

THE
ACTS AND PROCLAMATIONS
OF
COCHIN.

THE
ACTS AND PROCLAMATIONS
OF
COCHIN

VOLUME V
(1112—1113 M. E.)
(1936—1937)

PUBLISHED BY
THE GOVERNMENT OF COCHIN.



PRINTED AT THE VISWANATH PRESS,
ERNAKULAM.

1938

THE
ACTS AND PROCLAMATIONS
OF
COCHIN.

GENERAL CONTENTS.

S. No.	Short title.	Volume.	Page.
1	Abkari Act (I of 1077)	I	167
2	Agricultural Improvements Loans Act (IV of 1093)	III	19
3	Amending Act (I of 1109)	IV	1
4	Anchal Act (I of 1067)	I	19
5	Ancient Monuments Preservation Act (IX of 1110)	IV	175
6	Arbitration Act (V of 1108)	III	660
7	Arms Act (II of 1084)	I	491
8	Bankers' Books Evidence Act (III of 1103)	III	607
9	Bills of Lading Act (VI of 1112)	V	25
10	Births and Deaths Registration Act (II of 1081)	I	318
11	Boilers Act (VI of 1113)	V	551
12	Canals (Public) and Backwaters Navigation Act (I of 1092)	I	662
13	Carriage of Goods by Sea Act (LIX of 1112)	V	393
14	Carriers Act (XVI of 1112)	V	129
15	Cattle Disease (Prevention) Act (II of 1093)	III	1
16	Cattle Trespass Act (III of 1071)	I	57
17	Census Act (II of 1105)	III	618

S. No.	Short title.	Volume.	Page.
18	Chief Court Act (II of 1076)	I	93
19	Children Act (XXXVI of 1111)	IV	890
20	Christian Civil Marriage Act (V of 1095)	III	57
21	Christian Succession Act (VI of 1097)	III	309
22	Church Case—Trichur—Arbitration of Proclamation dated 24-5-1100	III	528
23	Cinematograph Act (IV of 1102)	III	597
24	Civil Courts Act (III of 1076)	I	103
25	Civil Marriage Act (XXI of 1110)	IV	193
26	Civil Procedure Code (XXIX of 1111)	IV	471
27	Coffee Cess Act (XVI of 1111)	IV	346
28	Coffee Stealing (Prevention) Act (V of 1076)	I	118
29	Coins—British Coins legal tender in the State—Proclamation dated 15-2-1076	I	92
30	Companies Proclamation dated 19-3-1197	III	306
31	Companies—Proclamation IV of 1112— bringing into force the Companies (Amendment) Act (XXII of 1936)	V	331
32	Contempt of Courts Act (XXXII of 1111)	IV	873
33	Contract Act (XXIII of 1112)	V	175
34	Co-operative Land Mortgage Bank Act (XXV of 1111)	IV	444
35	Copyright Act (LXXIII of 1112)	V	467
36	Cotton Industry (Statistics) Act (V of 1103)	III	611
37	Court Fees Act (II of 1080)	I	224
38	Court of Wards Act (XIII of 1097)	III	394
39	Criminal Procedure Code (II of 1086)	II	

S. No.	Short title.	Volume.	Page.
40	Cruelty to Animals (Prevention) Act (XVIII of 1095)	III	143
41	Cutchi Memons Act (IV of 1106)	III	625
42	Dangerous Drugs Act (XLIX of 1112)	V	372
43	Debt Conciliation Act (XXVI of 1112)	V	313
44	Dedication—Prevention of Dedication Act (XXVI of 1111)	IV	464
45	Deserters from H. M. Army—Proclama- tion dated 5-5-1095	III	57
46	Destruction of Records Act (V of 1074)	I	85
47	Devaswoms Proclamation dated 29-6-1085	I	569
48	Dock Labourers Act (XVII of 1112)	V	133
49	Dramatic Performances Act (LXXI of 1112)	V	420
50	Easements Act (XXII of 1112)	V	139
51	Election Offences and Enquiries Act (IX of 1098)	III	517
52	Electricity Act (III of 1102)	III	528
53	Enactments—Styling as Acts—Proclama- tion V of 1112	V	390
54	Enlistment in His Majesty's Army— Proclamation dated 14-1-1094	III	40
55	Epedimic Diseases Act (I of 1072)	I	70
56	Estates—Assumption of V. T. K. Estate— Proclamation dated 12-6-1104	III	615
57	Evidence—Proclamation dated 21-6-1080 bringing into force the Indian Evidence Act	I	266
58	Evidence—Proclamation bringing into force the Indian Evidence Amend- ment Act XXXI of 1926, No. (VII of 1112)	V	392

S. No.	Short title.	Volume.	Page.
59	Explosives Act (XIII of 1111)	IV	337
60	Extradition Act (Cochin and Br. India) (I of 1082)	I	334
61	Extradition Act (Cochin and Travancore) (X of 1093)	III	30
62	Factories Act (II of 1113)	V	495
63	Ferries and Tolls Act (III of 1082)	I	338
64	Fines by Court-martial, Proclamation dated 24-5-1094	III	53
65	Fisheries Act (III of 1092)	I	670
66	Food Adulteration—Prevention of Food Adulteration Act (XIV of 1109)	IV	129
67	Foreigners—temporary landing at Malippuram—Proclamation dated 5-5-1095.	III	55
68	Forest Act (III of 1080)	I	284
69	Forest Steam Tramway Act (V of 1082)	I	351
70	Fugitive Offenders Application Act (VI of 1108)	III	671
71	Gambling—Public Gambling Act (IV of 1082)	I	343
72	General Clauses Act (III of 1079)	I	210
73	Glanders and Farcy Act (VI of 1093)	III	25
74	Government Loan—Proclamation giving first charge	IV	1
75	Government Securities Act (XVI of 1108)	III	751
76	Guardian and Wards Act (XVII of 1095)	III	117
77	Hackney Carriage Act (II of 1098)	III	435
78	Hindu Religious Institutions Act (I of 1081)	I	308

GENERAL CONTENTS

v

S. No.	Short title.	Volume.	Page.
79	Hostile Foreigners—repatriation of— Proclamation dated 31-9-1091	I	661
80	Hostile States—Financial and other dealings—prohibition of—Proclama- tion dated 10-1-1091	I	656
81	Identification of Prisoners Act (XV of 1112)	V	125
82	Income-tax Act (VIII of 1108)	III	672
83	Insolvency Act (VII of 1098)	III	459
84	Irrigation Act (VIII of 1111)	IV	249
85	Joint Land Registration Act (II of 1103)	III	603
86	Judicial Officers' Protection Act (IV of 1076).	I	117
87	Juvenile Smoking Prevention Act (II of 1096)	III	148
88	Kanoms and Panayams Proclamation (III of 1112)	V	24
89	Karaima services in State Devaswoms— Proclamation dated 13-10-1094	III	54
90	Koodalmanickam Proclamation dated 15-4-1093	III	8
91	Kuries Act (VII of 1107)	III	625
92	Kuries Proclamation (I of 1112)	V	1
93	Land Acquisition Act (II of 1070)	I	26
94	Land Conservancy Act (IV of 1096)	III	151
95	Legislative Council Act (VIII of 1098)	III	508
96	Legislative Council Member's Exemption Act (I of 1105)	III	617
97	Lepers Act (VI of 1084)	I	549
98	Limitation Act (XII of 1112)	V	80

S. No.	Short title.	Volume.	Page.
99	Lunacy Act (VII of 1096)	III	168
100	Majority Act (XXXVII of 1112)	V	348
101	Matches (Excise Duty) Act (VIII of 1110)	IV	165
102	Mechanical Lighters (Excise Duty) Act (XXXV of 1111)	IV	884
103	Merchandise Marks Act (XLI of 1112)	V	350
104	Motor Vehicles Act (I of 1094)	III	44
105	Municipal Council—Proclamation extend- ing the term (I of 1113)	V	534
106	Muslim Succession Act (XV of 1108)	III	750
107	Muslim Women's Marriage Dissolution Act (XIV of 1108)	III	748
108	Mussalman Charitable Endowment Act (XXXI of 1111)	IV	866
109	Nair Act (XIII of 1095)	III	95
110	Negotiable Instruments Act (IX of 1097)	III	341
111	Newspapers Act (II of 1112)	V	2
112	Newspapers—Proclamation prohibiting import of 'Malayalee' and 'Bharatha Patrika (VI of 1112)	V	390
113	Notaries Public Act (I of 1075)	I	86
114	Nuisances Act (IV of 1098)	III	455
115	Oaths Act (XXXI of 1112)	V	327
116	Obstruction in Fairways Act (XIV of 1112)	V	121
117	Opium Act (VIII of 1076)	I	155
118	Palam Proclamation	IV	203
119	Palam Tarawad Act (VIII of 1097)	III	334

S. No.	Short title.	Volume.	Page.
120	Panel of Chairmen—Proclamation dated 24-12-1108	III	767
121	Partnership Act (XXIV of 1112)	V	256
122	Passport Act (VII of 1112)	V	27
123	Patents and Designs Act (XI of 1112)	V	29
124	Payment of Wages Act (IV of 1113)	V	535
125	Penal Code (I of 1059)	II	
126	Petroleum Act (XXXVI of 1112)	V	332
127	Places of Public Resorts Act (X of 1097)	III	388
128	Plague—Proclamation dated 28-6-1072	I	69
129	Plant Pests and Plant Diseases Act (XIV of 1095)	III	111
130	Poisons Act (XXX of 1111)	IV	862
131	Police Act (1 of 1058)	I	1
132	Police—Special Police Act (III of 1075)	I	88
133	Ports Act (VI of 1113)	V	571
134	Post Offices Act (VII of 1076)	I	153
135	Press and Registration of Books Act (VII of 1097)	III	319
136	Prisoners' Act (XLVI of 1112)	V	361
137	Prisons Act (VI of 1076)	I	125
138	Probate and Administration Act (X of 1096)	III	208
139	Provident Funds Act (XXIII of 1111)	IV	437
140	Provident Insurance Societies Act (II of 1110)	IV	142
141	Railways Act (XI of 1111)	IV	277
142	Registration Act (V of 1084)	I	505

S. No.	Short title.	Volume.	Page.
143	Religious Buildings—Erection of Religious Buildings Act (I of 1062)	I	17
144	Repealing Act (II of 1097)	III	260
145	Revenue Enquiries Act (I of 1084)	I	489
146	Revenue Recovery Act (IV of 1083)	I	361
147	Rubber Control Act (XXXIV of 1111)	IV	875
148	Rubber Thefts (Prevention) Act (VII of 1089)	I	623
149	Sale of Goods Act (XXV of 1112)	V	286
150	Salt Act (V of 1083)	I	386
151	Sea Customs Act (XII of 1109)	IV	6
152	Settlement Proclamation dated 27-7-1080	I	266
153	Societies—Literary, Scientific and Charitable Societies Act (II of 1088)	I	574
154	Soldiers serving under war conditions—Protection in respect of civil and revenue litigation—Proclamation dated 7-3-1091	I	658
155	Specific Relief Act (IV of 1097)	III	263
156	Stamp Act (VI of 1083)	I	409
157	State-Aid to Industries Act (X of 1111)	IV	267
158	State Nationals Definition Act (III of 1108)	III	658
159	Succession Certificate Act (VII of 1095)	III	83
160	Survey Act (II of 1074)	I	72
161	Tea Cultivation Restriction Act (V of 1110)	IV	161
162	Telegraph Protection Act (II of 1109)	IV	3
163	Telegraph Protection—Proclamation dated 30-10-1086	I	572
164	Telephone Act (V of 1096)	III	160

GENERAL CONTENTS

ix

S. No.	Short title.	Volume.	Page.
165	Tenancy Act (II of 1090)	I	633
166	Thiyya Act (VIII of 1107)	III	646
167	Tobacco Act (VII of 1084)	I	561
168	Trade Disputes Act (LXVI of 1112)	V	407
169	Trade Unions Act (III of 1112)	V	7
170	Transfer of Property Act (XVII of 1111)	IV	348
171	Treasure Trove Act (III of 1081)	I	326
172	Trusts Act (LXXII of 1112)	V	424
173	Usurious Loans Act (XXVIII of 1111)	IV	466
174	Vakils Act (VI of 1095)	III	76
175	Validating and Indemnity Act (X of 1109)	IV	5
176	Village Panchayat Act (V of 1089)	I	582
177	Weights and Measures Act (LXIII of 1112)	V	403
178	Workmen's Compensation Act (V of 1111)	IV	205

THE ACTS AND PROCLAMATIONS OF COCHIN.

VOLUME V.
(1112—1113 M. E.)

CONTENTS.

1. ARRANGED CHRONOLOGICALLY.

Year	Number	Short title	Page
1112	I	Kuries Proclamation	1
"	II	The Cochin Newspapers Act	2
"	✓ III	The Cochin Trade Unions Act	7
"	III	Kanoms and Panayams Proclamation	24
"	VI	The Cochin Bills of Lading Act	25
"	VII	The Cochin Passport Act	27
"	XI	The Cochin Patents and Designs Act	29
"	XII	The Cochin Limitation Act	80
"	XIV	The Cochin Obstruction in Fairways Act	121
"	XV	The Indentification of Prisoners Act	125
"	XVI	The Cochin Carriers Act	129
"	XVII	The Cochin Dock Labourers Act	133
"	XXII	The Cochin Easements Act	139
"	XXIII	The Cochin Contract Act	175
"	XXIV	The Cochin Partnership Act	256
"	XXV	The Cochin Sale of Goods Act	286
"	XXVI	The Cochin Debt Conciliation Act	313
"	XXXI	The Cochin Oaths Act	327
"	IV	Companies Proclamation bringing into force the Indian Companies (Amendment) Act, XXII of 1936	331
"	XXXVI	The Cochin Petroleum Act	332
"	XXXVII	The Cochin Majority Act	348

ARRANGED CHRONOLOGICALLY (Contd.)

Year	Number	Short title	Page
1112	XLI	The Cochin Merchandise Marks Act	350
"	XLVI	The Cochin Prisoners' Act	361
"	XLIX	The Cochin Dangerous Drugs Act	372
"	V	Proclamation styling enactments 'Acts'	390
"	VI	Proclamation prohibiting the import of the newspapers 'Malayali' and 'Bharata Patrika'	390
"	VII	The Evidence Proclamation bringing into force the Indian Evidence (Amendment) Act	392
"	LIX	The Cochin Carriage of Goods by Sea Act	393
"	LXIII	The Cochin Weights and Measures Act	403
"	LXVI	The Cochin Trade Disputes Act	407
"	LXXI	The Cochin Dramatic Performances Act	420
"	LXXII	The Cochin Trusts Act	424
"	LXXIII	The Cochin Copyright Act	467
1113	II	The Cochin Factories Act	495
"	I	Proclamation extending the term of Municipal Councils	534
"	IV	The Cochin Payment of Wages Act	535
"	V	The Cochin Boilers Act	551
"	VI	The Cochin Ports Act	571

II.—ARRANGED ALPHABETICALLY.

S. No.	Short title	Year and number	Page.
1	Bills of Lading Act	VI of 1112	25
2	Boilers Act	V of 1113	551
3	Carriage of Goods by Sea Act	LIX of 1112	393
4	Carriers Act	XVI of 1112	129
5	Companies—Proclamation bringing into force the Companies (Amendment) Act, XXII of 1936	IV of 1112	331
6	Contract Act	XXIII of 1112	175
7	Copyright Act	LXXIII of 1112	467
8	Dangerous Drugs Act	XLIX of 1112	372
9	Debt Conciliation Act	XXVI of 1112	313
10	Dock Labourers Act	XVII of 1112	133
11	Dramatic Performances Act	LXXI of 1112	420
12	Easements Act	XXII of 1112	139
13	Enactments—Proclamation Styling as 'Acts'	V of 1112	390
14	Evidence—Proclamation bringing into force the Indian Evidence (Amendment) Act, XXXI of 1926	VII of 1112	392
15	Factories Act	II of 1113	495
16	Identification of Prisoners Act	XV of 1112	125
17	Kanoms and Panayams Proclamation	III of 1112	24
18	Kuries Proclamation	I of 1112	1
19	Limitation Act	XII of 1112	80
20	Majority Act	XXXVII of 1112	348
21	Merchandise Marks Act	XLI of 1112	350
22	Municipal Councils—Proclamation—extending the term of	I of 1113	534

ARRANGED ALPHABETICALLY (Contd.)

S. No.	Short title	Year and number	Page
23	Newspapers Act	II of 1112	2
24	Newspapers—Proclamation prohibiting import of 'Malayali' and 'Bharatapatrika'	VI of 1112	390
25	Oaths Act	XXXI of 1112	327
26	Obstruction in Fairways Act	XIV of 1112	121
27	Partnership Act	XXIV of 1112	256
28	Passport Act	VII of 1112	27
29	Patents and Designs Act	XI of 1112	29
30	Payment of Wages Act	IV of 1113	535
31	Petroleum Act	XXXVI of 1112	332
32	Ports Act	VI of 1113	571
33	Prisoners' Act	XLVI of 1112	361
34	Sale of Goods Act	XXV of 1112	286
35	Trade Disputes Act	LXVI of 1112	407
36	Trade Unions Act	III of 1112	7
37	Trusts Act	LXXII of 1112	424
38	Weights and Measures Act	LXIII of 1112	403

ACTS AND PROCLAMATIONS
OF
COCHIN.

VOLUME V.

PROCLAMATION

(No. 1 of 1112.)

BY HIS HIGHNESS SIR SREE RAMA VARMA, G. C. I. E.,
MAHARAJA OF COCHIN.

Issued under date the 9th day of Chingam 1112 corresponding to the 24th day of August 1936.

WHEREAS representations have been made to Our Government regarding the desirability of continuing the operation of Our Proclamation relating to Kuries issued under date the 29th day of Chingam 1111 corresponding to the 14th day of September 1935, We are hereby pleased to command that the provisions of the said Proclamation shall continue to be in force from the 10th day of Chingam 1112 until such time as Our Government may deem fit to withdraw it by notification in Our Government Gazette.

THE COCHIN NEWSPAPERS ACT

(II OF 1112.)

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.
3. Licenses necessary for printing or publishing Newspapers.
4. Refund of license fee when Newspaper ceases publication.
5. Cancellation of licenses.
6. Grant of fresh licenses.
7. Cancellation of such licenses.
8. Surrender of Newspaper declared to be forfeited.
9. Appeal to Government and reference to the Chief Court.
10. Procedure to be adopted by the Chief Court on reference by Government.
11. Admissibility of copies of Newspapers in evidence.
12. Penalty for printing or publishing Newspaper without license.
13. Prosecutions not to be started except under the authority of the Government.
14. Transitory provisions.
15. Immunity of orders from civil action.

THE COCHIN NEWSPAPERS [ACT]

(II OF 1112.)

AN ACT TO BRING UNDER BETTER CONTROL
THE NEWSPAPERS IN COCHIN.

Passed by His Highness the Maharaja on the 9th day of Chingam 1112 corresponding to the 24th day of August 1936.

Preamble.

WHEREAS it is expedient to bring under better control the Newspapers in Cochin; it is hereby enacted as follows:—

1. Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

1. (1) This Act may be called "The Cochin Newspapers Act, II of 1112." Short title, extent and commencement.

(2) It shall extend throughout Cochin and shall come into force at once.

2. In this Act unless there is something repugnant to the subject or context— Definitions.

(a) "Print", "Printed" and "Printer" apply not only to printing, but also to typewriting, lithography, engraving and photography; and

(b) "Newspaper" means any periodical work containing public news or comments on public news printed in any language.

3. (1) No Newspaper shall be printed or published in Cochin for the printing and publishing of which a license has not been obtained in such form and manner as may be prescribed by rules framed by the Government in that behalf from time to time and on payment, within such time as may be fixed by such rules, of such fee not exceeding five hundred rupees as the Government may, in each case, see fit to require. Licenses necessary for printing or publishing Newspapers.

(2) When an application for a license has been made in such form and manner as may be prescribed by rules framed by the Government in that behalf from time to time and the fee required has been paid as above, the applicant shall be entitled to have a license granted to him.

4. Whenever any Newspaper ceases publication except in the circumstances described in section 5 or section 7, the fee paid under section 3 or section 6 shall be refunded upon representation by the licensee and thereupon the license issued under section 3 or section 6 shall be deemed to have been revoked. Refund of license fee when Newspaper ceases publication.

5. Whenever it appears to the Government that any Newspaper in respect of which a license has been granted under this Act— Cancellation of licenses.

(i) contains any words, signs, or visible representations which are likely or may have a tendency,

directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise—

- (a) to excite disaffection against or bring into hatred or contempt His Highness the Maharaja of Cochin or the Government of His Highness the Maharaja or His Majesty the King Emperor of India or the Government established by law in British India, or
- (b) to promote feelings of enmity or hatred between the several classes of people in Cochin, or
- (ii) habitually publishes matter punishable under section 480 of the Cochin Penal Code (Act I of 1059), or
- (iii) habitually disseminates false information,

the Government may, with or without previous warning, cancel, by notice in writing to the printer as well as to the publisher of such Newspaper indicating or describing such words, signs, visible representations or matter, the license granted in respect of such Newspaper and upon such cancellation, the declarations made under section 5 of the Cochin Press and Registration of Books Act, VII of 1067, in respect of such Newspaper shall be deemed to have been annulled and the license fee shall be forfeited to the Government.

