitution of conjugal rights, for the recovery of a wife, or for a divorce; [Act XV, 1877, Sch. II, Arts. 34 and 35.]

(32) a suit for maintenance; [Act XV, 1877, Sch. II, Art. 128.]

(33) a suit to enforce payment of the allowance or fees respectively called *málikána* and *hakk*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immoveable property; [Act XV, 1877, Sch. II, Art. 132.]

(34) a suit for arrears of land-revenue, village-expenses or other sums payable to the representative of a village-community or to his heir or transferee;

(35) a suit for profits payable by the representative of a village-community or by his heir or transferee after payment of land-revenue, village-expenses and other sums;

(36) a suit for contribution by a sharer in a joint estate in respect of a payment made by him of money due from a co-sharer, or by the manager of a joint estate of an undivided family in respect of a payment made by him on account of the estate; [Act XV, 1877, Sch. II, Arts. 99 and 107.]

(37) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue-authority on account of an arrear of land-revenue or of a demand recoverable as an arrear of land-revenue; [Act XV, 1877, Sch. II, Art. 16.]

(38) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force.

STATEMENT OF OBJECTS AND REASONS.

THE suits cognizable in Courts of Small Causes are, subject to certain provisoes, described in section 6, Act XI of 1865, as "claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage or demand does not exceed in amount or value the sum of five hundred rupees whether on balance of account or otherwise": and section 586 of the Code of Civil Procedure provides that "no second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees." Since section 6 of the Act of 1865 was enacted, a vast quantity of case-law has grown up around it, and, as the rulings of the Courts have not been uniform, doubts constantly arise on the question whether a suit is or is not a suit of the nature cognizable by a Court of Small Causes, and, consequently, whether or not, where the suit is of value not exceeding five hundred rupees and the original decree made in it was not final but was open to appeal, an appeal will also lie from the appellate decree in the suit. It appears to the Government of India that the conflicting constructions placed on section 6, of which some are due to the progress of legislation during the last twenty years (I. L. R. 3 All. 66), render a more accurate definition necessary of the suits of which Courts of Small Causes may take cognizance, and that legislation to this end should follow sections 18 and 19 of the Presidency Small Cause Courts Act, 1882, in declaring the jurisdiction of those Courts to extend to all suits of a civil nature, subject to specified exceptions. This Bill has accordingly been prepared, its primary object being to remove the doubts now felt as to the effect of section 6, Act XI of 1865; and, as several sections and parts of sections of that Act have, from time to time, been repealed and other sections are obsolete as regards both expression and utility, it has been considered desirable to repeal the Act and re-enact the substance of the extant portions of it.

2. The parts of the Bill which appear to call for remark will be noticed in the following paragraphs.

3. *Section 3.*—The limited extent of the savings in this section, as compared with section 12 of the Act of 1865, is due to the Government of India having decided to move the legislature to repeal Act XI of 1841, and connected Acts, regarding Military Courts of Requests for Native Officers and Soldiers, and so much of Bombay Regulation XXII of 1827 as relates to the trial of small suits by superintendents of bázárs in military stations in the presidency of Bombay.

4. *Section 8.*—Inconvenience has resulted from the restrictive terms in which section 15 of the Act of 1865 was drawn. It is proposed, therefore, to empower Local Governments to appoint Additional Judges without limit of time.

5. *Section 9.*—Sections 29 and 30, Act XI of 1865, appear to be little, if at all, used. It seems unnecessary, therefore, to retain them. If it is deemed desirable that two Judges should anywhere sit together as a bench for the trial of particular suits or classes of suits, a bench can be constituted under section 9 of the Bill, corresponding with section 31 of the Act of 1865.

6. *Section 17.*—This section declares the jurisdiction of a Court of Small Causes to extend to all suits, subject to certain exceptions specified in the second schedule to the Bill.

7. *Second Schedule.*—This schedule follows, with slight modifications section 19 of the Presidency Small Cause Courts Act, 1882, so far as that section goes.

8. As regards No. (11) of the suits specified in the schedule, it has been held that suits for the redemption of a mortgage of moveable property (16 W. R. 58) or for the sale of moveable property by enforcement of lien (9 W. R. 136) do not now, and (I. L. R. 7 All. 855) ought not to, lie in a Court of Small Causes.

9. The suits referred to in No. (20) are of two descriptions—

(*a*) by a decree-holder to have the right of his judgment-debtor declared to property of which the attachment has been raised; and

(*b*) by the owner of attached property, after disallowance of his objection to the attachment, either against the decree-holder or an auction-purchaser, to recover the property.

Suits of description (*a*), being suits for declaratory decrees, appear to have been held by most, if not all, High Courts not to be cognizable by a Court of Small Causes (10 W. R. 141; I. L. R. 4 Bom. 503; 3 All. H. C. Rep. 156: Punjab Record, No. 84 of 1870). As to suits of description (*b*), there is a conflict of authority (I. L. R. 7 All. 152, and cases there cited). It would seem, apart from section 6 of Act XI of 1865, that if suits of the one description ought not to be cognizable by Courts of Small Causes, the jurisdiction of those Courts ought to be barred in respect of suits of the other description also.

10. The suits referred to in No. (30) are of superior importance, and there should be a right of appeal from decrees passed in them. The rulings at I. L. R. 3 All. 747, and in the cases there cited, were made solely with reference to the language of section 6 of the Act of 1865. Most of these suits have been excluded from the jurisdiction of Presidency Small Cause Courts.

11. As regards the suits which No. (32) is intended to exclude from the jurisdiction of Courts of Small Causes, Westropp, C. J., has observed that "the very possible necessity of varying the maintenance from time to time, and of enquiring into the circumstances of the claimant, or of the family estate, or the family itself, shows how unsuitable maintenance suits are for the Small Cause Courts" (I. L. R. 2 Bom. 630). Arrears of maintenance are usually claimed on one of four grounds—

(*a*) the legal right of the plaintiff to maintenance;
(*b*) a decree of Court;
(*c*) an award of arbitrators fixing the maintenance; or
(*d*) a special bond or other contract for the payment of maintenance.