Explanation.— For the purposes of clause (a) of subsection (i) of this section, Explanations I, II and III under section 120 of the Cochin Penal Code, Act I of 1059, shall be deemed to be applicable.

Grant of
fresh licenses.

6. When a license granted in respect of any Newspaper has been cancelled under section 5, the Government may, in its discretion, grant a fresh license, unconditionally or otherwise, upon payment of such fee not exceeding two thousand five hundred rupees as may be fixed by the Government, or may refuse to grant a fresh license in respect of such Newspaper or any other

Newspaper which, in the opinion of the Government, is in substance identical with the Newspaper in respect of which the license has been cancelled.

7. (1) If, after a fresh license has been granted under section 6, any issue of the Newspaper contains any words signs, visible representations or matter, in the opinion of the Government, of the nature described in section 5, the Government may, by notice in writing to the printer as well as to the publisher of such Newspaper indicating or describing such words, signs, visible representations or matter, cancel such fresh license and declare the license fee to be forfeited to the Government and may, further by notification in the Cochin Government Gazette, declare every copy of the issue of the Newspaper containing such words signs, visible representations or matter to be forfeited to the Government, and thereupon any Police Officer may seize any such copy wherever found, and any Magistrate may, by warrant, authorise any Police Officer not below the rank of an Inspector to enter upon and search for such copy in any premises where it may be or may be reasonably suspected to be.

Cancellation
of such
licenses.

(2) Every warrant issued under this section shall, so far as relates to a search, be executed in the manner provided for the execution of search warrants under the Code of Criminal Procedure.

8. (1) Whoever is in possession of any copy of any issue of a Newspaper declared to be forfeited under section 7 (1) of this Act knowing it to be so declared shall, within 5 days of his possession of it with such knowledge, surrender it to the officer in charge of the nearest Police Station.

Surrender of
Newspaper
declared to
be forfeited.

(2) Whoever contravenes the provisions of sub-section (1) of this section shall, on conviction by a Magistrate, be punished with fine not exceeding rupees fifty in respect of each copy of such issue of the Newspaper in his possession.

Appeal to Government and reference to the Chief Court.

9. Any person aggrieved by an order under section 5 or section 7 may, within two months from the date of such order, apply to the Government for reconsideration of such order on the ground that the Newspaper in respect of which such order was made did not in fact contain any words, signs, visible representations or matter of the nature described in section 5, and the Government shall, thereupon either revoke such order or shall refer such application to the Chief Court forwarding to the said Court a copy of such order with the connected records.

Procedure to be adopted by the Chief Court on reference by Government.

10. (1) Every such application shall be heard and determined by a Full Bench of the Chief Court and the said Bench shall decide whether the words, signs, visible representations or matter contained in the Newspaper in respect of which the order in question was made were or were not in fact of the nature described in section 5.

(2) A copy of such decision under the seal of the court and the signature of the Registrar shall be sent to the Government with the connected records.

(3) If, in the opinion of the Full Bench, or when there is a difference of opinion, in the opinion of the majority of the Judges composing the Full Bench, the words, signs, visible representations or matter referred to in sub-section (1) were not in fact of the nature described in section 5, the Government shall, on receipt of such decision, revoke the said order.

Admissibility of copies of Newspapers in evidence.

11. On the hearing of any such application with reference to any Newspaper, any copy of such Newspaper published after the commencement of this Act may be given in evidence in aid of the proof of the nature or tendency of the words, signs, visible representations or matter contained in such Newspaper which are alleged to be of the nature described in section 5.

Penalty for printing or publishing Newspaper without license.

12. Whoever prints or publishes any Newspaper for the printing and publishing of which a license has not been obtained under the provisions of this Act or prints or publishes a Newspaper in respect of which the

license has been cancelled, shall, on conviction by a Magistrate, be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 5 of the Cochin Press and Registration of Books Act, VII of 1097.

13. No prosecution for any offence under this Act shall be started except under the authority of the Government.

Prosecution not to be started except under the authority of the Government.

14. Notwithstanding anything contained in this Act, any Newspaper in respect of which the necessary declarations as prescribed by section 5 of the Cochin Press and Registration of Books Act, VII of 1097, have been made before the commencement of this Act shall be deemed to have complied with the provisions of section 3 of this Act if, in respect of such Newspaper, a license is obtained within thirty days after the commencement of this Act.

Transitory Provisions.

15. No order passed or action taken under this Act shall be called in question in any court otherwise than in accordance with the provisions of this Act.

Immunity of orders from civil action.

THE COCHIN TRADE UNIONS ACT.

(III OF 1112.)

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II.

REGISTRATION OF TRADE UNIONS.

SECTIONS.

3. Appointment of Registrars.
4. Mode of Registration.
5. Application for registration.
6. Provisions to be contained in the rules of a Trade Union.
7. Power to call for further particulars and to require alteration of name.
8. Registration.
9. Certificate of registration.
10. Cancellation of registration.
11. Appeal.
12. Registered Office.
13. Incorporation of Registered Trade Unions.
14. Certain Acts not to apply to Registered Trade Unions.

CHAPTER III.

RIGHTS AND LIABILITIES OF REGISTERED TRADE UNIONS.

15. Objects on which general funds may be spent.
16. Constitution of a separate fund for political purposes.
17. Immunity from civil suit in certain cases.
18. Enforceability of agreement.
19. Right to inspect books of Trade Union.
20. Right of minors to membership of Trade Unions.
21. Proportion of officers to be connected with the industry.
22. Change of name.
23. Amalgamation of Trade Unions.
24. Notice of change of name or amalgamation.
25. Effects of change of name and of amalgamation.
26. Dissolution.
27. Returns.

CHAPTER IV.

RULES.

28. Power to make rules.
29. Publication of rules.

CHAPTER V.

PENALTIES AND PROCEDURE.

SECTIONS.

30. Failure to submit returns.
31. Supplying false information regarding Trade Union.
32. Cognizance of offences.

THE COCHIN TRADE UNIONS [ACT]

(III OF 1112)

Passed by His Highness the Maharaja on the 12th day of Chingam 1112 corresponding to the 27th day of August 1936.

Whereas it is expedient to provide for the registration of Trade Unions and in certain respects to define the law relating to Registered Trade Unions in Cochin; it is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Cochin Trade Unions Act, III of 1112.
- (2) It extends to the whole of Cochin.
- (3) It shall come into force on such date as the Government may, by notification in the Cochin Government Gazette, appoint.

Short title, extent and commencement.

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

Definitions.

(a) “executive” means the body, by whatever name called, to which the management of the affairs of a Trade Union is entrusted;

(b) “officer” in the case of a Trade Union includes any member of the executive thereof, but does not include an auditor;

1. Substituted for ‘Regulation’ throughout the enactment by Proclamation V of 1112.

(c) "prescribed" means prescribed by rules made under this Act;

(d) "Registered office" means that office of a Trade Union which is registered under this Act as the head office thereof;

(e) "Registered Trade Union" means a Trade Union registered under this Act;

(f) "Registrar" means a Registrar of Trade Unions appointed by the Government under section 3;

(g) "Trade dispute" means any dispute between employers and workmen, or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the term of employment or the conditions of labour, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises; and

(h) "Trade Union" means any combination, whether temporary or permanent formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions:

Provided that this Act shall not affect—

(i) any agreement between partners as to their own business;

(ii) any agreement between an employer and those employed by him as to such employment; or

(iii) any agreement in consideration of the sale of the good will of a business or of instruction in any profession, trade or handicraft.

CHAPTER II.

REGISTRATION OF TRADE UNIONS.

3. The Government shall appoint a person to be the Registrar of Trade Unions for Cochin.

Appoint-
ment of
Registrars.

4. Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act.

Mode of
registration.

5. (1) Every application for registration of a Trade Union shall be made to the Registrar, and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely,—

Application
for
registration.

(a) the names, occupations and addresses of the members making the application ;

(b) the name of the Trade Union and the address of its head office ; and

(c) the titles, names, ages, addresses and occupations of the officers of the Trade Union.

(2) Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed.

6. A Trade Union shall not be entitled to registration under this Act, unless the executive thereof is constituted in accordance with the provisions of this Act and the rules thereof provide for the following matters, namely,—

Provisions
to be
contained in
the rules of a
Trade Union.

(a) the name of the Trade Union ;

(b) the whole of the objects for which the Trade Union has been established ;

(c) the whole of the purposes for which the general funds of the Trade Union shall be applicable, all

of which purposes shall be purposes to which such funds are lawfully applicable under this Act ;

(d) the maintenance of a list of the members of the Trade Union and adequate facilities for the inspection thereof by the officers and members of the Trade Union ;

(e) the admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected, and also the admission of the number of honorary or temporary members as officers required under section 21 to form the executive of the Trade Union ;

(f) the conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members ;

(g) the manner in which the rules shall be amended, varied or rescinded ;

(h) the manner in which the members of the executive and the other officers of the Trade Union shall be appointed and removed ;

(i) the safe custody of the funds of the Trade Union, an annual audit, in such manner as may be prescribed, of the accounts thereof, and adequate facilities for the inspection of the account books by the officers and members of the Trade Union ; and

(j) the manner in which the Trade Union may be dissolved.

Power to call for further particulars and to require alteration of name.

7. (1) The Registrar may call for further information for the purpose of satisfying himself that any application complies with the provisions of section 5, or that the Trade Union is entitled to registration under section 6, and may refuse to register the Trade Union until such information is supplied.

(2) If the name under which a Trade Union is proposed to be registered is identical with that by which any other existing Trade Union has been registered

or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either Trade Union, the Registrar shall require the persons applying for registration to alter the name of the Trade Union stated in the application, and shall refuse to register the Union until such alteration has been made.

8. The Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration. Registration.

9. The Registrar, on registering a Trade Union under section 8, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under this Act. Certificate of registration.

10. A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar— Cancellation of registration.

(a) on the application of the Trade Union to be verified in such manner as may be prescribed; or

(b) if the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has wilfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision; or has rescinded any rule providing for any matter, provision for which is required by section 6:

Provided that not less than two months' previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union.

Appeal.

11. (1) Any person aggrieved by any refusal of the Registrar to register a Trade Union or by the withdrawal or cancellation of a certificate of registration may, within such period as may be prescribed, appeal to the principal Civil Court of original jurisdiction, as the Government may appoint in this behalf for the area.

(2) The appellate Court may dismiss the appeal, or pass an order directing the Registrar to register the Union and to issue a certificate of registration under the provisions of section 9 or setting aside the order for withdrawal or cancellation of the certificate, as the case may be, and the Registrar shall comply with such order.

(3) For the purpose of an appeal under subsection (1) an appellate Court shall, so far as may be, follow the same procedure and have the same powers as it follows and has when trying a suit under the Code of Civil Procedure and may direct by whom the whole or any part of the costs of the appeal shall be paid and such costs shall be recovered as if they had been awarded in a suit under the said Code.

(4) In the event of the dismissal of an appeal by any Court appointed under clause (1) the person aggrieved shall have a right of appeal to the Chief Court, and the Chief Court shall, for the purpose of such appeal, have all the powers of an appellate Court under subsections (2) and (3), and the provisions of those subsections shall apply accordingly.

Registered
Office.

12. All communications and notices to a registered Trade Union may be addressed to its registered office. Notice of any change in the address of the head office shall be given within fourteen days of such change to the Registrar in writing, and the changed address shall be recorded in the register referred to in section 8.

Incorporation
of
Registered
Trade
Unions.

13. Every Registered Trade Union shall be a body corporate by the name under which it is registered, and shall have perpetual succession and a common seal with power to acquire and hold both movable and immovable

property and to contract, and shall by the said name sue and be sued.

14. The following Acts namely—

Certain Acts
not to apply
to Registered
Trade
Unions.

(a) the Act for the Registration of Literary, Scientific and Charitable Societies in Cochin, II of 1088,

(b) the Cochin Co-operative Societies Act, IV of 1088,

(c) the Cochin Provident Insurance Societies Act, II of 1110,

(d) the Indian Companies Act, as made applicable to Cochin by His Highness the Maharaja's Proclamation dated the 19th day of Thulam 1097, shall not apply to any registered Trade Union, and the registration of any such Trade Union under any such Act shall be void.

CHAPTER III.

RIGHTS AND LIABILITIES OF REGISTERED TRADE UNIONS.

15. The general funds of a Registered Trade Union shall not be spent on any other objects than the following, namely,—

Object
on which
general
funds may
be spent.

(a) the payment of salaries, allowances and expenses to officers of the Trade Union;

(b) the payment of expenses for the administration of the Trade Union, including audit of the accounts of the general funds of the Trade Union;

(c) the prosecution or defence of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any

rights of the Trade Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs;

(d) the conduct of trade disputes on behalf of the Trade Union or any member thereof;

(e) the compensation of members for loss arising out of trade disputes;

(f) allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members;

(g) the issue of, or the undertaking of liability under, policies of assurance on the lives of members or under policies insuring members against sickness, accident or unemployment;

(h) the provision of educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members;

(i) the up-keep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;

(j) the payment, in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contributions to any cause intended to benefit workmen in general, provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one-fourth of the combined total of the gross income which has up to that time accrued to the general funds of the Trade Union during that year and of the balance at the credit of those funds at the commencement of that year; and

(k) Subject to any conditions contained in the notification any other object notified by the Government in the Cochin Government Gazette.

16. (1) A Registered Trade Union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made, for the promotion of the civic and political interests of its members, in furtherance of any of the objects specified in sub-section (2).

Constitution
of a separate
fund for
political
purposes.

(2) The objects referred to in sub-section (1) are—

(a) the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of the Legislative Council, Municipal Council or Panchayat, before, during or after the election in connection with his candidature or election ; or

(b) the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or

(c) the maintenance of any person who is a member of the Legislative Council, Municipal Council or Panchayat ; or

(d) the registration of electors or the selection of a candidate for the Legislative Council, Municipal Council or Panchayat ; or

(e) the holding of political meetings of any kind, or the distribution of Political literature or political documents of any kind.

(3) No member shall be compelled to contribute to the fund constituted under sub-section (1); and a member who does not contribute to the said fund shall not be excluded from any benefits of the Trade Union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the Trade Union (except in relation to the control or management of the said fund) by reason of his not contributing to the said fund; and contribution to the said fund shall not be made a condition for admission to the Trade Union.

Immunity
from civil
suit in
certain cases.

17. (1) No suit or other legal proceeding shall be maintainable in any Civil Court against any Registered Trade Union or any officer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

(2) A Registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by any agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the Trade Union.

Enforce-
ability of
agreement.

18. Notwithstanding anything contained in any other law for the time being in force an agreement between the members of a Registered Trade Union shall not be void or voidable merely by reason of the fact that any of the objects of the agreement are in restraint of trade:

Provided that nothing in this section shall enable any Civil Court to entertain any legal proceeding instituted for the express purpose of enforcing or recovering damages for the breach of any agreement concerning the conditions on which any members of a Trade Union shall or shall not sell their goods, transact business, work, employ or be employed.

Right to
inspect
books of
Trade Union.

19. The account books of a Registered Trade Union and the list of members thereof shall be open to inspection by an officer or member of the Trade Union at such times as may be provided for in the rules of the Trade Union.

20. Any person who has attained the age of fifteen years may be a member of a Registered Trade Union subject to any rules of the Trade Union to the contrary, and may, subject as aforesaid, enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules:

Right of minors to membership of Trade Unions.

Provided that no person who has not attained the age of eighteen years shall be an officer of any such Trade Union.

21. Not less than one-half of the total number of the officers of every Registered Trade Union shall be persons actually engaged or employed in an industry with which the Trade Union is connected:

Proportion of officers to be connected with the industry.

Provided that the Government may, by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order.

22. Any Registered Trade Union may, with the consent of not less than two-thirds of the total number of its members and subject to the provisions of section 24, change its name.

Change of name.

23. Any two or more registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds of such Trade Unions or either or any of them, provided that the votes of at least one-half of the members of each or every such Trade Union entitled to vote are recorded, and that at least sixty per cent of the votes recorded are in favour of the proposal.

Amalgamation of Trade Unions.

24. (1) Notice in writing of every change of name and of every amalgamation, signed, in the case of a change of name, by the Secretary and by seven members of the Trade Union changing its name, and, in the case of an amalgamation, by the Secretary and by seven members of each and every Trade Union which is a party thereto shall be sent to the Registrar.

Notice of change of name or amalgamation.

(2) If the proposed name is identical with that by which any other existing Trade Union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive the public or the members of either Trade Union, the Registrar shall refuse to register the change of name.

(3) Save as provided in sub-section (2), the Registrar shall, if he is satisfied that the provisions of this Act in respect of change of name have been complied with, register the change of name in the register referred to in section 8, and the change of name shall have effect from the date of such registration.

(4) The Registrar shall, if he is satisfied that the provisions of the Act in respect of amalgamation have been complied with and that the Trade Union formed thereby is entitled to registration under section 6, register the Trade Union in the manner provided in section 8, and the amalgamation shall have effect from the date of such registration.

Effects of
change of
name and
of amalga-
mation.

25. (1) The change in the name of a Registered Trade Union shall not affect any rights or obligations of the Trade Union or render defective any legal proceeding by or against the Trade Union, and any legal proceeding which might have been continued or commenced by or against it by its former name may be continued or commenced by or against it by its new name.

(2) An amalgamation of two or more Registered Trade Unions shall not prejudice any right of any of such Trade Unions or any right of a creditor of any of them.

Dissolution.

26. (1) When a Registered Trade Union is dissolved, notice of the dissolution signed by seven members and by the Secretary of the Trade Union shall, within fourteen days of the dissolution, be sent to the Registrar, and shall be registered by him if he is satisfied that the dissolution has been effected in accordance with

the rules of the Trade Union, and the dissolution shall have effect from the date of such registration.

(2) Where the dissolution of a Registered Trade Union has been registered and the rules of the Trade Union do not provide for the distribution of funds of the Trade Union on dissolution, the Registrar shall divide the funds amongst the members in such manner as may be prescribed.

27. (1) There shall be sent annually to the Registrar, ^{Returns:} on or before such date as may be prescribed, a general statement, audited in the prescribed manner, of all receipts and expenditure of every Registered Trade Union during the year ending on the last day of Karkadagam next preceding such prescribed date, and of the assets and liabilities of the Trade Union existing on such last day of Karkadagam. The statement shall be prepared in such form and shall comprise such particulars as may be prescribed.

(2) Together with the general statement there shall be sent to the Registrar a statement showing all changes of officers made by the Trade Union during the year to which the general statement refers together also with a copy of the rules of the Trade Union corrected up to the date of the despatch thereof to the Registrar.

(3) A copy of every alteration made in the rules of a Registered Trade Union shall be sent to the Registrar within fifteen days of the making of the alteration.

CHAPTER IV.

RULES.

28. (1) The Government may make rules for the ^{Power to} purpose of carrying into effect the provisions of this ^{make rules.} Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely,—

(a) the manner in which Trade Unions and the rules of Trade Unions shall be registered and the fees payable on registration;

(b) the manner in which, and the qualifications of persons by whom, the accounts of Registered Trade Unions or of any class of such Unions shall be audited;

(c) the conditions subject to which inspection of documents kept by Registrar shall be allowed and the fees which shall be chargeable in respect of such inspections; and

(d) any matter which is to be or may be prescribed.

Publication
of rules.

29. (1) The power to make rules conferred by section 28 is subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 21 of the General Clauses Act, III of 1079, as that after which a draft or rules proposed to be made will be taken into consideration shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(3) Rules so made shall be published in the Cochin Government Gazette, and on such publication shall have effect as if enacted in this Act.

CHAPTER V.

PENALTIES AND PROCEDURE.

Failure to
submit
returns.

30. (1) If default is made on the part of any Registered Trade Union in giving any notice or sending any statement or other document as required by or under

any provision of this Act every officer or other person bound by the rules of the Trade Union to give or send the same or, if, there is no such officer or person, every member of the executive of the Trade Union, shall be punishable with fine which may extend to five rupees, and in the case of a continuing default, with an additional fine which may extend to five rupees for each week after the first during which the default continues:

Provided that the aggregate fine shall not exceed fifty rupees.

(2) Any person who wilfully makes, or causes to be made, any false entry in, or any omission from, the general statement required by section 27 or, in or from any copy of rules or of alterations of rules sent to the Registrar under that section, shall be punishable with fine which may extend to five hundred rupees.

31. Any person who, with intent to deceive, gives to any member of a Registered Trade Union or to any person intending or applying to become a member of such Trade Union any document purporting to be a copy of the rules of the Trade Union or of any alterations to the same which he knows, or has reason to believe, is not a correct copy of such rules or alterations as are for the time being in force, or any person who, with the like intent, gives a copy of any rules of an unregistered Trade Union to any person on the pretence that such rules are the rules of a Registered Trade Union, shall be punishable with fine which may extend to two hundred rupees.

Supplying
false in-
formation
regarding
Trade
Unions.

32. (1) No court inferior to that of a Magistrate of the First Class shall try any offence under this Act.

Cognizance
of offences.

(2) No court shall take cognizance of any offence under this Act, unless complaint thereof has been made by, or with the previous sanction of, the Registrar or, in the case of an offence under section 31, by the person to whom the copy was given, within six months of the date on which the offence is alleged to have been committed.

PROCLAMATION

(No. III of 1112.)

BY HIS HIGHNESS SIR SREE RAMA VARMA, G. C. I. E.,
MAHARAJA OF COCHIN.

Issued under date the 1st day of Thulam 1112 corresponding to the 17th day of October 1936.

WHEREAS representations have been received by Our Government that the Proclamation issued under date the 15th day of Edavam 1107 which has kept in abeyance all suits relating to Kanams and Panayams of whatever duration is causing great inconvenience to the litigant public; Whereas it may take some time before a final decision is taken by Our Government on the new Tenancy Bill which was passed by the Legislative Council and Whereas it is felt desirable that the inconvenience caused by the Proclamation should be immediately removed;

WE are pleased to command that Our Proclamation dated the 15th day of Edavam 1107 do stand repealed.

WE are pleased further to command that all Panayam holdings that have the main incidents of Kanam holdings as expressed or implied in the Cochin Tenancy ¹[Act] II of 1090, and that were of thirty years' duration on the day on which that Act came into force be considered to stand on the same footing as Kanam holdings of the same duration for all purposes mentioned in that Act.

1. Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

THE COCHIN BILLS OF LADING ACT

(VI OF 1112.)

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title, extent and commencement.
2. Rights under bills of lading to vest in consignee or endorsee.
3. Not to affect right of stoppage *in transitu* or claims for freight.
4. Bill of lading in hands of consignee, etc., conclusive evidence of the shipment as against master, etc.

THE COCHIN BILLS OF LADING : [ACT]

(VI OF 1112.)

Passed by His Highness the Maharaja of Cochin on the 20th day of Thulam 1112 corresponding to the 5th day of November 1936.

Whereas by the custom of merchants a bill of lading of goods being transferable by endorsement, the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner and it is expedient that such rights should pass with the property; and whereas it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board, and it is proper that such bills of lading in the hands of a *bona fide* holder for value should not be questioned by the master or other person signing the same, on the ground of the

Preamble.

1. Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

goods not having been laden as aforesaid; it is enacted as follows :—

Short title,
extent and
commence-
ment.

1. (1) This act may be called “ The Cochin Bills of Lading Act, VI of 1112 ”;

(2) It extends to the whole of Cochin State; and

(3) It shall come into force at once.

Rights under
bills of lading
to vest in
consignee or
endorsee.

2. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

Not to affect
right of stop-
page *in tran-
situ* or claims
for freight.

3. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

Bill of lading
in hands of
consignee,
etc., conclu-
sive evidence
of the ship-
ment as
against
master etc.

4. Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not in fact been laden on board:

Proviso.

Provided that the master or other person so signing may exonerate himself, in respect of such misrepresentation, by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder or some person under whom the holder claims.

THE COCHIN PASSPORT ACT

(VII OF 1112.)

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.
3. Power to make rules.
4. Power of arrest.
5. Power of removal.
6. Repeal.

THE COCHIN PASSPORT ACT [ACT]

(VII OF 1112.)

Passed by His Highness the Maharaja on the 20th day of Thulam 1112 corresponding to the 5th day of November 1936.

Whereas it is expedient to take power to require passports of persons entering Cochin State; It is hereby enacted as follows :—

1. (1) This Act may be called “The Cochin Passport Act, VII of 1112.”

(2) It shall extend to the whole of Cochin State and shall come into force at once.

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

“entry” means entry by water, land or air;

“passport” means a passport for the time being in force issued or renewed by the prescribed authority and satisfying the conditions prescribed relating to the class of passports to which it belongs; and

-
1. Substituted for ‘Regulation’ throughout the enactment by Proclamation V of 1112.

“prescribed” means prescribed by rules made under this Act.

Power to
make rules.

3. (1) The Government may make rules requiring that persons entering Cochin State shall be in possession of passports, and for all matters ancillary or incidental to that purpose.

(2) Without prejudice to the generality of the foregoing power such rules may—

- (a) prohibit the entry into Cochin State or any part thereof of any person who has not in his possession a passport issued to him ;
- (b) prescribe the authorities by whom passports must have been issued or renewed, and the conditions with which they must comply, for the purposes of this Act; and
- (c) provide for the exemption, either absolutely or on any condition, of any person or class of persons from any provision of such rules.

(3) Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

(4) All rules made under this section shall be published in the Cochin Government Gazette, and shall thereupon have effect as if enacted in this Act.

Power of
arrest.

4. (1) Any officer of police, not below the rank of an Inspector, and any officer of the Customs Department empowered by a general or special order of the Government in this behalf may arrest without warrant any person who has contravened or against whom a reasonable suspicion exists that he has contravened any rule or order made under section 3.

(2) Every officer making an arrest under this section, shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case or to the officer in charge of the nearest police station and the provisions of section 66 of the Code of Criminal Procedure, 1086, shall, so far as may be, apply in the case of any such arrest.

5. The Government may, by general or special order, direct the removal of any person from Cochin State who, in contravention of any rule made under section 3 prohibiting entry into Cochin State without passport, has entered therein, and thereupon any officer of Government shall have all reasonable powers necessary to enforce such direction. Power of removal.

6. The Cochin Passport Act, III of 1093, is hereby repealed. Repeal.

THE COCHIN PATENTS AND DESIGNS ACT.

(XI OF 1112.)

CONTENTS.

PREAMBLE.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.

PART I.

PATENTS.

APPLICATION FOR AND GRANT OF PATENT.

3. Application.
4. Specification.
5. Proceedings upon application.
6. Advertisement on acceptance of application.
7. Use of invention on acceptance of application.

SECTIONS.

8. Opposition to grant of patent.
9. Grant and sealing of patent.
10. Date of patent.
11. Effect, extent and form of patent.
12. Fraudulent applications for patents.

TERM OF PATENT

13. Term of patent.
14. Extension of term of patent.
15. Patents of addition.
16. Restoration of lapsed patent.

AMENDMENT OF APPLICATION OR SPECIFICATION.

17. Amendment of application or specification by Controller.
18. Amendment of specification by the Court.
19. Restriction on recovery of damages.

REGISTER OF PATENTS.

20. Register of Patents.
21. Patent to bind His Highness the Maharaja.
22. Assignment of patent to the Diwan.

COMPULSORY LICENSES AND REVOCATION.

23. Compulsory licenses and revocation.
24. Revocation of patents worked outside Cochin.
25. Operation of order under section 23 or section 24.
26. Power of Controller to revoke surrendered patent.
27. Revocation of patent on public grounds.

LEGAL PROCEEDINGS.

28. Petition for revocation of patent.
29. Notice of proceedings to persons interested.
30. Framing issue for trial before other Courts.
31. Suits for infringement of Patents.
32. Exemption of innocent infringer from liability for damages.
33. Order for inspection etc., in suit.
34. Certificate of validity questioned and costs thereon.
35. Transmission of decrees and orders to the Controller.
36. Hearing with assessor.

SECTIONS.

37. Grant of relief in respect of particular claims.
38. Remedy in case of groundless threats of legal proceedings.

MISCELLANEOUS.

39. Grant of patents to two or more persons.
40. Novelty of invention.
41. Loss or destruction of patent.
42. Provisions as to exhibitions.
43. Models to be furnished to Cochin Museum.
44. Foreign vessels in Cochin waters.

PART II.

DESIGNS.

REGISTRATION OF DESIGNS.

45. Application for registration of designs.
46. Registration of designs in new classes.
47. Certificate of Registration.
48. Register of Designs.

COPYRIGHT IN REGISTERED DESIGNS.

49. Copyright on Registration.
50. Requirements before delivery on sale.
51. Effect of disclosure on copyright.
52. Inspection of registered designs.
53. Information as to existence of copyright.
54. Cancellation of Registration.
55. Registration of designs to bind His Highness the Maharaja.

INDUSTRIAL AND INTERNATIONAL EXHIBITIONS.

56. Provisions as to exhibitions.

LEGAL PROCEEDINGS.

57. Piracy of registered design.
58. Application of certain provisions of the Act as to patents to designs.

PART III.

GENERAL.

PATENT OFFICE AND PROCEEDINGS THEREAT.

59. Patent Office.
60. Officers and clerks.
61. Fees.

PROVISIONS AS TO REGISTERS AND OTHER DOCUMENTS
IN THE PATENT OFFICE.

SECTIONS.

- 62. Notice of trust not to be entered in registers.
- 63. Inspection of, and extracts from registers.
- 64. Privilege of reports of Controller.
- 65. Prohibition of publication of specification, drawings, etc., where application abandoned, etc.
- 66. Power for Controller to correct clerical errors.
- 67. Entry of assignments and transmissions in registers.
- 68. Rectification of register by Court.

POWERS AND DUTIES OF CONTROLLER.

- 69. Powers of Controller in proceedings under Act.
- 70. Publication of patented inventions.
- 71. Exercise of discretionary power by Controller.
- 72. Power of Controller to take directions of Government.
- 73. Refusal to grant patent, etc., in certain cases.
- 74. Appeals to the Government.

EVIDENCE, ETC.

- 75. Certificate of Controller to be evidence.
- 76. Transmission of certified printed copies of specifications, etc.
- 77. Applications and notices by post or anchal.
- 78. Declaration by infant, lunatic, etc.
- 79. Security for costs.

AGENCY.

- 80. Subscription and verification of certain documents.
- 81. Agency.

POWERS, ETC., OF THE GOVERNMENT.

- 82. Power of the Government to make rules.

OFFENCES.

- 83. Wrongful use of words " Patent Office."

RECIPROCITY.

RECIPROCAL ARRANGEMENTS WITH BRITISH INDIA
AND OTHER STATES.

- 84. Reciprocal arrangements with British India and other States.

SAVINGS AND REPEAL.

85. Saving for prerogative.
 86. Repeal.
 The Schedule.

THE COCHIN PATENTS AND DESIGNS : [ACT],
 (XI OF 1112.)

*Passed by His Highness the Maharaja on the 24th day
 of Thulam 1112 corresponding to the 9th day of
 November 1936.*

Whereas it is expedient to amend the law relating to the protection of inventions and designs; It is hereby enacted as follows:— Preamble.

PRELIMINARY.

1. (1) This Act may be called the Cochin Patents and Designs Act, XI of 1112. Short title, extent and commencement.
 (2) It extends to the whole of Cochin; and
 (3) It shall come into force on the 1st day of Vrischigam 1112.
2. In this Act, unless there is anything repugnant in the subject or context, Definitions.
 (1) "article" means (as respects designs) any article of manufacture and any substance, artificial or natural, or partly artificial and partly natural;
 (2) "Controller" means the Controller of Patents and Designs appointed under this Act;
 (3) "copyright" means the exclusive right to apply a design to any article in any class in which the design is registered;

1. Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

(4) “design” means only the features of shape, configuration, pattern or ornament applied to any article by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished articles appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in section 458, or property mark as defined in section 459, of the Cochin Penal Code, Act I of 1059;

(5) “District Court” has the meaning assigned to that expression by the Code of Civil Procedure;

(6) “Chief Court” has the meaning assigned to that expression by the Code of Criminal Procedure, Act II of 1086, in reference to proceedings against European British subjects;

(7) “invention” means any manner of new manufacture, and includes an improvement and an alleged invention;

(8) “legal representative” means a person who in law represents the estate of a deceased person;

(9) “manufacture” includes any art, process or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture;

(10) “patent” means a patent granted under the provisions of this Act;

(11) “patentee” means the person for the time being entered on the register of patents, kept under this Act as the grantee or proprietor of the patent;

(12) “prescribed” includes prescribed by rules under this Act; and

(13) “proprietor of a new or original design”,—

(a) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed; and

(b) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired ; and

(c) in any other case, means the author of the design ; and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

PART I.

PATENTS.

APPLICATION FOR AND GRANT OF PATENT.

3. (1) An application for a patent may be made by Application.
any person whether he is a Cochin subject or not, and whether alone or jointly with any other person.

(2) The application must be made in the prescribed form, and must be left at the Patent Office in the prescribed manner.

(3) The application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application one at least of the applicants, claims to be the true and first inventor or the legal representative or assign of such inventor and for which he desires to obtain a patent, and must be accompanied by a specification and by the prescribed fee.

(4) Where the true and first inventor is not a party to the application, the application must contain a statement of his name, and such particulars for his identification as may be prescribed, and the applicant must show that he is the legal representative or assign of such inventor.

4. (1) The specification must particularly describe Specification.
and ascertain the nature of the invention and the manner in which the same is to be performed.

(2) Where the Controller deems it desirable, he may require that suitable drawings shall be supplied with the specification, or at any time before the acceptance of the application, and such drawings shall be deemed to form part of the specification.

(3) The specification must commence with the title, and must end with a distinct statement of the invention claimed.

(4) If in any particular case the Controller considers that an application should be further supplemented by a model or sample of anything illustrating the invention or alleged to constitute an invention, such model or sample as he may require shall be furnished before the acceptance of the application, but such model or sample shall not be deemed to form part of the specification.

Proceedings
upon appli-
cation.

5. (1) The Controller shall examine every application, and if he considers that—

(a) the nature of the invention is not fairly described, or

(b) the application, specification and drawings have not been prepared in the prescribed manner, or

(c) the title does not sufficiently indicate the subject-matter of the invention, or

(d) the statement of claim does not sufficiently define the invention, or

(e) the invention as described and claimed is *prima facie* not a new manufacture or improvement, or

(f) the specification relates to more than one invention he may refuse to accept the application or require that the application, specification or drawings be amended before he proceeds with the application, and in the latter case the application shall, if the Controller so directs, bear date as from the time when the requirement is complied with:

Provided that, when a specification comprises more than one invention, the application shall, if the Controller or the applicant so requires, be restricted to one invention and the other inventions may be made the subject-matter of fresh applications; and any such fresh application shall be proceeded with as a substantive application, but the Controller may, in his discretion, direct that any such fresh application made before the acceptance of the original application shall bear the date of the original application or such later date as he may fix, and the fresh application shall be deemed, for the purposes of this Act to have been made on the date which it bears in accordance with such direction.

(2) Where the Controller refuses to accept an application or requires an amendment, the applicant may appeal from his decision to the Government.

(3) The investigations required by this section shall not be held in any way to guarantee the validity of any patent, and no liability shall be incurred by the Government or any officer by reason of, or in connection with, any such investigation, or any proceeding consequent thereon.

(4) Unless an application is accepted within 12 months from the date of the application, the application shall (except where an appeal has been lodged) become void:

Provided that where, before, or within three months after, the expiration of the said period of 12 months a request is made to the Controller for an extension of time by any period not exceeding three months, the application shall, on payment of the prescribed fee, be continued or revived as the case may be, during, but not beyond, the period of extension so requested.

6. On the acceptance of an application the Controller shall give notice thereof to the applicant and shall advertise the acceptance; and the application and

Advertisement on acceptance of application.

specification with the drawings (if any), shall be open to public inspection.

Use of invention on acceptance of application.

7. Where an application for a patent in respect of an invention has been accepted, any use or publication of the invention during the period between the date of application and the date of sealing such patent shall not prejudice the patent to be granted for the invention:

Provided that an applicant shall not be entitled to institute any proceedings for infringement unless and until a patent for the invention has been granted to him.

Opposition to grant of patent.

8. (1) Any person may, on payment of the prescribed fee at any time within four months from the date of the advertisement of the acceptance of an application, give notice at the Patent Office of opposition to the grant of the patent on any of the following grounds, namely—

(a) that the applicant obtained the invention from him, or from a person of whom he is the legal representative or assign; or

(b) that the invention has been claimed in any specification filed in Cochin which is or will be of prior date to the patent, the grant of which is opposed; or

(c) that the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the specification; or

(d) that the invention has been publicly used in any part of Cochin; or has been made publicly known in any part of Cochin; but on no other ground.

(2) Where such notice is given the Controller shall give notice of the opposition to the applicant, and shall, on the expiration of those four months, after hearing the applicant and the opponent, if desirous of being heard, decide on the case.

(3) The decision of the Controller shall be subject to appeal to the Government.

9. (1) If there is no opposition, or, in case of ^{Grant and sealing of} opposition, if the determination is in favour of the grant ^{patent.} of a patent, a patent shall, on payment of the prescribed fee, be granted subject to such conditions (if any) as the Government think expedient, to the applicant, or in the case of a joint application to the applicants jointly and the Controller shall cause the patent to be sealed with the seal of the Patent Office.

(2) Notwithstanding anything contained in subsection (1), where—

(a) an applicant has agreed in writing that on the grant to him of a patent he will assign it to another party or to a joint applicant and refuses to proceed with the application, or

(b) disputes arise between joint applicants as to proceeding with an application, the Controller, if he is satisfied of the existence of such agreement or, in any other case, that any joint applicant or applicants ought to be allowed to proceed alone, may direct that such other party or joint applicant or applicants may proceed with the application accordingly and may grant a patent to him or them, as the case may be:

Provided that—

(1) the Controller shall not give any such direction until every party interested has had an opportunity of being heard by him, and

(2) an appeal from any such direction shall lie to the Government.

(3) A patent shall be sealed as soon as may be, and not after the expiration of eighteen months from the date of application:

Provided that—

(a) where the Controller has allowed an extension of the time within which an application may be accepted, a further extension of four months after the said

eighteen months shall be allowed for the sealing of the patent ;

(b) where the sealing is delayed by an appeal to the Government, or by opposition to the grant of the patent, the patent may be sealed at such time as the Controller may direct ;

(c) where the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at any time within twelve months after the date of his death ;

(d) where for any reason a patent cannot be sealed within the period allowed by any of the foregoing provisions of this section, that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended to the extent applied for but not exceeding three months.

Date of
patent.

10. Except as otherwise expressly provided by this Act, a patent shall be dated and sealed as of the date of the application :

Provided that no proceedings shall be taken in respect of an infringement committed before the advertisement of the acceptance of the application.

Effect,
extent and
form of
patent.

11. (1) A patent sealed with the seal of the Patent Office shall, subject to the other provisions of this Act, confer on the patentee the exclusive privilege of making, selling and using the invention throughout Cochin and of authorising others so to do.

(2) Every patent may be in the prescribed form and shall be granted for one invention only, but the specification may contain more than one claim ; and it shall not be competent for any person in a suit or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

Fraudulent
applications
for patents.

12. (1) A patent granted to the true and first inventor or his legal representative or assign shall not be

invalidated by an application in fraud of him, or by protection obtained thereon or by any use or publication of the invention subsequent to that fraudulent application during the period of protection.

(2) Where a patent has been revoked by the Chief Court on the ground that it has been obtained in fraud of the true and first inventor, or where the grant of a patent has been refused by the Controller under section 8 on the ground stated in clause (a) of sub-section (1) of that section, the Controller may, on the application of the true inventor or his legal representative or assign made in accordance with the provisions of this Act, grant to him a patent for the whole or any part of the invention, and the patent so granted shall bear the same date as the patent so revoked or, in the case of a patent the grant of which has been refused, the same date as would have been borne by the patent if it had been granted :

Provided that no suit shall be brought for any infringement of the patent so granted committed before the actual date when such patent was granted.

TERM OF PATENT.

13. (1) The term limited in every patent for the duration thereof, shall, save as otherwise expressly provided by this Act, be sixteen years from its date. ^{Term of patent.}

(2) Any patent the original term of which had not expired on or before the 1st day of Vrischigam 1112, shall have effect as if the term mentioned therein was sixteen years instead of fourteen years, and any license existing at that date which has been granted for the term of the patent shall be treated as having been granted for the term as so extended if the licensee so desires.

(3) Where any party to a contract with the patentee or any other person entered into before the 1st day of Vrischigam 1112, is subjected to loss or liability by reason of the extension of the term of any patent under this section, any District Court having jurisdiction may determine in what manner and by which parties such loss or liability shall be borne.

(4) A patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to pay the prescribed fees within the prescribed times :

Provided that where the patentee, before, or within three months after, the expiration of the time for payment, applies to the Controller for an extension of time by any period not exceeding three months, the patent shall, on payment of such additional fee as may be prescribed, be continued or revived, as the case may be, during, but not beyond, the period of extension applied for.

(5) If any proceeding is taken in respect of an infringement of the patent committed after a failure to pay any fee within the prescribed time, and before any enlargement thereof, the court before which the proceeding is taken may, if it thinks fit, refuse to award any damages in respect of such infringement.

Extension of
term of
patent.

14. (1) A patentee may present a petition to the Government praying that his patent may be extended for a further term ; but such petition must be left at the Patent Office at least six months before the time limited for the expiration of the patent and must be accompanied by the prescribed fee, and must be advertised by the patentee within the prescribed time and in the prescribed manner.

(2) Any person may, within such time as may be prescribed and on payment of the prescribed fee, give notice to the Controller of objection to the extension.

(3) Where a petition is presented under sub-section (1), the Government may, as they think fit dispose of the petition themselves or refer it to the Chief Court for decision.

(4) If the petition be referred to the Chief Court, then on the hearing of such petition under this section, the patentee, and any person who has given notice under sub-section (2) of objection, shall be made parties to the proceeding, and the Controller shall be entitled to appear and be heard.

(5) The Chief Court shall, in considering its decision, have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(6) If it appears to the Government, or to the Chief Court when the petition has been referred to it, that the patentee has been inadequately remunerated by his patent, the Government or the Chief Court, as the case may be, may, by order extend the term of the patent for a further term not exceeding five or, in exceptional cases, ten years, or may order the grant of a new patent for such term as may be specified in the order and subject to the payment of such fees as may be prescribed and containing any restriction, conditions and provisions which the Government or the Chief Court, as the case may be, may think fit:

Provided that any patent so extended or granted shall, notwithstanding anything therein, or in this Act, cease if the inventor fails to pay before the expiration of each year the prescribed fee.