Suits on ground (*a*) involve intricate questions of title, and those on grounds (*b*) and (*c*) have been held not to be cognizable by a Court of Small Causes (6 All. H. C. Rep. 91, and cases there cited; 3 All. H. C. Rep. 117 and 7 All. H. C. Rep. 329). Suits on ground (*d*) are at present cognizable by a Court of Small Causes. But, seeing that even in those suits questions may be raised as to re-adjustment of maintenance (5 C. L. R. 18), and possibly as to forfeiture (I. L. R. 7 Bom. 84), it seems desirable that suits for maintenance generally, including suits of the kind referred to at I. L. R. 7 Bom. 537, should be excluded from the jurisdiction of Courts of Small Causes.

12. As regards No. (33), reference may be made to 1 All. H. C. Rep. 205, and I. L. R. 1 All. 444, 2 All. 905, and 9 Cal. 183. Moreover, in suits which No. (33) is intended to cover, claims may be, and often are, included which ought not to be cognizable by a Court of Small Causes.

13. As regards Nos. (34) and (35), reference may be made to the case reported at I. L. R. 5 All. 438. It seems proper that such a suit as is there described, involving, as it may, intricate village-accounts and important questions of right, should not be cognizable by a Court of Small Causes. Moreover, the decree in the suit should be open to appeal, as ordinarily the decree of a Revenue Court would be in a suit by a recorded co-sharer against a lambardár.

14. There appears to be no sufficient reason for excluding any suits for contribution from the jurisdiction of Courts of Small Causes, except the suits referred to in Nos. (36) and (38). As to the cognizance of suits for contribution generally under the Act of 1865, there has been some conflict of authority, the High Court at Fort William holding them not to be cognizable by Courts of Small Causes (B. L. R., F. B., 675, and I. L. R. 10 Cal. 388), and the High Courts at Madras and Allahabad holding them to be cognizable by those Courts (5 Mad. H. C. Rep. 200, and I. L. R. 3 All. 66).

There would seem, apart from section 6 of Act XI of 1865, to be no sufficient ground for excluding from the cognizance of a Court of Small Causes such a suit as that reported at I. L. R. 7 All. 378.

15. No. (38) will exclude the following among other suits:—

(*a*) suits for compensation for infringing copyright (I. L. R. 6 Cal. 499);
(*b*) suits for compensation for infringing the exclusive privilege of an inventor (Act XV, 1859, section 22);
(*c*) suits against Sovereign Princes or Ruling Chiefs, or Ambassadors or Envoys of Foreign States (Act XIV, 1882, section 433);
(*d*) suits for dissolution of marriage or judicial separation (Act IV, 1869); and
(*e*) suits founded on the liability of a contributory (Act VI, 1882, section 125).

16. *Sections 19 and 34.*—As to the second proviso to section 21 of the Act of 1865, reference may be made to I. L. R. 6 Cal. 236 and 8 Cal. 287. As the law now stands, a person wishing to have a decree set aside may apply for (*a*) a new trial under section 21, Act XI of 1865, or (*b*) a review under Chapter XLVII of the Code, or (*c*) both a new trial and a review. "It is difficult," as observed by the learned Chief Justice of the High Court at Fort William, "to conceive any reasons which would justify a new trial which would not also afford good grounds for a review" (I. L. R. 6 Cal. 238). It is proposed, therefore, to replace the alternative or cumulative remedies of new trial and review by the single remedy of review, but to impose on applications for review restrictions similar to those imposed by the existing law on applications for new trial.

17. *Section 21.*—This section supplements section 223 of the Code of Civil Procedure, which extends to Courts of Small Causes. Section 20 of the Act of 1865, which the section

supersedes, appears in some places to have been construed to require a decree-holder to proceed in the first instance against moveable property even when the moveable property of the judgment-debtor is known to be of no appreciable value.

18. *Section 26.*—Under section 45 of the Act of 1865, it is the duty of the Clerk of the Court to "take charge of and keep an account of all moneys payable or paid into or out of Court" and to "enter an account of all such moneys in a book belonging to the Court to be kept by such Clerk for that purpose." The terms of that section have been held to preclude the transfer of the duty of receiving moneys and keeping accounts in a Court of Small Causes to the special staff of accountants which in some provinces is employed at the head-quarters of each district to receive and account for moneys paid into the Civil Courts located there. It has been provided in section 26 of the Bill that the High Court may, if it sees fit, relieve the clerk of the Court of his duties as cashier and accountant.

19. *Section 32.*—The High Court for the North-Western Provinces has held (5 All. H. C. Rep. 55) that section 51 of the Act of 1865 does not authorise the Local Government to permanently and unconditionally invest the Judge of a Small Cause Court with the powers of a Principal Sadr Amín, and that the section only contemplates an occasional investment of the powers, and one contingent on the state of the business of the Court. Under section 32 of the Bill the question will not again arise.

20. In sections 32 and 33 regard has been had to I. L. R. 8 Bom. 230, 9 Bom. 237, 1 All. 87, 1 All. 624, and 3 All. 710. It has been made clear that, for the purposes of sections 223 and 295 of the Code of Civil Procedure and section 21 of the Bill, the Court of a Judge of a Court of Small Causes when the Judge is acting as such, and the Court of the same Judge when the Judge has been appointed to be and is acting as a Subordinate Judge, are different Courts, and that, for the same purposes, the Court of a Subordinate Judge when the Judge is acting as such, and the Court of the same Judge when the Judge has been invested with the jurisdiction of a Court of Small Causes and is exercising that jurisdiction, are different Courts.

21. The first proviso to section 21 of Act XI of 1865 has been omitted because its retention has been rendered unnecessary by the extension of section 108 of the Code of Civil Procedure to Courts of Small Causes.

22. Section 52 of the Act of 1865 has been omitted, as it is believed not to be used.

23. It is proposed by the first schedule to make section 648 of the Code of Civil Procedure, which extends to the Presidency Small Cause Courts, extend also to Provincial Courts of Small Causes.

24. It is proposed by the same schedule to repeal so much of the second schedule of the Code of Civil Procedure as extends sections 121 to 136 of the Code to Provincial Courts of Small Causes. These sections do not extend to Presidency Small Cause Courts, and their provisions, which contemplate elaborate and lengthened trials in suits of superior importance, are incompatible with the speedy disposal of the petty suits cognizable by a Court of Small Causes. The want of the sections is not likely to be really felt in Courts of Small Causes, while their application to those Courts is not unlikely to be taken advantage of for the purpose of delaying proceedings.

25. So much of sections 137, 447, 453, 454 and 456 of the Code of Civil Procedure as requires applications to Courts of Small Causes to be supported by affidavit is proposed to be repealed. Chapter XVI of the Code, respecting affidavits, does not extend to Provincial Courts of Small Causes.

C. P. ILBERT.

The 18th December, 1885.

S. HARVEY JAMES,
Offg. Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, DECEMBER 26, 1885.

☞ 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.

LAGISLATIVE 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 18th December 1885:—

No. 19 OF 1885.

THE PROVINCIAL SMALL CAUSE COURTS BILL, 1885.

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The Provincial Small Cause Courts Bill, 1885.

(*Chapter II.—Constitution of Courts of Small Causes.—Sections 1-8.*)

A Bill to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law relating to Courts of Small Causes established beyond the local limits for the time being of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal and at Madras and Bombay; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, local extent and commencement.

1. (*1*) This Act may be called the Provincial Small Cause Courts Act, 1886.

XIV of 1874.

(*2*) It extends to the whole of British India except the scheduled districts as defined in the Scheduled Districts Act, 1874; and

(*3*) It shall come into force on the first day of July, 1886.

Repeal.

2. (*1*) The enactments specified in the first schedule to this Act are repealed to the extent mentioned therein.

(*2*) But all Courts constituted, limits fixed, appointments, declarations and rules made, jurisdiction and powers conferred, forms prescribed, directions given and notifications published under Act XI of 1865 (*an Act to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil jurisdiction of the High Courts of Judicature*), shall, so far as may be, be deemed to have been respectively constituted, fixed, made, conferred, prescribed, given and published under this Act.

(*3*) Any enactment or document referring to the said Act XI of 1865 shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

Saving of procedure and jurisdiction in certain cases.

3. Nothing in this Act affects—

[Act XIV, 1882, s. 3.]

(*a*) any proceedings prior to decree in any suit instituted before the day on which this Act comes into force or any proceedings after decree which were commenced before and were pending on that day;

[44 & 45 Vic., c. 58.] [Act XV, 1882, s. 1, and Act XI, 1865, s. 49.]

(*b*) the provisions of the Army Act, 1881, section 151; or

[Act XI, 1865, s. 12. cf. Act IX, 1860.]

(*c*) the jurisdiction of a Cantonment Joint Magistrate invested with civil jurisdiction under Act III of 1859, or of a Magistrate having jurisdiction under any law for the time being in force with respect to debts or other claims of a civil nature, or of Village Munsifs or Village Panchâyats under the provisions of the Madras Code.

Definitions.

4. In this Act, unless there is something repugnant in the subject or context,— [New.] Mad. Regs. IV And V of 1816.

(*1*) "Court of Small Causes" means a Court of Small Causes constituted under this Act:

(*2*) "District Court" means a principal Civil Court of original jurisdiction:

(*3*) "district" means the local limits of the jurisdiction of a District Court:

(*4*) "value", used with reference to a suit, means the amount or value of the subject-matter of the suit: and

(*5*) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund.

CHAPTER II.

CONSTITUTION OF COURTS OF SMALL CAUSES.

Establishment of Courts of Small Causes, and local limits of their jurisdiction.

5. (*1*) The Local Government, with the previous sanction of the Governor General in Council, may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration. [Act XI, 1865, s. 3.]

(*2*) The local limits of the jurisdiction of the Court shall be such as the Local Government may define.

Judge.

6. (*1*) When a Court of Small Causes has been established, the Local Government shall, by order in writing, appoint a Judge of the Court. [Act XI, 1865, s. 13.]

(*2*) The Judge may be the Judge of one Court of Small Causes or of two or more such Courts, as the Local Government directs.

Appointment of times of sitting in certain circumstances.

7. (*1*) A Judge who is the Judge of two or more such Courts may fix the times at which he will sit in each of the Courts of which he is Judge. [Act XI, 1865, s. 14.]

(*2*) Notice of the times shall be published in such manner as the High Court directs.

Additional Judge.

8. (*1*) The Local Government, with the previous sanction of the Governor General in Council, may, by order in writing, appoint an Additional Judge of a Court of Small Causes. [Act XI, 1865, s. 15, and Act XVII, 1875, s. 94.]

(*2*) The Additional Judge shall discharge such of the functions of the Judge as the Judge directs. [Act VI, 1871, s. 7.]

The Provincial Small Cause Courts Bill, 1885.

(*Chapter II.—Constitution of Courts of Small Causes.—Sections 9-16.*)

[cf. Act XIV, 1882, s. 25.]

(*3*) The Judge may withdraw from the Additional Judge any business pending before him.

[New.]

(*4*) When the Judge is absent, the Additional Judge may discharge all or any of the functions of the Judge.

[Act XI, 1865, ss. 29, 30 & 31.]

Power to require two Judges to sit as a bench.

9. The Local Government may, by order in writing, direct that two Judges of Courts of Small Causes, or a Judge and an Additional Judge of a Court of Small Causes, shall sit together for the trial of such suits cognizable by a Court of Small Causes as may be described in the order.

[Act XI, 1865, ss. 32, 33 and 34.]

Decision in case heard by a bench.

10. (*1*) Where two Judges, or a Judge and an Additional Judge, sitting together under section 9, are of the same opinion as to a decree or order to be made, the decree or order shall follow their opinion.

(*2*) If they differ as to a question of law or usage having the force of law, or in construing a document the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of the Code of Civil Procedure applicable to a reference to the High Court shall apply.

XIV of 1882.