15. (1) Where a patent for an invention has been applied for or granted, and the applicant or the patentee, ^{Patents of addition.} as the case may be, applies for a further patent in respect of any improvement in or modification of the invention, he may in his application for the further patent request that the term limited in that patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired, and, if he does so, a patent (hereinafter referred to as a patent of addition) may be granted for such term as aforesaid.

(2) Save as otherwise expressly provided by this Act, a patent of addition shall remain in force as long as the patent for the original invention remains in force, but no longer, and in respect of a patent of addition no fees shall be payable for renewal:

Provided that if the patent for the original invention is revoked, then the patent of addition shall, if the authority by which it is revoked so orders, become an independent patent, and the fees payable, and the dates when they become payable, shall be determined by its date, but its duration shall not exceed the unexpired term of the patent for the original invention.

(3) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for a patent of addition, and the validity of the patent shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.

Restoration
of lapsed
patent.

16. (1) Where any patent has ceased owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the Controller in the prescribed manner for an order for the restoration of the patent.

(2) Every such application shall contain a statement of the circumstances which have led to the omission of the payment of the prescribed fee.

(3) If it appears from such statement that the omission was unintentional or unavoidable and that no undue delay has occurred in the making of the application, the Controller shall advertise the application in the prescribed manner, and within such time as may be prescribed any person may give notice of opposition at the Patent Office.

(4) Where such notice is given the Controller shall notify the applicant thereof.

(5) After the expiration of the prescribed period, the Controller shall hear the case and, subject to an appeal to the Government, issue an order either restoring the patent subject to any conditions and restrictions deemed to be advisable or dismissing the application :

Provided that in every order under this section, restoring a patent such provisions as may be prescribed

shall be inserted for the protection of persons who may have availed themselves of the subject matter of the patent after the patent had ceased.

AMENDMENT OF APPLICATION OR SPECIFICATION.

17. (1) An applicant or a patentee may at any time, by request in writing left at the Patent Office and accompanied by the prescribed fee, seek leave to amend his application or specification, including drawings forming part thereof by way of disclaimer, correction or explanation, stating the nature of and the reasons for, the proposed amendment.

Amendment
of applica-
tion or speci-
fication by
Controller.

(2) If the application for a patent has not been accepted, the Controller shall determine whether and subject to what conditions (if any) the amendment shall be allowed.

(3) In any other case the request and the nature of the proposed amendment shall be advertised in the prescribed manner, and at any time within three months from its first advertisement any person may give notice at the Patent Office of opposition to the amendment.

(4) Where such a notice is given, the Controller shall give notice of the opposition to the person making the request and shall hear and decide the case.

(5) Where no notice of opposition is given, or the person so giving notice of opposition does not appear, the Controller shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6) The decision of the Controller in either case shall be subject to an appeal to the Government.

(7) No amendment shall be allowed that would make the application or specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the application or specification as it stood before amendment.

(8) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall be advertised in the prescribed manner, and shall in all courts and for all purposes be deemed to form part of the application or specification.

(9) This section shall not apply when and so long as any suit for infringement or proceeding before a Court for the revocation of the patent is pending.

Amendment
of specifica-
tion by the
Court.

18. In any suit for infringement of a patent or proceeding before a Court for the revocation of a patent, the Court may by order allow the patentee to amend his specification by way of disclaimer, correction or explanation in such manner, and subject to such terms as to costs, advertisement or otherwise, as the Court may think fit:

Provided that no amendment shall be so allowed that would make the specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the specification as it stood before the amendment, and where an application for such an order is made to the Court, notice of the application shall be given to the Controller, and the Controller shall have the right to appear and be heard.

Restriction
on recovery
of damages.

19. Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act, no damages shall be given in any suit in respect of the use of the invention before the date of the decision allowing the amendment unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

REGISTER OF PATENTS.

Register of
Patents.

20. (1) There shall be kept at the Patent Office a book called the Register of Patents, where in shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of

patents, of licenses under patents, and of amendments, extensions and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may be prescribed.

(2) The register of inventions and address-book existing at the commencement of this Act shall be incorporated with, and form part of, the register of patents under this Act.

(3) The register of patents shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

(4) Copies of deeds, licenses and any other documents affecting the proprietorship in any patent or in any license thereunder, must be supplied to the Controller in the prescribed manner for filing in the Patent Office.

21. (1) Subject to the other provisions of this section, a patent shall have to all intents the like effect as against His Highness the Maharaja as it has against a subject.

Patent to
bind His
Highness the
Maharaja.

(2) The officers or authorities administering any department of the service of His Highness the Maharaja may, by themselves or by such of their agents, contractors or others as may be authorised in writing by them, at any time after the application, and after giving notice to the applicant or patentee, make, use or exercise the invention for the service of His Highness the Maharaja on such terms as may, either before or after the use thereof, be agreed on, with the approval of the Government, between such officers or authorities and the applicant or patentee, or, in default of agreement, as may be settled in the manner hereinafter provided. And the terms of any agreement or license concluded between the applicant or patentee and any person other than such officers or authorities, shall be inoperative so far as concerns the making, use or exercise of the invention for the service of His Highness the Maharaja.

(3) Where an invention which is the subject of any patent has, before the date of the patent, been duly recorded in a document by, or tried by or on behalf of, the officers or authorities administering any department of the service of His Highness the Maharaja (such invention not having been communicated directly or indirectly by the applicant or patentee) such officers or authorities, or such of their agents, contractors or others, as may be authorised in writing by them, may, after giving notice to the applicant or patentee, make, use or exercise the invention so recorded or tried for the service of His Highness the Maharaja, free of any royalty or other payment to the applicant or patentee, notwithstanding the existence of the patent. If, in the opinion of such officers or authorities, the disclosure to the applicant or patentee, as the case may be, of the document recording the invention, or the evidence of the trial thereof, if required, would be detrimental to the public interest, it may be made confidentially to counsel on behalf of the applicant or patentee, or to any independent expert mutually agreed upon.

(4) In the event of any dispute as to the making, use or exercise of an invention under this section, or the terms therefor, or as to the existence or scope of any record or trial as aforesaid the matter shall be referred to the Chief Court for decision, who shall have power to refer the whole matter or any question or issue of fact arising thereon to be tried before a special or official referee or an arbitrator upon such terms as it may direct. The Court, referee, or arbitrator, as the case may be, may, with the consent of the parties, take into consideration the validity of the patent for the purposes only of the reference and for the determination of the issues between the applicant or patentee and such officers or authorities. The Court, referee or arbitrator, further, in settling the terms as aforesaid, shall be entitled to take into consideration any benefit or compensation which the applicant or patentee, or any other person interested in the patent, may

have received directly or indirectly from His Highness the Maharaja or from such officers or authorities in respect of such patent :

Provided that, if the inventor or patentee is a Government servant and the subject matter of the invention is certified by the Government to be connected with work done in the course of such service, any such dispute shall be settled by the Government after hearing the applicant or patentee and any other person having an interest in the invention or patent.

(5) The right to use an invention for the services of His Highness the Maharaja under the provisions of this section, or any provisions for which this section is substituted, shall include and shall be deemed always to have included, the power to sell any articles made in pursuance of such right which are no longer required for the services of His Highness the Maharaja.

(6) Nothing in this section shall affect the right of His Highness the Maharaja or of any person deriving title directly or indirectly from His Highness the Maharaja to sell or use any articles forfeited under any law for the time being in force relating to customs or excise.

22. (1) The inventor of any improvement in instruments or munitions of war may (either for or without valuable consideration) assign to the Diwan on behalf of His Highness the Maharaja all the benefit of the invention and of any patent obtained or to be obtained for the invention; and the Diwan may be a party to the assignment.

Assignment
of patent to
the Diwan.

(2) The assignment shall effectually vest the benefit of the invention and patent in the Diwan on behalf of His Highness the Maharaja, and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and effectual (notwithstanding any want of valuable consideration), and may be enforced accordingly by or on behalf of the Diwan.

(3) Where any such assignment has been made, the Government may, at any time before the publication of the specification, certify to the Controller that, in the interest of the public service, the particulars of the invention and of the manner in which it is to be performed should be kept secret.

(4) If the Government so certify, the application and specifications, with the drawings (if any) and any amendment of the specification and any copies of such documents and drawings, shall, instead of being left in the ordinary manner at the Patent Office, be delivered to the Controller in a packet sealed by authority of the Government.

(5) The packet shall, until the expiration of the term during which a patent for the invention may be in force, be kept sealed by the Controller, and shall not be opened save under the authority of an order of the Government.

(6) The sealed packet shall be delivered at any time during the continuance of the patent to any person authorised by the Government to receive it, and shall, if returned to the Controller, be again kept sealed by him.

(7) On the expiration of the term of the patent, the sealed packet shall be delivered to the Government.

(8) Where the Government certify as aforesaid after an application for a patent has been left at the Patent Office but before the publication of the specification the application and specifications, with the drawings (if any), shall be forthwith placed in a packet sealed by authority of the Controller, and the packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the Government.

(9) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in

relation to which a certificate has been given by the Government as aforesaid.

(10) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but, save as otherwise provided in this section, the provisions of this Act shall apply in respect of any such invention and patent as aforesaid.

(11) The Government may at any time waive the benefit of this section with respect to any particular invention, and the specifications, documents and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12) The communication of any invention for any improvement in instruments or munitions of war to the Diwan or the Government or to any person or persons authorised by the Diwan or the Government to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

COMPULSORY LICENSES AND REVOCATION.

23. (1) Any person interested may present a petition to the Government, which shall be left at the Patent Office, together with the prescribed fee, alleging that the demand for a patented article in Cochin is not being met to an adequate extent and on reasonable terms, and praying for the grant of a compulsory license, or, in the alternative, for the revocation of the patent.

Compulsory
licenses and
revocation.

(2) The Government shall consider the petition, and if the parties do not come to an arrangement between themselves, the Government may, as they think fit, either dispose of the petition themselves or refer it to the Chief Court for decision.

(3) The provisions of sub-section (4) of section 14, prescribing the procedure to be followed in the case of references to the Court under that section, shall apply in the case of references made to the Court under this section.

(4) If the Government are of opinion or where a reference has been made under sub-section (2) to the Chief Court, that Court finds that the demand for the patented article in Cochin is not being met to an adequate extent and on reasonable terms, the patentee may be ordered to grant licenses on such terms as the Government or the Chief Court, as the case may be, may think just, or, if the Government are or the Chief Court is of opinion that the demand will not be adequately met by the grant of licenses, the patent may be revoked by order of the Government or the Chief Court:

Provided that an order of revocation shall not be made before the expiration of four years from the date of the patent, or if the patentee gives satisfactory reasons for his default.

(5) For the purposes of this section the demand for a patented article shall not be deemed to have been met to an adequate extent and on reasonable terms—

(a) if by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article, or any parts thereof which are necessary for its efficient working, or to carry on the patented process to an adequate extent or to grant licenses on reasonable terms, any existing trade or industry or the establishment of any new trade or industry in Cochin is unfairly prejudiced, or

(b) if any trade or industry in Cochin is unfairly prejudiced by the conditions attached by the patentee to the purchase, hire or use of the patented article or to the using or working of the patented process.

24. (1) At any time not less than four years after the date of a patent granted under this Act, any person may apply to the Government for relief under this section on the ground that the patented article or process is manufactured or carried on exclusively or mainly outside Cochin.

Revocation
of patents
worked out-
side Cochin.

(2) The Government shall consider the application, and, if after inquiry, they are satisfied—

(a) that the allegations contained therein are correct; and

(b) that the applicant is prepared, and is in a position to manufacture or carry on the patented article or process in Cochin; and

(c) that the patentee refuses to grant a license on reasonable terms, then, subject to the provisions of this section and unless the patentee proves that the patented article or process is manufactured or carried on to an adequate extent in Cochin, or gives satisfactory reasons why the article or process is not so manufactured or carried on, the Government may make an order—

(a) revoking the patent either—

(i) forthwith; or

(ii) after such reasonable interval as may be specified in the order, unless in the meantime it is shown to their satisfaction that the patented article or process is manufactured or carried on within Cochin to an adequate extent; or

(b) ordering the patentee to grant a license to the applicant which may be a license exclusive to him or otherwise as the Government may direct.

(3) No order revoking a patent shall be made under the last sub-section which is at variance with any treaty, convention, arrangement or engagement with the Paramount Power.

(4) The Government may, on the application of the patentee, extend the time limited in any order made under sub-section (2), clause (ii), for such period not exceeding two years as they may specify in a subsequent order or revoke any order made under sub-section (2), clause (ii), or any subsequent order if sufficient cause is in their opinion shown by the patentee.

Operation of order under section 23 or section 24.

25. An order of the Chief Court under section 23 or of the Government under section 23 or section 24, directing the grant of any license shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a license and executed by the patentee and all other necessary parties.

Power of Controller to revoke surrendered patent.

26. A patentee may at any time, by giving notice in the prescribed manner to the Controller, offer to surrender his patent, and the Controller may, if after giving notice of the offer and hearing all parties who desire to be heard he thinks fit, accept the offer, and thereupon make an order for the revocation of the patent.

Revocation of patent on public grounds.

27. A patent shall be deemed to be revoked if the Government declare, by notification in the Cochin Government Gazette, the patent or the mode in which it is exercised to be mischievous to the State or generally prejudicial to the public.

LEGAL PROCEEDINGS.

Petition for revocation of patent.

28. (1) Revocation of a patent in whole or in part may be obtained on petition to the Chief Court on all or any of the following grounds, namely—

(a) that any invention included in the Statement of claim is of no utility;

(b) that any invention included in the Statement of claim was not, at the date of the application for a patent, a new invention within the meaning of this Act;

(c) that the applicant was not the true and first inventor thereof or the assign or legal representative of such inventor thereof;

(d) that the original or any amended application or specification does not fulfil the requirements of this Act;

(e) that the applicant has knowingly or fraudulently included in the application for a patent or in the original or any amended specification, as his invention, something which was not new or whereof he was neither the inventor nor the assign nor the legal representative of such inventor;

(f) that the original or any subsequent application relating to the invention, or the original or any amended specification, contains a wilful or fraudulent mis-statement;

(g) that the whole or a part of the invention or the manner in which the whole or a part is to be made and used as described in the original or any amended specification, is not thereby sufficiently described, and that this insufficiency was fraudulent or is injurious to the public.

(2) A petition for revocation of a patent may be presented—

(a) by the Government Advocate or any person authorised by him; or

(b) by any person alleging—

(i) that the patent was obtained in fraud of his rights or of the rights of any person under or through whom he claims; or

(ii) that he, or any person under or through whom he claims, was the true and first inventor of any invention included in the claim of the patentee; or

(iii) that he, or any person under or through whom he claims an interest in any trade, business or manufacture, had publicly manufactured, used or sold, within Cochin, before the date of the patent, anything claimed by the patentee as his invention.

(3) The Chief Court may, irrespective of any provisions of the Code of Civil Procedure in this behalf, require any person, other than the Government Advocate or any person authorised by him, applying for the revocation of a patent to give security for the payment of all costs incurred or likely to be incurred by any person appearing to oppose the petition.

Notice of proceedings to persons interested.

29. (1) Notice of any petition for revocation of a patent under section 28 shall be served on all persons appearing from the register to be proprietors of that patent or to have shares or interests therein, and it shall not be necessary to serve the notice on any other person.

(2) The notice shall be deemed to be sufficiently served if a copy thereof is sent by post or anchal in a registered letter directed to the person and place for the time being stated in the register.

Framing issue for trial before other Courts.

30. (1) The Chief Court may, if it thinks fit, direct an issue for the trial before itself or any District Court, of any question arising upon a petition to itself under section 28, and the issue shall be tried accordingly.

(2) If the issue is directed to a District Court, the finding of that Court shall not be subject to appeal, but the evidence taken upon the trial shall be recorded and a copy thereof, certified by the Judge of the Court, shall be transmitted together with any remarks which he may think fit to make thereon, to the Chief Court directing the issue, and the Chief Court may thereupon act upon the finding of the District Court, or dispose of the petition upon the evidence recorded, or direct a new trial, as the justice of the case may require.

Suits for infringement of Patents.

31. (1) A patentee may institute a suit in a District Court having jurisdiction to try the suit against any person, who during the continuance of a patent acquired by him under this Act in respect of an invention, makes, sells or uses the invention without his license, or counterfeits it, or imitates it.

(2) Every ground on which a patent may be revoked under this Act shall be available by way of defence to a suit for infringement.

32. A patentee shall not be entitled to recover any damages in respect of any infringement of a patent granted after the commencement of this Act from any defendant who proves that at the date of the infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the word "Patent," "Patented", or any word or words expressing or implying that a patent has been obtained for the article stamped, engraved, impressed on, or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the year and number of the patent :

Exemption of innocent infringer from liability for damages.

Provided that nothing in this section shall affect any proceedings for an injunction.

33. In a suit for infringement of a patent, the Court may, on the application of either party, make such order for an injunction, inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon as the Court may see fit.

Order for inspection, etc., in suit.

34. In a suit for infringement of a patent, the Court may certify that the validity of the patent came in question, and if the Court so certifies, then in any subsequent suit in that Court for infringement of the same patent the plaintiff, on obtaining a final order or judgment in his favour, shall, unless the Court trying the suit otherwise directs, have his full costs, charges and expenses of and incidental to the said suit properly incurred.

Certificate of validity questioned and costs thereon.

35. A Court making a decree in a suit under section 31 or an order on a petition under section 28 shall send a copy of the decree or order, as the case may be, to the Controller, who shall cause an entry thereof and reference thereto to be made in the register of patents.

Transmission of decrees and orders to the Controller.

Hearing with
assessor.

36. (1) In a suit or proceeding for infringement or revocation of a patent, the Court may, if it thinks fit, and shall on the request of all the parties to the proceedings, call in the aid of an assessor specially qualified, and try the case wholly or partially with his assistance.

(2) A Court exercising appellate jurisdiction in respect of such suit or proceeding may, if it thinks fit, call in the aid of an assessor as aforesaid.

(3) The remuneration, if any, to be paid to an assessor under this section shall, in every case be determined by the Court and be paid by it as part of the expenses of the execution of this Act.

Grant of
relief in
respect of
particular
claims.

37. Notwithstanding anything contained in section 19, if the Court in any action for infringement of a patent finds that any one or more of the claims in the specification in respect of which the infringement is alleged are valid it may, subject to its discretion as to costs and as to the date from which damages should be reckoned and to such terms as to amendment as it may deem desirable, grant relief in respect of any of such claims which are infringed without regard to the invalidity of any other claim in the specification. In exercising such discretion the Court may take into consideration the conduct of the parties in inserting such invalid claims in the specification or permitting them to remain there.

Remedy in
case of
groundless
threats of
legal
proceedings.

38. Where, any person claiming to have an interest in a patent by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved thereby may bring a suit against him in a District Court having jurisdiction to try the suit, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as he has sustained thereby, if the alleged infringement to which the threats related was not in fact an infringement of the Patent:

Provided that this section shall not apply if an action for infringement of the patent is commenced and prosecuted with due diligence.

MISCELLANEOUS.

39. Where, after the commencement of this Act, a patent is granted to two or more persons jointly, they shall, unless otherwise specified in the patent, be treated for the purpose of the devolution of the legal interest therein as joint tenants, but subject to any contract to the contrary, each of such persons shall be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a license without their consent, and, if any such person dies, his beneficial interest in the patent shall devolve on his legal representatives.

Grant of patents to two or more persons.

40. (1) An invention shall be deemed a new invention within the meaning of this Act—

Novelty of invention.

(a) if it has not, before the date of the application for a patent thereon, been publicly used in any part of Cochin, or been made publicly known in any part of Cochin, and

(b) if the inventor has not by secret or experimental uses made direct or indirect profits from his invention in excess of such an amount as the Court or the Government, as the case may be, may, in consideration of all the circumstances of the case, deem reasonable.

(2) The public use or knowledge of an invention before the date of the application for a patent thereon shall not be deemed a public use or knowledge within the meaning of this Act if the knowledge has been obtained surreptitiously or in fraud of the true and first inventor or has been communicated to the public in fraud of such inventor, or in breach of confidence:

Provided that such inventor has not acquiesced in the public use of his invention, and that, within six months after the commencement of that use, he applies for a patent.

Loss or
destruction
of patent.

41. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the Controller, the Controller may at any time on payment of the prescribed fee, seal a duplicate thereof.

Provisions as
to
exhibitions.

42. (1) The exhibition of an invention at an industrial or international exhibition, certified as such by the Government, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition, in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor to apply for and obtain a patent in respect of the invention or the validity of any patent granted on the application :

Provided that—

(a) the exhibitor, before exhibiting the invention, gives the Controller the prescribed notice of his intention to do so; and

(b) the application for a patent is made before or within six months from the date of the opening of the exhibition.

(2) The Government may, by notification in the Cochin Government Gazette, apply this section to any exhibition mentioned in the notification in like manner as if it were an industrial or international exhibition certified as such by the Government, and any such notification may provide that the exhibitor shall be relieved from the condition of giving notice to the Controller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the notification.

Models to be
furnished to
Cochin
Museum.

43. The Curator of the Cochin State Museum may, at any time require a patentee to furnish him with a model or sample of his invention on payment to the patentee of the cost of the manufacture of the model or sample, the

amount to be settled, in case of dispute, by the Government.

44. (1) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of any Court in Cochin, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connection with the manufacture or preparation of anything intended to be sold in or exported from Cochin.

Foreign
vessels in
Cochin
waters;

(2) This section shall not extend to vessels of any foreign State of which the laws do not confer corresponding rights with respect to the use of inventions in Cochin vessels while in the ports of that State, or in the waters within the jurisdiction of its Courts.

PART II

DESIGNS.

REGISTRATION OF DESIGNS.

45. (1) The Controller may, on the application of any person claiming to be the proprietor of any new or original design not previously published in Cochin, register the design under this part.

Application
for registra-
tion of
designs.

(2) The application must be made in the prescribed form, and must be left at the Patent Office in the prescribed manner and must be accompanied by the prescribed fee.

(3) The same design may be registered in more than one class, and, in case of doubt as to the class in which a design ought to be registered, the Controller may decide the question.

(4) The controller may, if he thinks fit, refuse to register any design presented to him for registration; but any person aggrieved by any such refusal may appeal to the Government.

(5) An application which, owing to any default or neglect on the part of the applicant, has not been

completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

(6) A design when registered shall be registered as of the date of the application for registration.

Registration
of designs in
new classes.

46. Where a design has been registered in one or more classes of goods, the application of the proprietor of the design to register it in some one or more classes shall not be refused, nor shall the registration thereof be invalidated—

(a) on the ground of the design not being a new or original design by reason only that it was so previously registered, or

(b) on the ground of the design having been previously published in Cochin, by reason only that it has been applied to goods of any class in which it was so previously registered :

Provided that such subsequent registration shall not extend the period of copyright in the design beyond that arising from previous registration.

Certificate of
Registration.

47. (1) The Controller shall grant a certificate of registration to the proprietor of the design when registered.

(2) The Controller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.

Register of
Designs.

48. (1) There shall be kept at the Patent Office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may be prescribed.

(2) The register of designs existing at the commencement of this Act shall be incorporated with, and form part of, the register of designs under this Act.

(3) The register of designs shall be *prima facie* evidence of any matters by this Act directed or authorised to be entered therein.

COPYRIGHT IN REGISTERED DESIGNS.

49. (1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.

Copyright on
Registration.

(2) If within the prescribed time before the expiration of the said five years application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller shall, on payment of the prescribed fee, extend the period of copyright for a second period of five years from the expiration of the original period of five years.

(3) If within the prescribed time before the expiration of such second period of five years application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller may, subject to any rules under this Act, on payment of the prescribed fee, extend the period of copyright for a third period of five years from the expiration of the second period of five years.

50. (1) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall—

Requirements
before deli-
very on sales.

(a) (if exact representations or specimens were not furnished on the application for registration), furnish to the Controller the prescribed number of exact representations or specimens of the design; and, if he fails to do so, the Controller may erase his name from the register, and thereupon the copyright in the design shall cease; and

(b) cause each such article to be marked with the prescribed mark or with the prescribed words or figures denoting that the design is registered; and, if he

fails to do so, the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

(2) Where a representation is made to the Government by or on behalf of any trade or industry that in the interests of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the Government may, if they think fit, by rule under this Act, dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as they think fit.

Effect of disclosure on copyright.

51. The disclosure of a design by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor of the design, and the acceptance of a first and confidential order for goods bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

Inspection of registered designs.

52. (1) During the existence of copyright in a design or such shorter period not being less than two years from the registration of the design as may be prescribed, the design shall not be open to inspection except by the proprietor or a person authorised in writing by him, or a person authorised by the Controller or by the Court, and furnishing such information as may enable the Controller to identify the design, and shall not be open to the inspection of any person except in the presence

of the Controller, or of an officer acting under him, and on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof:

Provided that, where the registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

(2) After the expiration of the copyright in a design, or such shorter period as aforesaid, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

(3) Different periods may be prescribed under this section for different classes of goods.

53. On the request of any person furnishing such information as may enable the Controller to identify the design, and on payment of the prescribed fee, the Controller shall inform such person whether the registration still exists in respect of the design, and, if so, in respect of what classes of goods, and shall state the date of registration, and the name and address of the registered proprietor.

Information as to existence of copyright.

54. (1) Any person interested may present a petition for the cancellation of the registration of a design—

Cancellation of Registration.

(a) at any time after the registration of the design, to the Chief Court on any of the following grounds, namely:—

(i) that the design has been previously registered in Cochin; or

(ii) that it has been published in Cochin prior to the date of registration; or

(iii) that the design is not a new or original design; or

(b) within one year from the date of the registration, to the Controller on either of the grounds specified in sub-clauses (i) and (ii) of clause (a).

(2) An appeal shall lie from any order of the Controller under this section to the Chief Court, and the Controller may at any time refer any such petition to the Chief Court and the Chief Court shall decide any petitions so referred.

Registration of designs to bind His Highness the Maharaja.

55. The provisions of section 21 shall apply to registered designs as if those provisions were re-enacted herein and in terms made applicable to registered designs.

INDUSTRIAL AND INTERNATIONAL EXHIBITIONS.

Provisions as to exhibitions.

56. (1) The exhibition at an industrial or international exhibition certified as such by the Government, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof:

Provided that—

(a) the exhibitor, before exhibiting the design or article, or publishing a description of the design, gives the Controller the prescribed notice of his intention to do so; and

(b) the application for registration is made before or within six months from the date of the opening of the exhibition.

(2) The Government may, by notification in the Cochin Government Gazette, apply this section to any exhibition mentioned in the notification in like manner as if it were an industrial or international exhibition certified as such by the Government, and any such

notification may provide that the exhibitor shall be relieved from the condition of giving notice to the Controller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the notification.

LEGAL PROCEEDINGS.

57. (1) During the existence of copyright in any design it shall not be lawful for any person— Piracy of registered design.

(a) for the purpose of sale to apply or cause to be applied to any article in any class of goods in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the license or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied ; or

(b) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section, he shall be liable for every contravention—

(a) to pay to the registered proprietor of the design a sum not exceeding five hundred rupees recoverable as a contract debt ; or

(b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly :

Provided that the total sum recoverable in respect of one design under clause (a) shall not exceed one thousand rupees.

(3) When the Court makes a decree in a suit under sub-section (2), it shall send a copy of the decree to

the Controller, who shall cause an entry thereof to be made in the register of designs.

Application of certain provisions of the Act as to patents to design.

58. The provisions of this Act with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention.

PART III.

GENERAL.

PATENT OFFICE AND PROCEEDINGS THEREAT.

Patent Office.

59. (1) The Government may provide, for the purposes of this Act, an office which shall be called, and is in this Act referred to as, the Patent Office.

(2) The Patent Office shall be under the immediate control of the Controller of Patents and Designs, who shall act under the superintendence and direction of the Government.

(3) There shall be a seal for the Patent Office.

(4) Any act or thing directed to be done by or to the Controller may be done by or to any officer authorized by the Government.

Officers and clerks.

60. The Government may appoint the Controller, and so many officers and clerks, with such designations and duties, as they think fit.

FEES.

Fees.

61. (1) There shall be paid in respect of the grant of patents and the registration of designs, and applications therefor, and in respect of other matters with relation to the patents and designs under this Act, such fees as may be prescribed by the Government, so however

that the fees prescribed in respect of the instruments and matters mentioned in the schedule shall not exceed those there specified.

(2) A proceeding in respect of which a fee is payable under this Act or the rules made thereunder shall be of no effect unless the fee has been paid.

PROVISIONS AS TO REGISTERS AND OTHER DOCUMENTS
IN THE PATENT OFFICE.

62. There shall not be entered in any register kept under this Act, or be receivable by the Controller, any notice of any trust, expressed, implied or constructive.

Notice of trust not to be entered in registers.

63. Every register kept under this Act shall at all convenient times be opened to the inspection of the public, subject to the provisions of this Act; and certified copies sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Inspection of, and extracts from, registers.

64. Reports of or to the Controller made under this Act shall not in any case be published or be open to public inspection.

Privilege of reports of Controller.

65. (1) Where an application for a patent has been abandoned or become void, the specifications and drawings (if any), accompanying or left in connection with such application, shall not, save as otherwise expressly provided by this Act, at any time, be open to public inspection or be published by the Controller.

Prohibition of publication of specification, drawings, etc., where application abandoned, etc.

(2) Where an application for a design has been abandoned or refused, the application and any drawings, photographs, tracings, representations or specimens left in connection with the application shall not at any time be open to public inspection or be published by the Controller.

66. The Controller may, on request in writing accompanied by the prescribed fee—

Power for Controller to correct clerical errors.

(a) correct any clerical error in or in connection with an application for a patent or in any patent or any specification,

(b) correct any clerical error in the representation of a design or in the name or address of the proprietor of any patent or design, or in any other matter which is entered upon the register of patents or the register of designs.

Entry of assignments and transmissions in registers.

67. (1) Where a person becomes entitled by assignment, transmission or other operation of law to a patent or to the copyright in a registered design, he may make application to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of such patent or design, and shall cause an entry to be made in the prescribed manner in the register of the assignment, transmission or other instrument affecting the title.

(2) Where any person becomes entitled as mortgagee, licensee or otherwise to any interest in a patent or registered design, he may make application to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title, to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of patents or designs, as the case may be, with particulars of the instrument, if any, creating such interest.

(3) The person registered as the proprietor of a patent or design shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the patent or design and to give effectual receipts for any consideration for any such assignment, license or dealing :

Provided that any equities in respect of the patent

or design may be enforced in like manner as in respect of any other movable property.

(4) Except in the case of an application made under section 68, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of sub-sections (1) and (2) shall not be admitted in evidence in any Court in proof of the title to a patent or to copyright in a design or to any interest therein, unless the Court, for reasons to be recorded in writing, otherwise directs.

68. (1) The Controller may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of patents or designs of any entry, or by any entry made in either such register without sufficient cause, or by any entry wrongly remaining on either such register, or by an error or defect in any entry in either such register, make such order for making, expunging or varying such entry as he thinks fit and rectify the register accordingly. Rectification
of register
by Court.

(2) The Controller may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of a register.

(3) An appeal shall lie to the Chief Court from any order of the Controller under this section, and the Controller may refer any application under this section to the Chief Court for decision, and the Chief Court shall dispose of any application so referred.

(4) Any order of the Court rectifying a register shall direct that notice of the rectification be served on the Controller in the prescribed manner, who shall, upon the receipt of such notice, rectify the register accordingly.

(5) Nothing in this section shall be deemed to empower the Controller—

(a) to rectify the register of patents or to decide any question relating to a patent, otherwise than for the purpose of correcting a mistake of fact apparent from a reference either to the patent itself or to some order of a competent authority made under any other provision of this Act, or

(b) to make any such order cancelling the registration of a design as is provided for in section 54.

POWERS AND DUTIES OF CONTROLLER.

Powers of
Controller in
proceedings
under Act.

69. Subject to any rules in this behalf, the Controller in any proceedings before him under this Act shall have the powers of a Civil Court for the purpose of receiving evidence and administering oaths and enforcing the attendance of witnesses and compelling the production of documents and awarding costs.

Publication
of patented
inventions.

70. The Controller shall issue periodically a publication of patented inventions containing such information as the Government may direct.

Exercise of
discretionary
power by
Controller.

71. Where any discretionary power is by, or under, this Act, given to the Controller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of an application, or of a specification or for registration of a design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

Power of
Controller
to take
directions of
Government.

72. The Controller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the Government for directions in the matter.

Refusal to
grant patent,
etc., in
certain cases.

73. (1) The Controller may refuse to grant a patent for an invention or to register a design, of which the use would, in his opinion, be contrary to law or morality.

(2) An appeal shall lie to the Government from an order of the Controller under this section.

74. (1) Where an appeal is declared by this Act to lie from the Controller to the Government, the appeal shall be made within three months of the date of the order passed by the Controller, and shall be in writing, and accompanied by the prescribed fee.

Appeals
to the
Government.

(2) In calculating the said period of three months the time (if any) occupied in granting a copy of the order appealed against shall be excluded.

(3) The Government may, if they think fit, obtain the assistance of an expert in deciding such appeals, and the decision of the Government shall be final.

EVIDENCE, ETC.

75. A certificate purporting to be under the hand of the Controller as to any entry, matter or thing which he is authorized by this Act, or any rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Certificate of
Controller to
be evidence.

76. Copies of all specifications, drawings and amendments left at the Patent Office after the commencement of this Act, printed for and sealed with the seal of the Patent Office, shall be transmitted as soon as may be, after they have been accepted or allowed at the Patent Office, to the Government and to such other authorities, as the Government may appoint in this behalf, and shall be open to the inspection of any person at all reasonable times, at places to be appointed by those authorities.

Transmis-
sion of certi-
fied printed
copies of
specifica-
tions, etc.

77. Any application, notice or other document authorised or required to be left, made or given at the Patent Office or to the Controller, or to any other person under this Act, may be sent by post or anchal.

Applications
and notices
by post or
anchal.

78. (1) If any person is, by reason of infancy, lunacy or other disability, incapable of making any statement or doing anything required or permitted by or under this

Declaration
by infant,
lunatic, etc.

Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or, if there be none, any person appointed by any Court possessing jurisdiction in respect of his property, may make such statement, or a statement as nearly corresponding thereto as circumstances permit and do such thing in the name and on behalf of the person subject to the disability.

(2) Any appointment may be made by the Court for the purposes of this section upon the petition of any person acting on behalf of the person, subject to the disability or of any other person interested in the making of the statement or the doing of the thing.

Security for costs.

79. Where a person giving notice of any opposition under this Act or giving notice to the Court of appeal from any decision of the Controller under this Act, neither resides nor carries on business in Cochin, the Controller or the Court, as the case may be, may require such person to give security for the payment of all costs incurred and likely to be incurred in the proceedings or appeal, as the case may be, and in default of such security being given, may disallow the opposition or dismiss the appeal.

AGENCY.

Subscription and verification of certain documents.

80. The following documents, namely—

- (1) applications for a patent,
- (2) notices of opposition,
- (3) applications for extension of term of patent,
- (4) applications for the restoration of lapsed patents,
- (5) applications for leave to amend,
- (6) applications for compulsory license or revocation, and
- (7) notices of surrenders of patent,

shall be signed and verified, in the manner prescribed, by the person making such applications or giving such notices :

Provided that, if such person is absent from Cochin, they may be signed and verified on his behalf by an agent resident in Cochin authorized by him in writing in that behalf.

81. (1) All other applications and communications Agency. to the Controller under this Act may be signed by and all attendances upon the Controller may be made by or through a legal practitioner, or by or through an agent authorised to the satisfaction of the Controller.

(2) The Controller may, if he sees fit, require—

- (a) any such agent to be resident in Cochin ;
- (b) any person not residing in Cochin to employ an agent residing in Cochin ;
- (c) the personal signature or presence of any applicant, opponent or other person.

POWERS, ETC., OF THE GOVERNMENT.

82. (1) The Government may make such rules, Power of the Government to make rules. as they think expedient, subject to the provisions of this Act—

(a) for regulating the practice of registration under this Act.

(b) for classifying goods for the purposes of designs ;

(c) for making or requiring duplicates of specifications, drawings and other documents ;

(d) for securing and regulating the publishing and selling of copies, at such prices and in such manner as the Government think fit, of specifications, drawings and other documents ;

(e) for securing and regulating the making, printing, publishing and selling of indices to, and abridgements of, specifications, and other documents in the Patent Office ; and providing for the inspection of indices and abridgments and other documents ;

(f) for the manner in which fees leviable under this Act may be paid ;

(g) for ensuring secrecy with respect to patents to which section 22 applies ;

(h) generally for regulating the business of the Patent Office, the conduct of proceedings before the Controller, and all things by this Act placed under the direction or control of the Controller or of the Government ; and

(i) generally for the purpose of carrying into effect the provisions of this Act.

(2) The power to make rules under this section shall be subject to the condition of the rules being made after previous publication.

(3) Nothing in sub-section (2) shall apply in the case of rules made for the purpose specified in clause (g) of sub-section (1) ; and any such rules may modify any of the provisions of this Act so far as may be necessary for that purpose.

(4) All rules made under this section shall be published in the Cochin Government Gazette, and on such publication, shall have effect as if enacted in this Act.

OFFENCES.

Wrongful
use of words
"Patent
Office."

83. If any person uses on his place of business, or on any document issued by him, or otherwise, the words "Patent Office", or any other words suggesting that his place of business is officially connected with, or is, the Patent Office, he shall be punishable with fine which may extend to two hundred rupees, and in the case of a continuing offence, with further fine of twenty rupees for each day on which the offence is continued after conviction therefor.

RECIPROCITY.

Reciprocal arrangements with British India and
Other States.

84. (1) If the Government make any arrangement with the United Kingdom or with the Government of British India or any other State for mutual protection of inventions or designs and declare, by a notification in the Cochin Government Gazette, the provisions of this section to be applicable in such cases, then any person who has applied for protection for any invention or design in the United Kingdom, British India or the other State or his legal representative or assignee shall be entitled to a patent for his invention or to registration of his design under this Act, in priority to other applicants; and the patent or registration shall have the same date as the date of the application in the United Kingdom, British India or the other State :

Reciprocal
arrange-
ments with
British India
and other
States.

Provided that—

(a) the application is made in the case of a patent within twelve months, and, in the case of a design, within six months from the application for protection in the United Kingdom, British India or the other State; and

(b) nothing in this section shall entitle the patentee or the proprietor of the design to recover damages for infringements happening prior to the actual date on which, in the case of a patent, his application is accepted, or, in the case of a design, the design is registered, in Cochin.

(2) The patent granted for an invention or the registration of a design shall not be invalidated—

(a) in the case of a patent, by reason only of the publication of a description of, or use of, the invention, or

(b) in the case of a design, by reason only of the exhibition or use of or the publication of a description or representation of the design, in Cochin during the period specified in this section as that within which the application may be made.

(3) The application for the grant of a patent or the registration of a design under this section must be made in the same manner as an ordinary application under this Act:

Provided that in the case of a patent, if the application is not accepted within twelve months from the date of the application for protection in the United Kingdom, British India or the other State, the specification and the drawings (if any) supplied therewith shall be open to public inspection at the expiration of that period.

(4) Where it is made to appear to the Government that the legislature of any other part of the United Kingdom or of British India or of any other State has made satisfactory provisions for the protection of inventions or designs, patented or registered in Cochin, the Government may, by notification in the Cochin Government Gazette, direct that the provisions of this section, with such variations or additions, if any, as may be set out in such notification, shall apply for the protection of inventions or designs patented or registered in that part of the United Kingdom, British India or any other State, as the case may be.

SAVINGS AND REPEAL.

Saving for
prerogative.

85. Nothing in the Act shall take away, abridge or prejudicially affect the prerogative of His Highness the Maharaja in relation to the granting of any letters patent or to the withholding of a grant thereof.

86. On the commencement of this Act, the Cochin Repeal. Patents and Designs Act, XII of 1095, shall stand repealed.

THE SCHEDULE.

(See section 61.)

Fees.

	Rs.
On application for a patent	10
Before sealing a patent	30
Before the expiration of the 4th year from the date of the patent	50
Before the expiration of the 5th year from the date of the patent	50
Before the expiration of the 6th year from the date of the patent	50
Before the expiration of the 7th year from the date of the patent	50
Before the expiration of the 8th year from the date of the patent	100
Before the expiration of the 9th year from the date of the patent	100
Before the expiration of the 10th year from the date of the patent	100
Before the expiration of the 11th year from the date of the patent	100
Before the expiration of the 12th year from the date of the patent	150
Before the expiration of the 13th year from the date of the patent	150
Before the expiration of the 14th year from the date of the patent	150
Before the expiration of the 15th year from the date of the patent	150
Provided that the fees for two or more years may be paid in advance	
On application to extend the term of a patent	50
Before the expiration of each year of the extended term of a patent or of a new patent granted under section 14	150
On application for registration of a design	3

THE COCHIN LIMITATION ACT,
(XII OF 1112.)

CONTENTS.

PREAMBLE.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.

PART II.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

3. Dismissal of suit, etc., instituted, etc., after period of limitation.
4. Where court is closed, when period expires.
5. Extension of period in certain cases.
6. Legal disability.
7. Repealed.
8. Disability of one of several plaintiffs or applicants.
9. Special exceptions.
10. Continuous running of time.
11. Suits against express trustees and their representatives.
12. Suits on foreign contracts.
Foreign Limitation Law.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

13. Exclusion of time in legal proceedings.
14. Exclusion of time of defendant's absence from India.
15. Exclusion of time of proceeding *bona fide* in Court without jurisdiction.
16. Exclusion of time during which proceedings are suspended.

SECTIONS.

17. Exclusion of time during which judgment-debtor, etc., is attempting to set aside execution sale.
18. Effect of death before right to sue accrues.
19. Effect of fraud.
20. Effect of acknowledgment in writing.
21. Effect of payment of interest as such or of part payment of principal.
Effect of receipt of produce of mortgaged land.
22. Agent of person under disability.
Acknowledgment of payment by one of several joint contractors, etc.
23. Effect of substituting or adding new plaintiff or defendant.
24. Continuing breaches and wrongs.
25. Suit for compensation for act not actionable without special damage.
26. Computation of time mentioned in instruments.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

27. Repealed.
28. Repealed.
29. Extinguishment of right to property.

PART V.