(*3*) If they differ on any matter other than a matter specified in sub-section (*2*), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an Additional Judge, then the opinion of the Judge sitting with him, shall prevail.

[Act XVIII, 1884, s. 5.]

(*4*) For the purposes of sub-section (*3*), a Judge permanently appointed shall be deemed senior to an officiating Judge.

[Act XI, 1865, ss. 25, 26 and 27.]

Registrar.

11. (*1*) The Judge of a Court of Small Causes shall, if the Local Government directs, appoint an officer to be called the Registrar.

(*2*) The appointment shall be subject to the sanction of the Local Government.

(*3*) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court.

(*4*) The Local Government may, by order in writing, confer upon the Registrar, within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees.

(*5*) The Registrar shall exercise the jurisdiction subject to the general control of the Judge.

[Act XI, 1865, s. 24.]

Clerk of Court.

12. (*1*) Subject to the sanction of the Local Government, the Judge of a Court of Small Causes may appoint an officer to be called the Clerk of the Court.

(*2*) A Registrar of a Court of Small Causes may also be the Clerk of the Court.

Other ministerial officers.

13. Subject to the sanction of the Local Government, the Judge of a Court of Small Causes may appoint as many other ministerial officers as may be necessary. [Act XI, 1865 s. 3.]

Duties of ministerial officers.

14. (*1*) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs. [Act XV, 1882, s. 13.]

(*2*) The High Court may make rules consistent with this Act, and with any other enactment for the time being in force, conferring and imposing on the ministerial officers of a Court of Small Causes such powers and duties of a non-judicial or quasi-judicial nature as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed. [Act XVIII 1884, s. 14, cl. (*f*).]

Suspension and removal of officers.

15. (*1*) A Judge, Additional Judge or Registrar of a Court of Small Causes may be suspended or removed from office by the Local Government. [cf. Act XVIII, 1884, ss. 31, 36 & 37.]

(*2*) The Judge of a Court of Small Causes may suspend the Registrar of his Court if there appears to him to be urgent necessity for so doing, and may suspend or remove from office, or fine in an amount not exceeding one month's salary, any other ministerial officer of his Court who is guilty of misconduct or neglect in the performance of his duties.

(*3*) A fine imposed under sub-section (*2*) may, if the order imposing it so directs, be recovered by deduction of the amount thereof from any salary which may be or become due to the officer fined. [Act XVI, 1885, s. 19, sub-section (4).]

Penalty on Judge or ministerial officer practising or trading.

16. (*1*) A Judge, Additional Judge or ministerial officer appointed under this Act shall not, during his tenure of office, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, vakil, attorney, pleader 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. [Act XV, 1882, s. 12, and Act XI, 1865, s. 17.]

(*2*) If a Judge, Additional Judge or ministerial officer aforesaid practises, acts or is concerned in any trade or profession, in contravention of the provisions of sub-section (*1*), he shall be deemed to have committed an offence under section 168 of the Indian Penal Code. XLV of 1860.

(*3*) Nothing in this section shall be deemed to prohibit a Judge, Additional Judge or ministerial officer from being a member of an incorporated or registered company.

The Provincial Small Cause Courts Bill, 1885.

(Chapter IV.—Practice and Procedure of Courts of Small Causes.—Sections 17-24.)

CHAPTER III.

JURISDICTION OF COURTS OF SMALL CAUSES.

Cognizance of suits by Courts of Small Causes.

17. (*1*) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule to this Act.

[Act XV, 1882, ss. 18 and 19.]

(*2*) Subject to the exceptions specified in the said schedule, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

[Act XI, 1865, s. 7.]

(*3*) Subject to the exceptions aforesaid, the Local Government may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order.

[Act XI, 1865, s. 12. Act XVII, 1879, s. 6.]

Exclusive jurisdiction of Courts of Small Causes.

18. Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes.

CHAPTER IV.

PRACTICE AND PROCEDURE OF COURTS OF SMALL CAUSES.

[Act XIV, 1882, s. 5.]

Application of the Code of Civil Procedure.

19. The procedure prescribed in the chapters and sections of the Code of Civil Procedure specified in the second schedule annexed to the said Code, as amended by this Act, shall, so far as those chapters and sections are applicable, be the procedure followed in a Court of Small Causes in all suits cognizable by it:

XIV of 1882.

Provided that—

[Act XI, 1865, s. 21.]

(*a*) where the applicant for a review of judgment was the defendant or one of the defendants, the Court shall not grant his application unless, at the time of presenting the application, he deposits in the Court the amount due from him under the decree or order; and

[Act XIV, 1882, ss. 86 and 228.]

(*b*) where a person to be arrested or property to be attached under section 648 of the said Code resides or is situate within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or Bombay, or of the Recorder of Rangoon, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as the case may be; and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.

Exclusion of written statements.

20. Except in a case of set-off, a written statement shall not be received unless required by the Court.

[Act XI, 1865, s. 18; and Act XV, 1882, s. 24.]

Transfer of decrees to other Courts for execution.

21. If it appears to a Court of Small Causes that a judgment-debtor under its decree has not, within the local limits of the jurisdiction of the Court, moveable property sufficient to satisfy the decree, it may, on the application of the decreeholder, send the decree for execution to another Court in the manner provided by the Code of Civil Procedure, sections 223 and 224.

[Act XI, 1865, s. 20.]

XIV of 1882.

Trial of suits by Registrar.

22. Suits cognizable by the Registrar under section 11, sub-section (*4*), shall be tried by him, and decrees passed therein shall be executed by him, in like manner in all respects as the Judge might try the suits, and execute the decrees, respectively:

[Act XI, 1865, s. 41.]

Provided that the Judge may transfer to his own file, or to that of the Additional Judge if an Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar.

Admission, return and rejection of plaints by Registrar.

23. (*1*) When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may return or reject a plaint for any reason for which the Judge might return or reject it.

[Act XI, 1865, s. 37.]

(*2*) The Judge may, of his own motion or on the application of a party, return or reject a plaint which has been admitted by the Registrar, or admit a plaint which has been returned or rejected by him:

Provided that, where a party applies for the return or rejection or the admission of a plaint under this sub-section, his application shall be made at the first sitting of the Court after the day on which the Registrar admitted, or returned or rejected, the plaint.

Passing of decrees by Registrar on confession.

24. (*1*) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorised in that behalf appears before the Registrar and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree, which shall have the same effect as a decree passed by the Judge.

[Act XI, 1865, ss. 38 and 43.]

(*2*) Where a decree has been passed by the Registrar under sub-section (*1*), the Judge may grant an application for review of judgment and re-hear the suit, on the same conditions, on the

The Provincial Small Cause Courts Bill, 1885.

(Chapter V.—Supplemental Provisions.—Sections 25-34.)

same grounds and in the same manner as if the decree had been passed by himself.

Execution of decrees by Registrar.

25. (*1*) If the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar shall receive applications for the execution of decrees and orders made by the Court of which he is Registrar or sent to that Court for execution, and may, subject to any instructions which he may have received from the Judge or, with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any orders in respect of the applications which the Judge might make under this Act.

(*2*) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub-section (*1*), and the Additional Judge, in the case of any such decree or order made by himself, may, within fifteen days from the date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order, either of his own motion or on the application of a party.

[Act XVIII, 1884, s. 48.]

(*3*) The period of fifteen days mentioned in sub-section (*2*) shall be computed in accordance with the provisions of the Indian Limitation Act, 1877.

XV of 1877.

Functions of Clerk of Court.

26. The Clerk of the Court shall, subject to the orders of the Judge, and of the Registrar if a Registrar has been appointed, receive plaints and applications, issue summonses and notices, and, unless the High Court has ordered otherwise, take charge and keep an account of all moneys and securities for money paid or delivered into or out of Court.

[Act XI, 1865, s. 21.]

Finality of decrees and orders.

27. Save as in this Act expressly provided, a decree or order made under the foregoing provisions of this Act shall be final.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

[Act XVIII, 1884, s. 56.]

Place of sitting.

28. The Local Government may fix the place or places, within the local limits of the jurisdiction of a Court of Small Causes, at which the jurisdiction shall be exercised.

[Act XI, 1865, ss. 4, 45 and 46, and Act XV, 1882, s. 10.]

Subordination of Courts of Small Causes.

29. A Court of Small Causes shall be subject to the control of the District Court and to the superintendence of the High Court, and shall—

(*a*) keep such registers, books and accounts as the High Court prescribes; and

(*b*) comply with such requisitions as may be made by the District Court, the High Court or the Local Government for returns and statements in such form and manner as the authority making the requisition directs.

[Act XI, 1865, s. 4.]

Seal.

30. A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the Local Government.

[Act XI, 1865, s. 3.]

Abolition of Courts of Small Causes.

31. The Local Government may, by order in writing, abolish a Court of Small Causes.

[Act XI, 1865, s. 5.]

Saving of power to appoint Judge of Court of Small Causes to other office.

32. (*1*) Nothing in this Act shall prevent the Local Government from appointing a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other Civil Court subordinate to a District Court, or to be a Magistrate of any class.

(*2*) When a Judge or Additional Judge is so appointed, the ministerial officers of his Court shall, subject to such rules as the Local Government may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of his duties as the Judge of the other Civil Court or as a Magistrate.

[New.]

Application of Act to Courts with jurisdiction of Court of Small Causes.

33. (*1*) So much of Chapters III and IV of this Act as relates to the nature of the suits cognizable by Courts of Small Causes, to the exclusion of the jurisdiction of other Courts in those suits, to the powers and procedure of Courts of Small Causes, and to the finality of the decrees and orders of those Courts, applies to Courts invested under any enactment for the time being in force with the jurisdiction of a Court of Small Causes when the Courts are exercising that jurisdiction.

[New.]

XIV of 1882.

(*2*) A Court invested with the jurisdiction of a Court of Small Causes, with respect to the exercise of that jurisdiction, and the same Court, with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure, be deemed to be different Courts.

[Act XV, 1882, s. 37. XV of 1877.]

Amendment of Indian Limitation Act.

34. In the third division of the second schedule to the Indian Limitation Act, 1877,—

(*a*) before No. 158, the following shall be inserted, namely:—

"157A. For a review of judgment by a Provincial Court of Small Causes, or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	*Eight days.*	The date of the decree or order."

The Provincial Small Cause Courts Bill, 1885.

(Chapter V.—Supplemental Provisions.—Sections 35-36.—The First Schedule.—Enactments repealed.—The Second Schedule.—Suits excepted from the cognizance of a Court of Small Causes.)

and (*b*) in No. 173, the words, figures and letter "No. 157A and" shall be inserted before the word and figures "No. 162."

[Act XVIII, 1884, s. 65.]

35. All powers conferred by this Act may be exercised from time to time as occasion requires.

Powers exercisable from time to time.

[Act XVI, 1885, s. 27.]

36. All orders required by this Act to be made in writing by the Local Government shall be published in the official Gazette, but shall take effect from the date on which they are made.

Publication of certain orders.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

Number and year.	Subject or title.	Extent of repeal.
Act XI of 1865.	Mufassal Small Cause Courts Act.	So much as has not been repealed.
Act VI of 1871.	Bengal Civil Courts Act.	Section 30.
Act III of 1873.	Madras Civil Courts Act.	Section 29, paragraph one.
Act XIV of 1882.	The Code of Civil Procedure.	(*a*) In the second schedule, in the particulars specified against Chapter XLIX, the words and figures "sections 640 to 647 (both inclusive), sections 649 to 652 (both inclusive)," and (*b*) so much of that schedule as extends to Provincial Courts of Small Causes sections 121 to 136 and such portions of sections 137, 447, 453, 454 and 456 as require applications to be supported by affidavit.

THE SECOND SCHEDULE.

SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES.