SAVINGS AND REPEALS.

30. Savings.
31. Provisions for suits for which the period prescribed is shorter than that prescribed by the Cochin Limitation Act, 11 of 1079.
32. Repeal of enactments.
The First Schedule.
The Second Schedule.

THE COCHIN LIMITATION [ACT],
(XII OF 1112.)

HISTORY OF LEGISLATION.

Year	Number	Short title	Repeal and Amendments.
1112	XII	The Cochin Limitation Act.	Partly repealed by Act XXII of 1112 and amend- ed by Proclamation V and Act LXI of 1112.

*Passed by His Highness the Maharaja on the 24th day
of Thulam 1112 corresponding to the 9th day of
November 1936.*

An Act to consolidate and amend the law for the
limitation of suits and for other purposes:—

Preamble.

Whereas it is expedient to consolidate and amend
the law relating to the limitation of suits, appeals and
certain applications to courts; and whereas it is also
expedient to provide rules for acquiring by possession
the ownership of easements and other property; it is
hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called "The Cochin
Limitation Act, XII of 1112."

(2) It extends to the whole of Cochin, and shall
come into force on the 24th day of Thulam 1112.

Definitions.

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

(1) "applicant" includes any person from or
through whom an applicant derives his right to apply;

1. Substituted for 'Regulation' throughout the enactment
by Proclamation V of 1112.

(2) "bill of exchange" includes a hundi and a cheque;

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

(4) "defendant" includes any person from or through whom a defendant derives his liability to be sued;

(5) * [* * * * *]

(6) "foreign country" means any country other than Cochin;

(7) "good faith"—nothing shall be deemed to be done in good faith which is not done with due care and attention;

(8) "plaintiff" includes any person from or through whom a plaintiff derives his right to sue;

(9) "promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight;

(10) "suit" does not include an appeal or an application; and

(11) "trustee" does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

PART II.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

3. Subject to the provisions contained in sections 4 to 26 (inclusive), every suit instituted, appeal preferred, and application made after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

Dismissal of suit, etc., instituted, etc., after period of limitation.

1. Definition of 'easement' repealed by section 3 of Easements Act, XXII of 1112.

Explanation.—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and in the case of a claim against a Company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator.

Where court is closed, when period expires.

4. Where the period of limitation prescribed for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the court re-opens.

Extension of period in certain cases.

5. Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable, by or under any enactment for the time being in force, may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or applicant was misled by any order, practice or judgment of the Chief Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

Legal disability.

6. (1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule.

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may

institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is, at the date of the death, affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

Illustrations.— (a) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

(b) A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(c) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

7. (*Suspension of limitation during representative's disability.*) ¹*Repealed by section 2 of Act LXI of 1112.*

1. "Notwithstanding the repeal of this section, where on account of disability to sue or make an application for the execution of a decree, the running of time was or is in suspense by the operation of the said section, before or at the *commencement of this Act, such suit may be instituted or application made within two years next after the *commencement of this Act or within the period within which but for such suspension such suit or application would have to be instituted or made whichever period expires last". See section 2 of Act LXI of 1112.

* The commencement of the Act referred to is that of the *Limitation (Amendment) Act LXI of 1112 viz., 1-4-1113.*

Disability of
one of several
plaintiffs or
applicants.

8. Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them, until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Illustrations.—(a) *A* incurs a debt to a firm of which *B*, *C* and *D* are partners. *B* is insane, and *C* is a minor. *D* can give a discharge of the debt without the concurrence of *B* and *C*. Time runs against *B*, *C* and *D*.

(b) *A* incurs a debt to a firm of which *E*, *F* and *G* are partners. *E* and *F* are insane, and *G* is a minor. Time will not run against any of them until either *E* or *F* becomes sane or *G* attains majority.

Special
exceptions.

9. Nothing in sections 6 ¹[*] and 8 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations.—(a) *A*, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. *A* has, under the ordinary law, only one year remaining within which to sue. But under section 6 and this section, an extension of two years will be allowed to him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(b) A right to sue for a hereditary office accrues to *A* who, at the time, is insane. Six years after the accruer, *A* recovers his reason. *A* has six years, under the

1. The figure '7' deleted by Section 3 of Act, LXI of 1112.

ordinary law, from the date when his insanity ceased, within which to institute a suit. No extension of time will be given him under section 6 read with this section.

(c) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative-in-interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. Section 6 read with this section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

10. ¹ [Where once time has begun to run, no subsequent disability or inability to sue stops it: Continuous running of time.

Provided that where letters of administration to the estate of the creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.]

11. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time. Suits against express trustees and their representatives.

² [For the purposes of this section any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof.]

1. Substituted by section 4 of Act, LXI of 1112.

2. Added by section 5 *ibid.*

Suits on
foreign
contracts.

12. Suits instituted in Cochin on contracts entered into in a foreign country are subject to the rules prescribed by this Act.

Foreign Limi-
tation Law.

No foreign rule of limitation shall be a defence to a suit instituted in Cochin on a contract entered into in a foreign country unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

Exclusion of
time in legal
proceedings.

13. (1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

(5) I [* * * * *]

¹ Section 6 of Act, LXI of 1112 deleted sub-section (5).

“Notwithstanding the repeal of this sub-section, where an application for review of judgment presented before the expiration of the time allowed for an appeal had been made prior to the * commencement of this Act, the time during which such application for review was pending shall be excluded in computing the period of limitation prescribed for the appeal.” See section 6 of Act, LXI of 1112.

* The commencement of the Act referred to is that of the Limitation (Amendment) Act, LXI of 1112, viz., 1—4—1113.

14. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from India shall be excluded.

Exclusion of time of defendant's absence from India.

If there are more persons than one liable to the plaintiff's claim and some of them reside in India, the provisions of the first part of this section shall not apply to persons residing in India; but any decree or judgment obtained against them shall not debar the plaintiff from suing, on the same cause of action, the persons who were absent from India, on their return to India.

15. (1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or in a court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

Exclusion of time of proceeding *bona fide* in Court without jurisdiction.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or in a court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Explanation I.—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made and the day on which the proceedings therein ended shall both be counted.

Explanation II.—For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III.—For the purposes of this section, mis-joinder of parties or of causes of action shall be deemed to be a cause of like nature with defect of jurisdiction.

Exclusion of time during which proceedings are suspended.

16. (1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

Exclusion of time during which judgment-debtor, etc., is attempting to set aside execution sale.

17. In computing the period of limitation prescribed for a suit or for any application for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor or any other person interested in the property has been prosecuting a proceeding to set aside the sale, shall be excluded.

Effect of death before right to sue accrues.

18. (1) Where a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(3) 1 [* * * * *]

²[(3)] Nothing in sub-sections ³[1 and 2] applies to suits to enforce rights of pre-emption or to suits for the possession of immovable property or of an hereditary office.

Illustrations.—*A*, the head of a mutt or a monastery, dies on the 1st Medam 1095. The amount of a bond executed by *B* to *A* as the head of the institution falls due on the 15th Medam 1095. According to the rules of the institution, *C* was elected or appointed successor of *A* on the 30th Thulam 1096. The limitation prescribed for the suit on the bond shall begin to run from the day following the 30th Thulam 1096.

19. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him,

Effect of fraud.

the time limited for instituting a suit or making an application—

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected

1. Exclusion of time in the case where the right to sue or make the application accrued prior to the death of the person to or against whom such right accrued provided for by original sub-section (3) was deleted by section 7 (a) of Act, LXI of 1112.

2. Sub-section 4, re-numbered as sub-section (3) by section 18 (b) *ibid.*

3. Substituted for "1, 2 and 3" by section 18 (c) *ibid.*

thereby, or in the case of concealed document when he first had the means of producing it or compelling its production.

Effect of
acknowledg-
ment in
writing.

20. (1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, or by some person who is, either by operation of law or by contract, entrusted with the general management of the affairs of a family, in so far as such acknowledgment relates to transactions binding on such family, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Indian Evidence Act, 1872, as made applicable to Cochin by His Highness the Maharaja's Proclamation, dated 21st Makaram 1080, oral evidence of its contents shall not be received.

Explanation I.—For the purposes of this section, an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform, or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation II.—For the purposes of this section, "signed" means signed either personally or by an agent duly authorised in this behalf.

Explanation III.—The Karanavan of a Malabar tarawad and the Manager of an undivided Hindu family

come within the words "or by some person who is, either by operation of law or by contract, entrusted with the general management of the affairs of a family" in sub-section (1).

Explanation IV.—For the purposes of this section, an application for the execution of a decree or order is an application in respect of a right.

21. ¹ [(1) Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorised in this behalf, or

Effect of payment of interest as such or of part payment of principal.

where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorised in this behalf,

a fresh period of limitation shall be computed from the time when the payment was made:

Provided that an acknowledgment of the payment appears in the hand-writing of, or in a writing signed by, the person making the payment.

(2) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section (1).

Effect of receipt of produce of mortgaged land.

Explanation.—Debt includes money payable under a decree or order of Court].

22. (1) The expression "agent duly authorised in this behalf" in sections 20 and 21, shall, in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorised by such guardian, committee or manager, to sign the acknowledgment or make the payment.

Agent of person under disability.

(2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees

Acknowledgment of payment by one of several joint contractors, etc.

1. Substituted by section 8 of Act, LXI of 1112.

chargeable by reason only of a written acknowledgment signed, or of a payment made by or by the agent of, any other or others of them.

(3) For the purposes of the said sections—

(a) an acknowledgment signed, or a payment made, in respect of any liability, by or by the duly authorised agent of, any widow or other limited owner of property who is governed by the Hindu Law, shall be a valid acknowledgment or payment as the case may be, as against a reversioner succeeding to such liability; and

(b) where a liability has been incurred by, or on behalf of, a Hindu undivided family as such, an acknowledgment or payment made by, or by the duly authorised agent of, the manager of the family for the time being, shall be deemed to have been made on behalf of the whole family.

Effect of substituting or adding new plaintiff or defendant.

23. (1) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

Continuing breaches and wrongs.

24. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Suit for compensation for act not actionable without special damage.

25. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Illustration.—*A* owns the surface of a field. *B* owns the sub-soil. *B* digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by *A* against *B* runs from the time of the subsidence.

26. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Cochin Sirkar Calendar. Computation of time mentioned in instruments.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

27. (*Acquisition of right to easements.*) Repealed by section 3 of *Easements Act, XXII of 1112.*

28. (*Exclusion in favour of reversioner of servient tenement.*) Repealed by section 3 of *Easements Act, XXII of 1112.*

29. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. Extinguishment of right to property.

PART V.

SAVINGS AND REPEALS.

30. (1) Nothing in this Act shall affect ¹ section 25 of the Indian Contract Act as brought into force in Cochin by His Highness the Maharaja's Proclamation, dated 30th Karkadagam 1083. Savings.

1. Now section 26 of the Cochin Contract Act, XXIII of 1112.

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply as if such period were prescribed therefor in that schedule, and, for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(a) the provisions contained in section 4, sections 10 to 19 and section 23 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply.

Provisions for suits for which the period prescribed is shorter than that prescribed by the Cochin Limitation Act, II of 1079.

31. Notwithstanding anything herein contained, any suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the Cochin Limitation Act, II of 1079, may be instituted within the period of two years next after the passing of this Act, or within the period prescribed for such suit by the Cochin Limitation Act, II of 1079, whichever period expires first.

Repeal of enactments.

32. The enactments mentioned in the second schedule are repealed to the extent specified in the fourth column thereof.

THE FIRST SCHEDULE.

FIRST DIVISION.—SUITS.

Description of suits	Period of limitation	Time from which period begins to run.
1. For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in Cochin.	Part I. Ninety days	When the act or omission takes place.
2. Under the Cochin Specific Relief Act, IV of 1097, section 9, to recover possession of immovable property.	Part II. Six months	When the dispossession occurs.
3. Upon a Royal Proclamation, Act or Bye-law for a penalty or forfeiture.	Part III. One year	When the penalty or forfeiture is incurred.
4. For the wages of a household servant, artisan or labourer.	do	When the wages accrue due:
5. For the price of food or drink sold by the keeper of a hotel, tavern or lodging house.	do	When the food or drink is delivered.
6. For the price of lodging.	do	When the price becomes payable.
7. To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	do	When the purchaser takes under the sale, sought to be impeached, physical possession of the whole of the property sold, or where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.
8. By a person, against whom any of the following orders has been made, to establish the right which he claims to the property comprised in the order—	do	The date of the order.

Description of suit	Period of limitation	Time from which period begins to run
<p>(1) Order under the Code of Civil Procedure, on a claim preferred to or an objection made to the attachment of, property attached before judgment or in execution of a decree.</p>	<p><i>Part III-contd.</i> One year</p>	<p>The date of the order.</p>
<p>(2) Order under the Code of Civil Procedure, upon an application by the holder of a decree for the possession of immovable property or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof or upon an application by any person dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser, to establish the right which he claims to the present possession of the property comprised in the order.</p>		
<p>9. To set aside any of the following sales.—</p>	<p>do</p>	<p>When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.</p>
<p>(a) Sale in execution of a decree of a Civil Court.</p>		
<p>(b) Sale for arrears of Sirkar revenue or for any demand recoverable as such arrears.</p>		
<p>10. To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.</p>	<p>do</p>	<p>The date of the final decision or order in the case by a court competent to determine it finally.</p>

Description of suits	Period of limitation	Time from which period begins to run.
11. To set aside any act or order of an officer of Sirkar in his official capacity not herein otherwise expressly provided for.	Part III. One year	The date of the act or order.
12. Against Sirkar to set aside any attachment, lease or transfer of immovable property by the Revenue authorities for arrears of Sirkar revenue.	do	When the attachment, lease or transfer is made.
13. Against Sirkar to recover money paid under protest in satisfaction of a claim made by the Revenue authorities on account of arrears of revenue, or on account of demands recoverable as such arrears.	do	When the payment is made.
1 ¹ [13 A. Against Government for compensation for land acquired for public purposes.	do	The date of determining the amount of the compensation.
13 B. Like suit for compensation when the acquisition is not completed.	do	The date of the refusal to complete.]
14. For compensation for false imprisonment.	do	When the imprisonment ends.
15. For compensation for any other injury to the person.	do	When the injury is committed.
16. For compensation for malicious prosecution.	do	When the plaintiff is acquitted or, the prosecution is otherwise terminated.
17. For compensation for libel.	do	When the libel is published.

1. Inserted by section 9 (a) of Act, LXI of 1112.

Description of suits	Period of limitation	Time from which period begins to run
18. For compensation for slander.	<i>Part III-contd.</i> One year	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
19. For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	do	When the loss occurs.
20. For compensation for inducing a person to break a contract with the plaintiff.	do	The date of the breach.
21. For compensation for an illegal, irregular or excessive distress.	do	The date of the distress.
22. For compensation for wrongful seizure of movable property under legal process.	do	The date of the seizure.
23. Against a carrier for compensation for losing or injuring goods.	do	When the loss or injury occurs.
24. Against a carrier for compensation for non-delivery of, or delay in delivering goods.	do	When the goods ought to be delivered.
25. Against one who, having a right to use property for specific purposes, perverts it to other purposes.	<i>Part IV.</i> Two years	When the perversion first becomes known to the person injured thereby.
26. For compensation for any malfeasance, misfeasance or non-feasance independent of contract and not herein specially provided for.	do	When the malfeasance, misfeasance or non-feasance takes place.
27. For compensation for obstructing a way or a water-course.	<i>Part V.</i> Three years	The date of the obstruction.

Description of suit	Period of limitation	Time from which period begins to run
28. For compensation for diverting a water-course.	<i>Part V-contd.</i> Three years	The date of the diversion.
29. For compensation for trespass upon immovable property.	do	The date of the trespass.
30. For compensation for infringing copyright or any other exclusive privilege	do	The date of the infringement.
31. To restrain waste.	do	When the waste begins.
32. For compensation for injury caused by an injunction wrongfully obtained.	do	When the injunction ceases.
33. To compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets under the law for the time being in force relating to Probate and Administration.	do	The date of the payment or distribution.
34. By a ward who has attained majority, to set aside a transfer of property by his guardian.	do	When the ward attains majority.
35. By any person bound by an order respecting the possession of immovable property made under the Code of Criminal Procedure or by any one claiming under such person, to recover the property comprised in such order.	do	The date of the final order in the case.
36. For specific movable property lost or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	do	When the person having the right to the possession of the property first learns in whose possession it is.

Description of suits	Period of limitation	Time from which period begins to run.
<p>¹[36 A. To recover movable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration.</p>	<p>Part V. Three years</p>	<p>When the sale becomes known to the plaintiff.</p>
<p>36 B. To set aside sale of movable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.</p>	<p>do</p>	<p>When the sale becomes known to the plaintiff.]</p>
<p>37. For other specific movable property or for compensation for wrongfully taking or injuring or wrongfully detaining the same.</p>	<p>do</p>	<p>When the property is wrongfully taken or injured, or when the detainers' possession becomes unlawful.</p>
<p>38. For the hire of animals, vehicles, boats, or house-hold furniture.</p>	<p>do</p>	<p>When the hire becomes payable.</p>
<p>39. For the balance of money advanced in payment of goods to be delivered.</p>	<p>do</p>	<p>When the goods ought to be delivered.</p>
<p>40. For the price of goods sold and delivered, where no fixed period of credit is agreed upon.</p>	<p>do</p>	<p>The date of the delivery of the goods.</p>
<p>41. For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.</p>	<p>do</p>	<p>When the period of credit expires.</p>
<p>42. For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.</p>	<p>do</p>	<p>When the period of the proposed bill ²[elapses.]</p>

1. Inserted by section 9(b) of Act, LXI of 1112.

2. Substituted for 'lapses' by section 9(c) *ibid.*

Description of suits	Period of limitation	Time from which period begins to run
43. For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	<i>Part V-contd.</i> Three years	The date of the sale.
44. For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	do	When the work is done.
45. For money payable for money lent.	do	When the loan is made.
46. Like suit when the lender has given a cheque for the money.	do	When the cheque is paid.
47. For money lent under an agreement that it shall be payable on demand.	do	When the loan is made.
48. For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.	do	When the demand is made.
49. For money payable to the plaintiff for money paid for the defendant.	do	When the money is paid.
50. For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	do	When the money is received.
51. For money payable for interest upon money due from the defendant to the plaintiff.	do	When the interest becomes due.

Description of suits	Period of limitation	Time from which period begins to run.
52. For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	<i>Part V-contd.</i> Three years	When the accounts are stated in writing signed by the defendant or his agent duly authorised in this behalf, unless, where the debt is by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then, when that time arrives.
53. For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	do	<i>Explanation.</i> —The words “agent duly authorised in this behalf” shall include the “Karanavan” of a Malabar Tarawad and the Manager of an undivided Hindu family, where the accounts stated relate to the tarawad or family transactions. When the time specified arrives or the contingency happens.
54. On a single bond, where a day is specified for payment.	do	The day so specified.
55. On a single bond, where no such day is specified.	do	The date of executing the bond.
56. On a bond subject to a condition.	do	When the condition is broken.
57. On a bill of exchange or promissory note payable at a fixed time after date.	do	When the bill or note falls due.
58. On a bill of exchange payable at sight or after sight, but not at a fixed time.	do	When the bill is presented.
59. On a bill of exchange accepted payable at a particular place.	do	When the bill is presented at that place.

Description of suits	Period of limitation	Time from which period begins to run.
60. On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	<i>Part V-contd.</i> Three years.	When the fixed time expires.
61. On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	do	The date of the bill or note.
62. On a promissory note or bond payable by instalments.	do	The expiration of the first term of payment as to the part then payable; and, for the other parts, the expiration of the respective terms of payment.
63. On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due.	do	Same as above; but where after the default and on or before the date on which the last instalment is due the payee, or obligee makes a demand in writing for the payment of the whole and has not, thereafter, waived in writing his right to such payment, then from the date of such demand.
64. On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	do	The date of the delivery to the payee.
65. On a dishonoured foreign bill, where protest has been made and notice given.	do	When the notice is given.
66. By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	do	The date of the refusal to accept.

Description of suit	Period of limitation	Time from which period begins to run.
67. By the acceptor of an accommodation bill against the drawer.	<i>Part V-contd.</i> Three years.	When the acceptor pays the amount of the bill.
68. Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	do	When the bill, note or bond becomes payable.
69. By a surety against the principal debtor.	do	When the surety pays the creditor.
70. By a surety against a co-surety.	do	When the surety pays anything in excess of his own share.
71. Upon any other contract to indemnify.	do	When the plaintiff is actually damaged.
72. By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	do	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
73. For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	do	The close of the year in which the last item admitted or proved is entered in the accounts; such year to be computed as in the account.
74. On a policy of insurance, when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	do	When proof of the death or loss is given to or received by the insurers, whether by or from the plaintiff, or any other person.
75. By the assured to recover premia paid under a policy voidable at the election of the insurers.	do	When the insurers elect to avoid the policy.