(1) a suit concerning an act or order purporting to be done or made by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by a Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or concerning an act purporting to be done by any person by order of the Governor General in Council or the Local Government;

(2) a suit concerning an act or order purporting to be done or made by a Court or by a judicial officer acting in the execution of his office, or concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting as aforesaid;

(3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a local authority or Court of Wards, or by an officer or servant of a local authority or Court of Wards in the execution of his office or in the course of his service; [Act XV, 1877, Sch. II, Art. 14.]

(4) a suit for the possession of immoveable property; [Act XV, 1877, Sch. II, Arts. 3, 10, 46, 47, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, and 148.]

(5) a suit for the partition of immoveable property;

(6) a suit by a mortgagee of immoveable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immoveable property for the redemption of the mortgage; [Act XV, 1877, Sch. II, Arts. 147 and 148.]

(7) a suit for the recovery of, or otherwise concerning, the rent of land used for agricultural purposes, or for the assessment, enhancement, abatement or apportionment of the rent of any immoveable property; [Act XV, 1877, Sch. II, Arts. 110 and 130; Act XI, 1865, s. 6, proviso (4); and I. L. R. 5 Cal. 902.]

(8) a suit concerning the liability of land to be assessed to land-revenue; [Act XV, 1877, Sch. II, Art. 130.]

(9) a suit to restrain waste; [Act XV, 1877, Sch. II, Art. 41.]

(10) a suit for the determination of any other right to or interest in immoveable property; [Act XV, 1877, Sch. II, Arts. 15, 111, 121, 125, 126 and 132.]

(11) a suit for the enforcement of a lien on moveable property, or by a pawnor for the redemption or recovery of a pledge; [Act XV, 1877, Sch. II, Art. 145.]

(12) a suit for the specific performance or rescission of a contract; [Act I, 1877, Chaps. II and IV; and Act XV, 1877, Sch. II, Arts. 113 and 114.]

(13) a suit for the rectification or cancellation of an instrument; [Act I, 1877, Chaps. III and V; and Act XV, 1877, Sch. II. Art. 91.]

(14) a suit to obtain an injunction; [Act I, 1877, Chap. X.]

(15) a suit to enforce a trust;

(16) a suit for a declaratory decree; [Act XV, 1877, Sch. II, Arts. 92, 93, 118, 119, 129, and 131.]

(17) a suit to set aside a sale under a decree or order of a Court or of a revenue-authority, or a sale by a guardian; [Act XV, 1877, Sch. II, Arts. 12 and 44.]

The Provincial Small Cause Courts Bill, 1885.

(Second Schedule.—Suits excepted from the cognizance of a Court of Small Causes.)

(18) a suit to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial or quasi-judicial capacity;

(19) a suit to contest an award of a revenue-authority under any enactment for the time being in force;

(20) a suit by a person against whom an order is passed under section 280, section 281 or section 282 of the Code of Civil Procedure, to establish his right to, or to the present possession of, the property comprised in the order;

(21) a suit under the Indian Succession Act, 1865, section 320 or section 321, or under the Probate and Administration Act, 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets;

(22) a suit for a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate;

(23) a suit for the possession of an hereditary office;

(24) a suit—

(*a*) for a dissolution of partnership;

(*b*) for an account of partnership-transactions; or

(*c*) for a balance of partnership-account unless the balance has been struck by the parties or their agents;

(25) a suit for an account of property and its due administration under the decree of a Civil Court;

(26) any other suit for an account;

(27) a suit for a general average loss or for salvage;

(28) a suit for compensation in respect of a collision on the high seas;

(29) a suit on a policy of insurance;

(30) a suit for compensation—

(*a*) for false imprisonment

(*b*) for malicious prosecution;

(*c*) for libel;

(*d*) for slander;

(*e*) for adultery or seduction;

(*f*) for breach of promise of marriage;

(*g*) for inducing a person to break a contract made with the plaintiff;

(*h*) for illegal, irregular or excessive distress; or

(*i*) for injury caused by an injunction wrongfully obtained;

(31) a suit for the restitution of conjugal rights, for the recovery of a wife, or for a divorce; [Act XV, 1877, Sch. II, Arts. 34 and 35.]

(32) a suit for maintenance; [Act XV, 1877, Sch. II, Art. 128.]

(33) a suit to enforce payment of the allowance or fees respectively called *málikána* and *hakk*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immoveable property; [Act XV, 1877, Sch. II, Art. 132.]

(34) a suit for arrears of land-revenue, village-expenses or other sums payable to the representative of a village-community or to his heir or transferee;

(35) a suit for profits payable by the representative of a village-community or by his heir or transferee after payment of land-revenue, village-expenses and other sums;

(36) a suit for contribution by a sharer in a joint estate in respect of a payment made by him of money due from a co-sharer, or by the manager of a joint estate of an undivided family in respect of a payment made by him on account of the estate; [Act XV, 1877, Sch. II, Arts. 99 and 107.]

(37) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue-authority on account of an arrear of land-revenue or of a demand recoverable as an arrear of land-revenue; [Act XV, 1877, Sch. II, Art. 16.]

(38) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force.

STATEMENT OF OBJECTS AND REASONS.

THE suits cognizable in Courts of Small Causes are; subject to certain provisoes, described in section 6, Act XI of 1865, as "claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage or demand does not exceed in amount or value the sum of five hundred rupees whether on balance of account or otherwise": and section 586 of the Code of Civil Procedure provides that "no second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees." Since section 6 of the Act of 1865 was enacted, a vast quantity of case-law has grown up around it, and, as the rulings of the Courts have not been uniform, doubts constantly arise on the question whether a suit is or is not a suit of the nature cognizable by a Court of Small Causes, and, consequently, whether or not, where the suit is of value not exceeding five hundred rupees and the original decree made in it was not final but was open to appeal, an appeal will also lie from the appellate decree in the suit. It appears to the Government of India that the conflicting constructions placed on section 6, of which some are due to the progress of legislation during the last twenty years (I. L. R. 3 All. 66), render a more accurate definition necessary of the suits of which Courts of Small Causes may take cognizance, and that legislation to this end should follow sections 18 and 19 of the Presidency Small Cause Courts Act, 1882, in declaring the jurisdiction of those Courts to extend to all suits of a civil nature, subject to specified exceptions. This Bill has accordingly been prepared, its primary object being to remove the doubts now felt as to the effect of section 6, Act XI of 1865; and, as several sections and parts of sections of that Act have, from time to time, been repealed and other sections are obsolete as regards both expression and utility, it has been considered desirable to repeal the Act and re-enact the substance of the extant portions of it.

2. The parts of the Bill which appear to call for remark will be noticed in the following paragraphs.

3. *Section 3.*—The limited extent of the savings in this section, as compared with section 12 of the Act of 1865, is due to the Government of India having decided to move the legislature to repeal Act XI of 1841, and connected Acts, regarding Military Courts of Requests for Native Officers and Soldiers, and so much of Bombay Regulation XXII of 1827 as relates to the trial of small suits by superintendents of bázárs in military stations in the presidency of Bombay.

4. *Section 8.*—Inconvenience has resulted from the restrictive terms in which section 15 of the Act of 1865 was drawn. It is proposed, therefore, to empower Local Governments to appoint Additional Judges without limit of time.

5. *Section 9.*—Sections 29 and 30, Act XI of 1865, appear to be little, if at all, used. It seems unnecessary, therefore, to retain them. If it is deemed desirable that two Judges should anywhere sit together as a bench for the trial of particular suits or classes of suits, a bench can be constituted under section 9 of the Bill, corresponding with section 31 of the Act of 1865.

6. *Section 17.*—This section declares the jurisdiction of a Court of Small Causes to extend to all suits, subject to certain exceptions specified in the second schedule to the Bill.

7. *Second Schedule.*—This schedule follows, with slight modifications section 19 of the Presidency Small Cause Courts Act, 1882, so far as that section goes.

8. As regards No. (11) of the suits specified in the schedule, it has been held that suits for the redemption of a mortgage of moveable property (16 W. R. 58) or for the sale of moveable property by enforcement of lien (9 W. R. 136) do not now, and (I. L. R. 7 All. 855) ought not to, lie in a Court of Small Causes.

9. The suits referred to in No. (20) are of two descriptions—

(*a*) by a decree-holder to have the right of his judgment-debtor declared to property of which the attachment has been raised; and

(*b*) by the owner of attached property, after disallowance of his objection to the attachment, either against the decree-holder or an auction-purchaser, to recover the property.

Suits of description (*a*), being suits for declaratory decrees, appear to have been held by most, if not all, High Courts not to be cognizable by a Court of Small Causes (10 W. R. 141; I. L. R. 4 Bom. 503; 3 All. H. C. Rep. 156; Punjab Record, No. 84 of 1870). As to suits of description (*b*), there is a conflict of authority (I. L. R. 7 All. 152, and cases there cited). It would seem, apart from section 6 of Act XI of 1865, that if suits of the one description

ought not to be cognizable by Courts of Small Causes, the jurisdiction of those Courts ought to be barred in respect of suits of the other description also.

10. The suits referred to in No. (30) are of superior importance, and there should be a right of appeal from decrees passed in them. The rulings at I. L. R. 3 All. 747, and in the cases there cited, were made solely with reference to the language of section 6 of the Act of 1865. Most of these suits have been excluded from the jurisdiction of Presidency Small Cause Courts.

11. As regards the suits which No. (32) is intended to exclude from the jurisdiction of Courts of Small Causes, Westropp, C. J., has observed that "the very possible necessity of varying the maintenance from time to time, and of enquiring into the circumstances of the claimant, or of the family estate, or the family itself, shows how unsuitable maintenance suits are for the Small Cause Courts" (I. L. R. 2 Bom. 630). Arrears of maintenance are usually claimed on one of four grounds—

(*a*) the legal right of the plaintiff to maintenance;
(*b*) a decree of Court;
(*c*) an award of arbitrators fixing the maintenance; or
(*d*) a special bond or other contract for the payment of maintenance.

Suits on ground (*a*) involve intricate questions of title, and those on grounds (*b*) and (*c*) have been held not to be cognizable by a Court of Small Causes (6 All. H. C. Rep. 91, and cases there cited; 3 All. H. C. Rep. 117 and 7 All. H. C. Rep. 329). Suits on ground (*d*) are at present cognizable by a Court of Small Causes. But, seeing that even in those suits questions may be raised as to re-adjustment of maintenance (5 C. L. R. 18), and possibly as to forfeiture (I. L. R. 7 Bom. 84), it seems desirable that suits for maintenance generally, including suits of the kind referred to at I. L. R. 7 Bom. 537, should be excluded from the jurisdiction of Courts of Small Causes.

12. As regards No. (33), reference may be made to 1 All. H. C. Rep. 205, and I. L. R. 1 All. 444, 2 All. 905, and 9 Cal. 183. Moreover, in suits which No. (33) is intended to cover, claims may be, and often are, included which ought not to be cognizable by a Court of Small Causes.

13. As regards Nos. (34) and (35), reference may be made to the case reported at I. L. R. 5 All. 438. It seems proper that such a suit as is there described, involving, as it may, intricate village-accounts and important questions of right, should not be cognizable by a Court of Small Causes. Moreover, the decree in the suit should be open to appeal, as ordinarily the decree of a Revenue Court would be in a suit by a recorded co-sharer against a lambardár.

14. There appears to be no sufficient reason for excluding any suits for contribution from the jurisdiction of Courts of Small Causes, except the suits referred to in Nos. (36) and (38). As to the cognizance of suits for contribution generally under the Act of 1865, there has been some conflict of authority, the High Court at Fort William holding them not to be cognizable by Courts of Small Causes (B. L. R., F. B., 675, and I. L. R. 10 Cal. 388), and the High Courts at Madras and Allahabad holding them to be cognizable by those Courts (5 Mad. H. C. Rep. 200, and I. L. R. 3 All. 66).

There would seem, apart from section 6 of Act XI of 1865, to be no sufficient ground for excluding from the cognizance of a Court of Small Causes such a suit as that reported at I. L. R. 7 All. 378.