Description of suits	Period of limitation	Time from which period begins to run.
76. Against a factor for an account.	<i>Part V-contd.</i> Three years.	When the account is, during the continuance of the agency, demanded and refused, or where no such demand is made, when the agency terminates.
77. By a principal against his agent for movable property received by the latter and not accounted for.	do	When the account is, during the continuance of the agency, demanded and refused, or where no such demand is made, when the agency terminates.
78. Other suits by principals against agents for neglect or misconduct.	do	When the neglect or misconduct becomes known to the plaintiff.
79. To cancel or set aside an instrument not otherwise provided for.	do	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
80. To declare the forgery of an instrument issued or registered.	do	When the issue or registration becomes known to the plaintiff.
81. To declare the forgery of an instrument attempted to be enforced against the plaintiff.	do	The date of the attempt.
82. For property which the plaintiff has conveyed while insane.	do	When the plaintiff is restored to sanity and has knowledge of the conveyance.
83. To set aside a decree obtained by fraud or for other relief on the ground of fraud.	do	When the fraud becomes known to the party wronged.
84. For relief on the ground of mistake.	do	When the mistake becomes known to the plaintiff.
85. For money paid upon an existing consideration which afterwards fails.	do	The date of the failure.

Description of suit	Period of limitation	Time from which period begins to run.
86. To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	<i>Part V-contd.</i> Three years.	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
87. For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers.	do	The date of the payment in excess of the plaintiff's own share.
88. By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	do	When the right to contribution accrues.
89. For a seaman's wages.	do	The end of the voyage during which the wages are earned.
90. For wages not otherwise expressly provided for by this schedule.	do	When the wages accrue due.
91. By a Muhammadan for exigible dower (muajjal).	do	When the dower is demanded and refused or (where during the continuance of the marriage, no such demand has been made), when the marriage is dissolved by death or divorce.
92. By a Muhammadan for deferred dower (muwajjal).	do	When the marriage is dissolved by death or divorce.
93. By a mortgagor, after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	do	When the mortgagor re-enters on the mortgaged property.
94. For an account and a share of the profit of a dissolved partnership.	do	The date of the dissolution.

Description of suits	Period of limitation	Time from which period begins to run.
95. By the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate.	<i>Part V-contd.</i> Three years.	The date of the payment.
96. By a lessor for the value of trees cut down by his lessee, contrary to the terms of the lease.	do	When the trees are cut down.
97. For the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant.	do	When the profits are received.
98. For arrears of rent.	do	When the arrears become due.
99. By a vendor of immovable property for personal payment of unpaid purchase-money.	do	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
100. For a call by a company registered under any law.	do	When the call is payable.
101. For specific performance of a contract.	do	The date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.
102. For the rescission of a contract.	do	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
103. 1[* * *]		
104. 1[* * *]		

1. Deleted by section 9 (d) of Act, LXI of 1112.

Description of suits	Period of limitation	Time from which period begins to run.
105. For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	<i>Part V-contd.</i> Three years.	When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.
106. For compensation for the breach of a contract in writing registered.	<i>Part VI.</i> Six years.	When the period of limitation would begin to run against a suit brought on a similar contract not registered.
107. Upon a foreign judgment as defined in the Code of Civil Procedure.	do	The date of the judgment.
108. To obtain a declaration that an alleged adoption is invalid, or never in fact took place.	do	When the alleged adoption becomes known to the plaintiff.
109. To obtain a declaration that an adoption is valid.	do	When the rights of the adopted son, as such, are interfered with.
110. Suit for which no period of limitation is provided elsewhere in this schedule.	do	When the right to sue accrues.
111. Upon a judgment obtained in Cochin, or a recognisance.	<i>Part VII.</i> Twelve years	The date of the judgment or recognisance.
112. 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.	do	When the legacy or share becomes payable or deliverable.

Description of suits	Period of limitation	Time from which period begins to run.
<p>113. For possession of an hereditary office.</p>	<p><i>Part-VII-contd.</i> Twelve years</p>	<p>When the defendant takes possession of the office adversely to the plaintiff. <i>Explanation</i>—An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.</p>
<p>114. Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage.</p>	<p>do</p>	<p>The date of the alienation.</p>
<p>115. By a Hindu governed by the law of the Mitakshara or by a member of a Malabar Tarawad to set aside his father's or karanavan's (as the case may be) alienation of ancestral or joint property.</p>	<p>do</p>	<p>When the alienee takes possession of the property.</p>
<p><i>Explanation.</i>—The words "father" and "karanavan" in this article include the manager of a Makkathayam undivided Hindu family or of a Malabar Tarawad for the time being.</p>		
<p>116. By a person excluded from joint family property to enforce a right to share therein.</p>	<p>do</p>	<p>When the exclusion becomes known to the plaintiff.</p>
<p>117. By a Hindu for arrears of maintenance.</p>	<p>do</p>	<p>When the arrears are payable.</p>

Description of suits	Period of limitation	Time from which period begins to run.
118. By a Hindu for a declaration of his right to maintenance.	<i>Part VII-contd.</i> Twelve years.	When the right is denied.
119. To establish a periodically recurring right.	do	When the plaintiff is first refused the enjoyment of the right.
120. To enforce payment of money, paddy or other agricultural produce or customary dues charged upon immovable property.	do	When the money, paddy or other agricultural produce or customary dues sued for becomes payable.
121. To recover money or paddy charged upon immovable property payable by instalments, which provides that if default be made in payment of one or more instalments, the whole shall be due.	do	The expiration of the first term of payment as to the part then payable; and for the other parts the expiration of the respective terms of payment; but, where, after the default and on or before the date on which the last instalment is due, the payee or obligee makes a demand in writing for the payment of the whole, and has not, thereafter, waived in writing his right to such payment, then, from the date of such demand.
122. 1[* * * *]		
123. To recover possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration.	do	² [When the transfer becomes known to the plaintiff.]

1. Deleted by section 9 (d) of Act, LXI of 1112.

2. Sustituted for 'do' by section 9 (e), *ibid.*

Description of suits	Period of limitation	Time from which period begins to run.
<p>¹ [123 A. To set aside a transfer of immovable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment made by a manager thereof for a valuable consideration.</p>	<p><i>Part VII-contd.</i> Twelve years.</p>	<p>When the transfer becomes known to the plaintiff.</p>
<p>123 B. By the manager of a Hindu, Muhammadan or Buddhist religious or charitable endowment to recover possession of immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.</p>	<p>do</p>	<p>The death, resignation or removal of the transferor.</p>
<p>123 C. By the manager of a Hindu, Muhammadan or Buddhist religious or charitable endowment to recover possession of movable property comprised in the endowment which has been sold by a previous manager for a valuable consideration.</p>	<p>do</p>	<p>The death, resignation or removal of the seller].</p>
<p>124. Suit instituted by a mortgagee for possession of immovable property mortgaged.</p>	<p>do</p>	<p>When the mortgagor's right to possession determines.</p>
<p>125. By a purchaser at a private sale for possession of immovable property sold when the vendor was out of possession at the date of the sale.</p>	<p>do</p>	<p>When the vendor is first entitled to possession.</p>

1. Inserted by Section 9 (f) of Act, LXI of 1112.

Description of suits	Period of limitation	Time from which period begins to run.
126. Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	<i>Part VII-contd.</i> Twelve years.	When the judgment-debtor is first entitled to possession.
127. Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was in possession at the date of the sale.	do	The date when the sale becomes absolute.
128. By a land-lord to recover possession from a tenant.	do	When the tenancy is determined.
129. By a remainderman, or a reversioner (other than a land-lord) or a devisee for possession of immovable property.	do	When his estate falls into possession.
130. Like suit by a Hindu or Muhammadan entitled to the possession of immovable property, on the death of a Hindu or Muhammadan female.	do	When the female dies.
131. For possession of immovable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	do	The date of dispossession or discontinuance.
132. Like suit when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	do	When the forfeiture is incurred or the condition is broken.
133. For possession of immovable property or any interest therein not hereby otherwise specially provided for.	do	When the possession of the defendant becomes adverse to the plaintiff.

Description of suits	Period of limitation	Time from which period begins to run.
134. Against a depository or pawnee to recover movable property deposited or pawned.	Part VIII. Thirty years	The date of the deposit or pawn.
135. By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it had discontinued the possession.	do	The date of the dispossession or discontinuance.
136. By a mortgagee for foreclosure or sale.	Part IX. Sixty years.	When the money secured by the mortgage becomes due.
137. Against a mortgagee to redeem or to recover possession of immovable property mortgaged.	do	When the right to redeem or to recover possession accrues.
138. Any suit by or on behalf of Sirkar.	do	When the period of limitation would begin to run under this Act against a like suit by a private person.

SECOND DIVISION—APPEALS.

Description of appeal.	Period of limitation	Time from which period begins to run.
139. Under the Code of Criminal Procedure, from a sentence of death or imprisonment for life passed by a Sessions Judge.	Seven days.	The date of the sentence.
140. Under the Code of Civil Procedure, to the Court of a District Judge.	Thirty days.	The date of the decree or order appealed ¹ [from].
141. Under the Code of Criminal Procedure, to any Court other than the Chief Court.	do	The date of the sentence or order appealed ₁ [from].

1. Substituted for 'against' by section 9 (g) of Act, LXI of 1112.

Description of appeal	Period of limitation	Time from which period begins to run.
142. Under the same Code to the Chief Court except in the cases provided for by ¹ [Articles] 139 and 144.	<i>Part IX-contd.</i> * [Sixty days]	The date of the sentence or order appealed ³ [from].
143. Under the Code of Civil Procedure, to the Chief Court.	* [Ninety days]	The date of the decree or order appealed ⁵ [from].
144. Under the Code of Criminal Procedure, from a judgment of acquittal.	Six months.	The date of the judgment appealed ⁶ [from].

THIRD DIVISION—APPLICATIONS.

Description of application	Period of limitation	Time from which period begins to run.
145. Under the Code of Civil Procedure, to set aside an award.	Ten days.	When the award is filed in Court and notice of the filing has been given to the parties.
146. For an order under the same Code, to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing.	Fifteen days.	When the application for review is rejected.
147. For a review of judgment in suits tried as small causes.	do	The date of the decree.
148. By a plaintiff, for an order to set aside a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs.	Thirty days.	The date of the dismissal.

1. Substituted for 'Nos.' by section 9 (h) i of Act, LXI of 1112.
2. Substituted for 'Forty-five days' by section 9 (h), ii *ibid.*
3. Substituted for 'against' by section 9 (h), iii *ibid.*
4. Substituted for 'do' by section 9 (i), i *ibid.*
5. Substituted for 'against' by section 9 (i), ii *ibid.*
6. Substituted for 'against' by section 9 (g), *ibid.*

Description of application	Period of limitation	Time from which period begins to run.
149. By a defendant, for an order to set aside a decree passed <i>ex-parte</i> .	<i>Part IX-contd.</i> Thirty days.	The date of the decree or, where the summons was not personally served, when the applicant has knowledge of the decree.
150. Under the Code of the Civil Procedure, by a person dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	do	The date of the dispossession.
151. Under the same Code, to set aside a sale in execution of a decree (including any such application by a judgment-debtor).	do	The date of the sale.
152. Complaining of resistance or obstruction to delivery of possession of immovable property decreed or sold in execution of a decree.	do	The date of the resistance or obstruction.
153. For the re-admission of an appeal dismissed for want of prosecution.	do	The date of the dismissal.
154. For the re-hearing of an appeal heard <i>ex-parte</i> .	do	The date of the decree in appeal or where notice of the appeal was not personally served, when the applicant has knowledge of the decree.
155. For leave to appeal as a pauper.	do	The date of the decree appealed from.
156. Under the Code of Civil Procedure, for an order to set aside an abatement.	Sixty days	The date of the abatement.

Description of application	Period of limitation	Time from which period begins to run.
157. Under the same Code, by the assignee or the receiver of an insolvent plaintiff or appellant, for an order to set aside the dismissal of a suit or an appeal.	<i>Part IX-contd.</i> Sixty days.	The date of the order of dismissal.
158. For a review of judgment except in cases provided for by Article 147.	Ninety days.	The date of the decree or order.
159. For the issue of a notice under the same Code, to show cause why any payment made out of court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.	do	When the payment or adjustment is made.
160. Under the same Code, to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.	do	The date of the death of the deceased plaintiff or appellant.
161. Under the same Code, to have the legal representative of a deceased defendant or of a deceased respondent made a party.	do	The date of the death of the deceased defendant or respondent.
162. Under the same Code, for the filing in court of an award in a suit made in any matter referred to arbitration by order of the court, or of an award made in any matter referred to arbitration without the intervention of a court.	Six months.	The date of the award.
163. For payment of the amount of a decree by instalments.	do	The date of the decree.

Description of application	Period of limitation	Time from which period begins to run.
164. By a purchaser of immovable property at a sale in execution of a decree, for delivery of possession.	<i>Part IX-contd.</i> Three years.	When the sale becomes absolute.
165. Applications for which no period of limitation is provided elsewhere in this schedule or by section 42 of the Code of Civil Procedure.	do	When the right to apply accrues.
166. For the execution of a decree or order of any Civil Court not provided for by the Code of Civil Procedure, section 42.	Three years or, where a certified copy of the decree or order has been registered, six years.	1. The date of the decree or order, or 2. (where there has been an appeal) the date of the final decree or order of the Appellate Court,

or the withdrawal of the appeal, or

3. (where there has been a review of judgment) the date of the decision passed on the review, or

4. (where the decree has been amended) the date of amendment, or

5. (where the application next hereinafter mentioned has been made) the date of the final order passed on an application made in accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree or order, or

6. (in respect of any amount recovered by execution of the decree or order, which the decree-holder has been directed to refund by a decree passed in a suit for such refund) the date of such last mentioned decree, or, in the case of an appeal therefrom, the date of the final decree of the Appellate Court or of the withdrawal of the appeal.

7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date.

Explanation I.—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject matter as payable or deliverable to each, the application mentioned in clause 5 of this article shall take effect in favour of only such

of the said persons or their representatives as it may be made by. But where the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.

Where the decree or order has been passed severally against more persons than one distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all.

Explanation II.—“Proper Court” means the court whose duty it is to execute the decree or order.

THE SECOND SCHEDULE.

Enactments repealed.

(See section 32).

Year	Number	Short title	Extent of repeal
1079	II	The Cochin Limitation Act, 1079	The whole
1097	V	The Cochin Limitation Amendment Act	do
1100	III	do	do
1096	X	The Cochin Probate and Administration Act	Section 154

THE COCHIN OBSTRUCTION IN FAIRWAYS ACT,
(XIV OF 1112.)

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title and commencement.
2. Government empowered to remove or destroy obstruction in fairway.
3. Government entitled to expenses incurred in removing obstruction.
Dispute concerning such expenses.
4. Notice of removal to be given by Government.
5. Things removed may, in certain cases, be sold.
6. Proceeds how applied.
7. "Vessel" to include tackle, cargo, etc.
8. Power to make rules to regulate and prohibit the placing of obstructions in fairways.
9. Penalty for breach of such rules.
10. Compensation payable in certain cases for damage caused under this Act.
11. Certain action of the Government previous to passing of this Act deemed to have been taken hereunder.
12. Saving of other powers possessed by Government.

THE COCHIN OBSTRUCTION IN FAIRWAYS
[ACT], (XIV OF 1112.)

AN ACT TO EMPOWER THE GOVERNMENT TO REMOVE
OR DESTROY OBSTRUCTIONS IN FAIRWAYS, AND
TO PREVENT THE CREATION OF SUCH OBSTRUCTIONS.

*Passed by His Highness the Maharaja of Cochin on the
24th day of Vrischigam 1112, corresponding to the
9th day of December 1936.*

Whereas it is expedient to empower the Government Preamble.
to remove or destroy obstructions to navigation in fair-
ways leading to ports in Cochin State, and to prevent the

-
1. Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

creation of such obstructions; It is hereby enacted as follows :—

Short title
and com-
mencement.

1. (1) This Act may be called "The Cochin Obstructions in Fairways Act of 1112";

(2) It shall come into force at once.

But nothing herein contained shall apply to vessels belonging to His Highness the Maharaja of Cochin or to His Majesty the King Emperor of India or hired by His Highness the Maharaja of Cochin or by His Majesty the King Emperor of India or by the Secretary of State for India in Council.

Government
empowered
to remove
or destroy
obstruction
in fairway.

2. Whenever, in any fairway leading to any port in Cochin State, any vessel is sunk, stranded or abandoned, or any fishing stake, timber or other thing, is placed or left, the Government may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,—

(a) cause such thing or any part thereof to be removed; or

(b) if such thing is of such a description or so situate that, in the opinion of the Government, it is not worth removing, cause the same or any part thereof to be destroyed.

Government
entitled to
expenses
incurred in
removing
obstruction.

3. Whenever anything is removed under section 2, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Dispute con-
cerning such
expenses.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the District Magistrate, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

Notice of
removal to
be given by
Government.

4. The Government shall, whenever anything is removed under section 2 publish in the Cochin Government Gazette a notification containing a description of

such thing, and the time at which and the place from which the same was so removed.

5. If, after publishing such notification, such thing is unclaimed, or if the person claiming the same fails to pay the amount due for the said expenses and any customs-duties or other charges properly incurred by the Government in respect thereof ;

Things removed may, in certain cases, be sold.

The Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and, if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

6. On realising the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same : Provided that he makes the claim within one year from the date of the sale.

Proceeds how applied.

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, store or ballast of a vessel ; and any proceeds arising from the sale of a vessel and of the cargo, thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

"Vessel" to include tackle, cargo, etc.

8. The Government may, from time to time, by notification in the Gazette, make rules to regulate or prohibit, in the fairway leading to a port in Cochin State, the placing of fishing stakes, the casting or throwing of ballast, rubbish or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in its opinion, cause, or be likely to cause, obstruction or danger to navigation.

Power to make rules to regulate and prohibit the placing of obstructions in fairways.

Penalty for breach of such rules.

9. Whoever is guilty of any act or omission in contravention of the rules made under section 8 may be tried for such offence by any Magistrate within whose jurisdiction he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Compensation payable in certain cases for damage caused under this Act.

10. Whenever the maintenance or creation of an obstruction in any fairway, has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section 2, or its creation is regulated or prohibited under section 8, any person having a right to maintain, or create such obstruction shall be entitled to receive from the Government reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes and not otherwise; and for the purpose of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the district in which the port to which such fairway leads is situate.

Certain action of the Government previous to passing of this Act deemed to have been taken hereunder.

11. Whenever any obstruction in a fairway leading to a port in Cochin State has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

Saving of other powers possessed by Government.

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

THE IDENTIFICATION OF PRISONERS ACT,
(XV OF 1112.)

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.
3. Taking of measurements, etc., of convicted persons.
4. Taking of measurements, etc., of non-convicted persons.
5. Power of Magistrate to order a person to be measured or photographed.
6. Resistance to the taking of measurements, etc.
7. Destruction of photographs and records of measurements, etc., on acquittal.
8. Power to make rules.
9. Bar of suits.

THE IDENTIFICATION OF PRISONERS [ACT],
(XV OF 1112.)

AN ACT TO AUTHORISE THE TAKING OF
MEASUREMENTS AND PHOTOGRAPHS OF CONVICTS
AND OTHERS.

*Passed by His Highness the Maharaja of Cochin on the
24th day of Vrischigam 1112, corresponding to
the 9th day of December 1936.*

Whereas it is expedient to authorise the taking of measurements and photographs of convicts and others; It is hereby enacted as follows:—

1. Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called “ The Identification of Prisoners Act, XV of 1112 ” ;

(2) It extends to the whole of Cochin ; and

(3) It shall come into force at once.

Definitions.

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

(a) “measurements” include finger impressions and foot-print impressions ;

(b) “police officer” means an officer in charge of a police-station, a police officer making an investigation under Chapter XIV of the Cochin Code of Criminal Procedure, or any other police officer not below the rank of Inspector ; and

(c) “prescribed” means prescribed by rules made under this Act.

Taking of
measure-
ments, etc.,
of convicted
persons.

3. Every person who has been—

(a) convicted of any offence punishable with rigorous imprisonment for a term of one year or upwards, or of any offence which would render him liable to enhanced punishment on a subsequent conviction ; or

(b) ordered to give security for his good behaviour under section 102 of the Cochin Code of Criminal Procedure, shall, if so required, allow his measurements and photograph to be taken by a police officer in the prescribed manner.

Taking of
measure-
ments, etc.,
of non-
convicted
persons.

4. Any person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards shall, if so required by a police officer, allow his measurements to be taken in the prescribed manner.

5. If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Cochin Code of Criminal Procedure, it is expedient to direct any person to allow his measurements or photograph to be taken, he may make an order to that effect, and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer :

Power of Magistrate to order a person to be measured or photographed.

Provided that no order shall be made directing any person to be photographed except by a Magistrate of the first class :

Provided further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.

6. (1) If any person who under this Act is required to allow his measurements or photograph to be taken resists or refuses to allow the taking of the same, it shall be lawful to use all means necessary to secure the taking thereof.

Resistance to the taking of measurements, etc.

(2) Resistance to or refusal to allow the taking of measurements or photographs under this Act shall be deemed to be an offence under section 172 of the Cochin Penal Code.

7. Where any person who, not having been previously convicted of an offence punishable with rigorous imprisonment for a term of one year or upwards, has had his measurements taken or has been photographed in accordance with the provisions of this Act is released without trial or discharged or acquitted by any Court, all measurements and all photographs (both negatives and copies) so taken shall, unless the Court or (in a case where

Destruction of photographs and records of measurements, etc., on acquittal.

such person is released without trial) the District Magistrate for reasons to be recorded in writing otherwise directs, be destroyed or made over to him.