15. No. (38) will exclude the following among other suits:—

(*a*) suits for compensation for infringing copyright (I. L. R. 6 Cal. 499);
(*b*) suits for compensation for infringing the exclusive privilege of an inventor (Act XV, 1859, section 22);
(*c*) suits against Sovereign Princes or Ruling Chiefs, or Ambassadors or Envoys of Foreign States (Act XIV, 1882, section 433);
(*d*) suits for dissolution of marriage or judicial separation (Act IV, 1869); and
(*e*) suits founded on the liability of a contributory (Act VI, 1882, section 125).

16. *Sections 19 and 34.*—As to the second proviso to section 21 of the Act of 1865, reference may be made to I. L. R. 6 Cal. 236 and 8 Cal. 287. As the law now stands, a person wishing to have a decree set aside may apply for (*a*) a new trial under section 21, Act XI of 1865, or (*b*) a review under Chapter XLVII of the Code, or (*c*) both a new trial and a review. "It is difficult," as observed by the learned Chief Justice of the High Court at Fort William, "to conceive any reasons which would justify a new trial which would not also afford good grounds for a review" (I. L. R. 6 Cal. 238). It is proposed, therefore, to replace the alternative or cumulative remedies of new trial and review by the single remedy of review, but to impose on applications for review restrictions similar to those imposed by the existing law on applications for new trial.

17. *Section 21.*—This section supplements section 223 of the Code of Civil Procedure, which extends to Courts of Small Causes. Section 20 of the Act of 1865, which the section

supersedes, appears in some places to have been construed to require a decree-holder to proceed in the first instance against moveable property even when the moveable property of the judgment-debtor is known to be of no appreciable value.

18. *Section 26.*—Under section 45 of the Act of 1865, it is the duty of the Clerk of the Court to "take charge of and keep an account of all moneys payable or paid into or out of Court" and to "enter an account of all such moneys in a book belonging to the Court to be kept by such Clerk for that purpose." The terms of that section have been held to preclude the transfer of the duty of receiving moneys and keeping accounts in a Court of Small Causes to the special staff of accountants which in some provinces is employed at the head-quarters of each district to receive and account for moneys paid into the Civil Courts located there. It has been provided in section 26 of the Bill that the High Court may, if it sees fit, relieve the clerk of the Court of his duties as cashier and accountant.

19. *Section 32.*—The High Court for the North-Western Provinces has held (5 All. H. C. Rep. 55) that section 51 of the Act of 1865 does not authorise the Local Government to permanently and unconditionally invest the Judge of a Small Cause Court with the powers of a Principal Sadr Amín, and that the section only contemplates an occasional investment of the powers, and one contingent on the state of the business of the Court. Under section 32 of the Bill the question will not again arise.

20. In sections 32 and 33 regard has been had to I. L. R. 8 Bom. 230, 9 Bom. 237, 1 All. 87, 1 All. 624, and 3 All. 710. It has been made clear that, for the purposes of sections 223 and 295 of the Code of Civil Procedure and section 21 of the Bill, the Court of a Judge of a Court of Small Causes when the Judge is acting as such, and the Court of the same Judge when the Judge has been appointed to be and is acting as a Subordinate Judge, are different Courts, and that, for the same purposes, the Court of a Subordinate Judge when the Judge is acting as such, and the Court of the same Judge when the Judge has been invested with the jurisdiction of a Court of Small Causes and is exercising that jurisdiction, are different Courts.

21. The first proviso to section 21 of Act XI of 1865 has been omitted because its retention has been rendered unnecessary by the extension of section 108 of the Code of Civil Procedure to Courts of Small Causes.

22. Section 52 of the Act of 1865 has been omitted, as it is believed not to be used.

23. It is proposed by the first schedule to make section 648 of the Code of Civil Procedure, which extends to the Presidency Small Cause Courts, extend also to Provincial Courts of Small Causes.

24. It is proposed by the same schedule to repeal so much of the second schedule of the Code of Civil Procedure as extends sections 121 to 136 of the Code to Provincial Courts of Small Causes. These sections do not extend to Presidency Small Cause Courts, and their provisions, which contemplate elaborate and lengthened trials in suits of superior importance, are incompatible with the speedy disposal of the petty suits cognizable by a Court of Small Causes. The want of the sections is not likely to be really felt in Courts of Small Causes, while their application to those Courts is not unlikely to be taken advantage of for the purpose of delaying proceedings.

25. So much of sections 137, 447, 453, 454 and 456 of the Code of Civil Procedure as requires applications to Courts of Small Causes to be supported by affidavit is proposed to be repealed. Chapter XVI of the Code, respecting affidavits, does not extend to Provincial Courts of Small Causes.

C. P. ILBERT.

The 18th December, 1885.

S. HARVEY JAMES,
Offg. 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 23rd December, 1885, and was referred to a Select Committee :—

No. 20 OF 1885.

A Bill to amend Act XXXVI of 1858.

WHEREAS it is expedient to amend Act XXXVI of 1858 (*an Act relating to Lunatic Asylums*); It is hereby enacted as follows :—

1. After section 18 of the said Act the following section shall be inserted, namely :—

"When an Executive Government has not established within its limits a public asylum for the reception and detention of lunatics under this Act, the Governor General in Council may, from time to time, appoint an asylum established in British India beyond those limits to be an asylum to which a Magistrate or Judge exercising jurisdiction within those limits may send lunatics as to an asylum established under this Act for the division in which his jurisdiction is situate."

STATEMENT OF OBJECTS AND REASONS.

IN some of the smaller Provinces, such as Coorg and the Andaman and Nicobar Islands, the Local Governments have not established asylums under Act XXXVI of 1858 for the reception and detention of lunatics. Occasions have, however, arisen on which inconvenience has been experienced by reason of there not being asylums to which Magistrates exercising jurisdiction in those Provinces may send lunatics under the provisions of the Act. The object of this Bill is to enable the Governor General in Council to appoint asylums to which lunatics may be sent from those Provinces.

S. C. BAYLEY.

The 18th December, 1885.

S. HARVEY JAMES,
Offg. Secretary to the Government of India.

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