Power to
make rules.

8. (1) Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for—

(a) restrictions on the taking of photographs of persons under section 5;

(b) the places at which measurements and photographs may be taken ;

(c) the nature of the measurements that may be taken ;

(d) the method in which any class or classes of measurements shall be taken ;

(e) the dress to be worn by a person when being photographed under section 3 ; and

(f) the preservation, safe custody, destruction and disposal of records of measurements and photographs.

Bar of suits.

9. No suit or other proceeding shall lie against any person for anything done, or intended to be done, in good faith under this Act or under any rule made thereunder.

THE COCHIN CARRIERS ACT,
(XVI OF 1112).

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title, extent and commencement.
2. Interpretation clause.
3. Carriers not to be liable for loss of certain goods above one hundred rupees in value, unless delivered as such.
4. For carrying such property, payment may be required at rates fixed by carrier.
5. The person entitled to recover in respect of property lost or damaged may also recover money paid for its carriage.
6. In respect of what property liability of carrier not limited or affected by public notice. Carriers, with certain exceptions, may limit liability by special contract.
7. Common carrier liable for loss or damage caused by neglect or fraud of himself or his agent.
8. Plaintiffs, in suits for loss, damage or non-delivery, not required to prove negligence or criminal act.
9. Notice of loss or injury to be given within six months.
10. Power to add to the Schedule.
11. Savings.
Schedule.

THE COCHIN CARRIERS [ACT],
(XVI OF 1112.)

AN ACT RELATING TO THE RIGHTS AND LIABILITIES
OF COMMON CARRIERS.

*Passed by His Highness the Maharaja of Cochin on the
11th day of Dhanu 1112 corresponding to the
25th day of December 1936.*

Whereas it is expedient not only to enable common carriers to limit their liability for loss of or damage to

Preamble.

1. Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

property delivered to them to be carried but also to declare their liability for loss of or damage to such property occasioned by the negligence or criminal acts of themselves, their servants or agents; It is enacted as follows:—

Short title,
extent and
commence-
ment.

1. This Act may be called "The Cochin Carriers Act, XVI of 1112." It shall extend to the whole of Cochin and shall come into force at once.

Interpreta-
tion clause.

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

"Common
carrier".

"Common carrier" denotes a person, other than the Government, engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately:

"Person".

"Person" includes any association or body of persons, whether incorporated or not.

Carriers not
to be liable
for loss of
certain goods
above one
hundred
rupees in
value, unless
delivered as
such.

3. No common carrier shall be liable for the loss of or damage to property delivered to him to be carried exceeding in value one hundred rupees and of the description contained in the schedule to this Act, unless the person delivering such property to be carried, or some person duly authorised in that behalf, shall have expressly declared to such carrier or his agent the value and description thereof.

For carrying
such pro-
perty, pay-
ment may be
required at
rates fixed
by carrier.

4. Every such carrier may require payment for the risk undertaken in carrying property exceeding in value one hundred rupees and of the description aforesaid, at such rate of charge as he may fix:

Proviso.

Provided that, to entitle such carrier to payment at a rate higher than his ordinary rate of charge, he shall have caused to be exhibited in the place where he carries on the business of receiving property to be carried, notice of the higher rate of charge required, printed or written in English and in Malayalam.

5. In case of the loss or damage to property exceeding in value one hundred rupees and of the description aforesaid, delivered to such carrier to be carried, when the value and description thereof shall have been declared and payment shall have been required in manner provided for by this Act, the person entitled to recover in respect of such loss or damage shall also be entitled to recover any money actually paid to such carrier in consideration of such risks as aforesaid.

The person entitled to recover in respect of property lost or damaged may also recover money paid for its carriage.

6. The liability of any common carrier for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the Schedule to this Act, shall not be deemed to be limited or affected by any public notice; but any such carrier may, by special contract, signed by the owner of such property so delivered as last aforesaid or by some person duly authorised in that behalf by such owner, limit his liability in respect of the same.

In respect of what property liability of carrier not limited or affected by public notice. Carriers, with certain exceptions, may limit liability by special contract.

7. Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for the loss of or damage to any property delivered to such carrier to be carried where such loss or damage shall have arisen from the criminal act of the carrier or any of his agents or servants and shall also be liable to the owner for loss or damage to any such property, other than property to which the provisions of section 3 apply and in respect of which the declaration required by that section has not been made, where such loss or damage has arisen from the negligence of the carrier or any of his agents or servants.

Common carrier liable for loss or damage caused by neglect or fraud of himself or his agent.

8. In any suit brought against a common carrier for the loss, damage or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents.

Plaintiffs, in suits for loss, damage or non-delivery, not required to prove negligence or criminal act.

9. No suit shall be instituted against a common carrier for the loss of, or injury to goods entrusted to him for carriage, unless notice in writing of the loss or injury

Notice of loss or injury to be given within six months.

has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff.

Power to
add to the
Schedule.

10. Government may, by notification in the Cochin Government Gazette, add to the list of articles contained in the Schedule to this Act, and the Schedule shall, on the issue of any such notification, be deemed to have been amended accordingly.

11. Nothing in this Act regarding the responsibility of common carriers with respect to the carriage of animals or goods, shall affect the responsibility of a railway administration as defined in section 37 of Act XI of 1111.

Schedule.

Gold and silver coin.

Gold and silver in a manufactured or unmanufactured state.

Precious stones and pearls.

Jewellery.

Time-pieces of any description.

Trinkets.

Bills and hundies.

Currency notes of the Government of India, or notes of any Banks, or securities for payment of money, English or Foreign.

Stamps and stamped paper.

Maps, prints, and works of art.

Writings.

Title-deeds.

Gold or silver plate or plated articles.

Glass.

China.

Silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials.

Shawls and lace.

Cloths and tissues embroidered with the precious metals or of which such metals form part.

Articles of ivory, ebony or sandalwood.

THE COCHIN DOCK LABOURERS ACT,
(XVII OF 1112.)

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title, extent, commencement and application.
2. Definitions.
3. Inspectors.
4. Powers of Inspectors.
5. Power of Government to make rules.
6. Power of Government to make other rules.
7. General provisions relating to rules.
8. Abstracts of Act and Rules to be conspicuously posted.
9. Penalties.
10. Provisions relating to jurisdiction.
11. Power to exempt.
12. Protection to persons acting under this Act.

THE COCHIN DOCK LABOURERS [ACT],
(XVII OF 1112.)

*Passed by His Highness the Maharaja of Cochin on the
11th day of Dhanu 1112, corresponding to the
25th day of December 1936.*

Whereas it is deemed expedient to make provisions for the protection against accidents of workers employed in loading or unloading ships; It is hereby enacted as follows :—

(1) This Act may be called " The Cochin Dock Labourers Act, XVII of 1112".

(2) It extends to the whole of Cochin State.

Preamble.

Short title,
extent, com-
mencement
and appli-
cation.

-
1. Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

(3) It shall come into force on such date as the Government may, by notification in the Cochin Government Gazette, appoint.

(4) It shall not apply to any ship of war of any nationality.

Definitions.

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

(a) “the processes” includes all work which is required for or is incidental to the loading or unloading of cargo or fuel into or from a ship and is done on board the ship or alongside it ; and

(b) “worker” means any person employed in the processes.

Inspectors.

3. (1) The Government may, by notification in the Cochin Government Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act within such local limits as it may assign to them respectively.

(2) Every inspector shall be deemed to be a public servant within the meaning of the Cochin Penal Code, and shall be officially subordinate to such authority as the Government may direct.

Powers of Inspectors.

4. Subject to any rules made in this behalf under section 6, an Inspector may, within the local limits for which he is appointed—

(a) enter, with such assistants (if any) as he thinks fit, any premises or ship where the processes are carried on ;

(b) make such examination of the premises or ship and the machinery and gear, fixed or loose, used for the processes, and of any prescribed registers and notices, and take on the spot or otherwise such evidence of any person as he may deem necessary for carrying out the purposes of this Act ; and

(c) exercise any other powers which may be conferred upon him by the rules made under section 5.

5. (1) The Government may make rules—

Power of
Government
to make
rules.

(a) providing for the safety of working places on shore and of any regular approaches over a dock, wharf, quay or similar premises which workers have to use for going to or from a working place at which the processes are carried on, and for the lighting and fencing of such places and approaches ;

(b) prescribing the nature of the means of access which shall be provided for the use of workers proceeding to or from a ship which is lying alongside a quay, hulk or other vessel ;

(c) prescribing the measures to be taken to ensure the safe transport of workers proceeding to or from a ship by water and the conditions to be complied with by the vessels used for the purpose ;

(d) prescribing the nature of the means of access to be provided for the use of the workers from the deck of a ship to a hold in which the processes are carried on ;

(e) prescribing the measures to be taken to protect hatchways accessible to the workers and other openings in a deck which might be dangerous to them ;

(f) providing for the efficient lighting of the means of access to ships on which the processes are carried on and of all places on board at which the workers are employed or to which they may be required to proceed ;

(g) providing for the safety of the workers engaged in removing or replacing hatch coverings and beams used for hatch coverings ;

(h) prescribing the measures to be taken to ensure that no hoisting machine, or gear, whether fixed or loose, used in connection therewith, is employed in the processes on shore or on board ship unless it is in a safe working condition ;

(i) providing for the fencing of machinery, live electric conductors and steam pipes ;

(j) regulating the provision of safety appliances on derricks, cranes and winches ;

(k) prescribing the precautions to be observed in regard to exhaust and live steam ;

(l) requiring the employment of competent and reliable persons to operate lifting or transporting machinery used in the processes, or to give signals to a driver of such machinery, or to attend to cargo falls on winch ends or winch drums, and providing for the employment of a signaller where this is necessary for the safety of the workers ;

(m) prescribing the measures to be taken in order to prevent dangerous methods of working in the stacking, unstacking, stowing and unstowing of cargo, or handling in connection therewith ;

(n) prescribing the precautions to be taken to facilitate the escape of the workers when employed in a hold or between decks in dealing with coal or other bulk cargo ;

(o) prescribing the precautions to be observed in the use of stages and trucks ;

(p) prescribing the precautions to be observed when the workers have to work where dangerous or noxious goods are, or have been stowed, or have to deal with or work in proximity to such goods ;

(q) providing for the rendering of first-aid to injured workers and removal to the nearest place of treatment ;

(r) prescribing the provision to be made for the rescue of immersed workers from drowning ;

(s) prescribing the abstracts of this Act and of the rules required by section 8 ;

(t) providing for the submission of notices of accidents and dangerous occurrences and prescribing the forms of such notices, the persons and authorities to whom they are to be furnished, the particulars to be contained in them and the time within which they are to be submitted;

(u) specifying the persons and authorities who shall be responsible for compliance with rules made under this Act;

(v) defining the circumstances in which and conditions subject to which exemptions from any of the rules made under this section may be given, specifying the authorities who may grant such exemptions and regulating their procedure;

(w) defining the additional powers which Inspectors may exercise under clause (c) of section 4; and

(x) providing generally for the safety of workers.

(2) Rules made under this section may make special provision to meet the special requirements of any particular port or ports.

(3) In making a rule under this section, the Government may direct that a breach of it shall be punishable with fine which may extend to five hundred rupees, and when the breach is a continuing breach, with a further fine which may extend to twenty rupees for every day after the first during which the breach continues.

6. The Government may further make rules regulating—

Power of Government to make other rules.

(a) the inspection of premises or ships where the processes are carried on; and

(b) the manner in which Inspectors are to exercise the powers conferred on them by this Act.

7. (1) The power to make rules conferred by sections 5 and 6 is subject to the condition of the rules being made after previous publication.

General provisions relating to rules.

(2) Rules shall be published in the Cochin Government Gazette.

Abstracts
of Act
and Rules to
be conspicu-
ously posted.

8. There shall be affixed in some conspicuous place near the main entrance of every dock, wharf, quay or similar premises where the processes are carried on, in English and in the language of the majority of the workers, the abstracts of this Act and of the rules made thereunder.

Penalties.

9. Any person who—

(a) wilfully obstructs an Inspector in the exercise of any power under section 4, or fails to produce on demand by an Inspector any registers or other documents kept in pursuance of the rules made under this Act, or any gear, fixed or loose, used for the processes, or conceals or prevents or attempts to prevent any person from appearing before, or being examined by, an Inspector, or

(b) unless duly authorised, or in case of necessity, removes any fencing, gangway, gear, ladder, life-saving means or appliance, light, mark, stage or other thing required to be provided by or under the rules made under this Act, or

(c) having in case of necessity removed any such fencing, gangway, gear, ladder, life-saving means or appliance, light, mark, stage or other thing, omits to restore it at the end of the period for which its removal was necessary,

shall be punishable with fine which may extend to five hundred rupees.

Provisions
relating to
jurisdiction.

10. (1) No Court inferior to that of a District Magistrate or a Magistrate of the first class shall try any offence under this Act or the rules made thereunder.

(2) No prosecution for any offence under this Act or the rules made thereunder shall be instituted except by or with the previous sanction of an Inspector.

(3) No Court shall take cognizance of any offence under this Act or the rules made thereunder, unless complaint thereof is made within six months of the date of which the offence is alleged to have been committed.

11. The Government may, by notification in the Cochin Government Gazette, exempt from all or any of the provisions of this Act and of the rules made thereunder, on such conditions, if any, as it thinks fit—

Power to exempt.

(a) any port or place, dock, wharf, quay or similar premises at which the processes are only occasionally carried on or the traffic is small and confined to small ships, or

(b) any specified ship or class of ship.

12. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Protection to persons acting under this Act.

THE COCHIN EASEMENTS ACT,

(XXII OF 1112.)

CONTENTS.

PREAMBLE.

PRELIMINARY.

SECTIONS.

1. Short title.
Local extent.
Commencement.
2. Savings.
3. Repeal of sections 2 (5), 27 and 28 of Act, XII of 1112.

CHAPTER I.

OF EASEMENTS GENERALLY.

4. "Easement" defined.
Dominant and servient heritages and owners.

SECTIONS.

5. Continuous and discontinuous, apparent and non-apparent, easements.
6. Easement for limited time or on condition.
7. Easements restrictive of certain rights.
 - (a) Exclusive right to enjoy.
 - (b) Rights to advantages arising from situation.

CHAPTER II.

THE IMPOSITION, ACQUISITION AND TRANSFER
OF EASEMENTS.

8. Who may impose easements.
9. Servient owners.
10. Lessor and mortgagor.
11. Lessee.
12. Who may acquire easements.
13. Easements of necessity and *quasi*-easements.
14. Direction of way of necessity.
15. Acquisition by prescription.
16. Exclusion in favour of reversioner of servient heritage.
17. Rights which cannot be acquired by prescription.
18. Customary easements.
19. Transfer of dominant heritage passes easement.

CHAPTER III.

THE INCIDENTS OF EASEMENTS.

20. Rules controlled by contract or title.
Incidents of customary easements.
21. Bar to use unconnected with enjoyment.
22. Exercise of easement.
Confinement of exercise of easement.
23. Right to alter mode of enjoyment.
24. Right to do acts to secure enjoyment.
Accessory rights.
25. Liability for expenses necessary for preservation of easement.
26. Liability for damage from want of repair.

SECTIONS.

27. Servient owner not bound to do anything.
28. Extent of easements.
Easement of necessity.
Other easements—
 - (a) right of way;
 - (b) right to light or air acquired by grant;
 - (c) proscriptive right to light or air;
 - (d) prescriptive right to pollute air and water;
 - (e) other prescriptive rights.
29. Increase of easement.
30. Partition of dominant heritage.
31. Obstruction in case of excessive user.

CHAPTER IV.

THE DISTURBANCE OF EASEMENTS.

32. Right to enjoyment without disturbance.
33. Suit for disturbance of easement.
34. When cause of action arises for removal of support.
35. Injunction to restrain disturbance.
36. Abatement of obstruction of easement.

CHAPTER V.

THE EXTINCTION, SUSPENSION AND REVIVAL
OF EASEMENTS.

37. Extinction by dissolution of right of servient owner.
38. Extinction by release.
39. Extinction by revocation.
40. Extinction on expiration of limited period or happening of dissolving condition.
41. Extinction on termination of necessity.
42. Extinction of useless easement.
43. Extinction by permanent change in dominant heritage.
44. Extinction on permanent alteration of servient heritage by superior force.
45. Extinction by destruction of either heritage.
46. Extinction by unity of ownership.
47. Extinction by non-enjoyment.

SECTIONS.

48. Extinction of accessory rights.
49. Suspension of easement.
50. Servient owner not entitled to require continuance. Compensation for damage caused by extinguishment.
51. Revival of easements.

CHAPTER VI.

LICENSES.

52. "License" defined.
53. Who may grant license
54. Grant may be express or implied.
55. Accessory licenses annexed by law.
56. License when transferable.
57. Grantor's duty to disclose defects.
58. Grantor's duty not to render property unsafe.
59. Grantor's transferee not bound by license.
60. License when revocable.
61. Revocation express or implied.
62. License when deemed revoked.
63. Licensee's rights on revocation.
64. Licensee's rights on eviction.

THE COCHIN EASEMENTS ' [ACT],
(XXII OF 1112.)

AN ACT TO DEFINE AND AMEND THE LAW RELATING
TO EASEMENTS AND LICENSES.

*Passed by His Highness the Maharaja of Cochin on the
27th day of February 1937, corresponding to the
16th day of Kumbham 1112.*

Preamble.

Whereas it is expedient to define and amend the law relating to Easements and Licenses ; It is hereby enacted as follows :—

-
1. Substituted for 'Regulation' throughout the enactmen
by Proclamation V of 1112.

PRELIMINARY.

1. This Act may be called “ The Cochin Easements Act, XXII of 1112 ” ; Short title.

It extends to the whole of Cochin and it shall come into force at once. Local Extent and commencement.

2. Nothing herein contained shall be deemed to affect any law not hereby expressly repealed; or to derogate from— Saving.

(a) any right of the Government to regulate the collection, retention and distribution of the water of rivers and streams flowing in natural channels, and of natural lakes and ponds, or of the water flowing, collected, retained or distributed in or by any channel or other work constructed at the public expense for irrigation ;

(b) any customary or other right (not being a license) in or over immovable property which the Government, the public or any person may possess irrespective of other immovable property ; or

(c) any right acquired, or arising out of a relation created before this Act comes into force.

3. Sections 27 and 28 of the Cochin Limitation Act, XII of 1112 and the definition of “ Easement ” contained in that Act are repealed. All references in any Act to sections 27 and 28 of ¹ Act II of 1079 shall be read as made to sections fifteen and sixteen of this Act. Repeal of sections 2(5), 27 and 28 of Act, XII of 1112.

CHAPTER I.

OF EASEMENTS GENERALLY.

4. An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own. “Easement” defined.

1. The Cochin Limitation Act, II of 1079 was repealed by the new Limitation Act, XII of 1112.

Dominant
and servient
heritages and
owners.

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation.—In the first and second clauses of this section, the expression “land” includes also things permanently attached to the earth: the expression “beneficial enjoyment” includes also possible convenience, remote advantage, and even a mere amenity; and the expression “to do something” includes removal and appropriation by the dominant owner for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon. •

Illustrations.

(a) A, as the owner of a certain house has a right of way thither over his neighbour B’s land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(b) A, as the owner of a certain house, has the right to go on his neighbour B’s land, and to take water for the purposes of his house-hold out of a spring therein. This is an easement.

(c) A, as the owner of a certain house, has the right to conduct water from B’s stream to supply the fountains in the garden attached to the house. This is an easement.

(d) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B’s field, or to take, for the purpose of being used in the house, by himself, his family, guests, lodgers and servants, water or fish out of C’s tank, or timber out of D’s wood, or to use, for the purpose of manuring his land, the leaves which have fallen from the trees on E’s land. These are easements.

(e) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. This right is not an easement.

(f) A is bound to cleanse a watercourse running through his land and keep it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement.

5. Easements are either continuous or discontinuous, apparent or non-apparent.

Continuous and discontinuous, apparent and non-apparent, easements.

A continuous easement is one whose enjoyment is, or may be, continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him.

A non-apparent easement is one that has no such sign.

Illustrations.

(a) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A. This is a continuous easement.

(b) A right of way annexed to A's house over B's land. This is a discontinuous easement.

(c) Rights annexed to A's land to lead water thither across B's land by an aqueduct and to draw off water thence by a drain. The drain would be discovered upon careful inspection by a person conversant with such matters. These are apparent easements.

(d) A right annexed to A's house to prevent B from building on his own land. This is a non-apparent easement.

6. An easement may be permanent, or for a term of years or other limited period, or subject to periodical interruption, or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified Act.

Easement for limited time or on condition.

7. Easements are restrictions of one or other of the following rights (namely):—

Easements restrictive of certain rights.

Exclusive
right to
enjoy.

(a) The exclusive right of every owner of immovable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto.

Rights to
advantages
arising from
situation.

(b) The right of every owner of immovable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Illustrations of the Rights above referred to.

(a) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force.

(b) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons.

(c) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person.

(d) The right of every owner of land to so much light and air as pass vertically thereto.

(e) The right of every owner of land, that such land, in its natural condition, shall have the support naturally rendered by the subjacent soil of another person.

Explanation.—Land is in its natural condition when it is not excavated and not subjected to artificial pressure; and the “subjacent and adjacent soil” mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition.

(f) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over or through his land shall not, before so passing or percolating, be unreasonably polluted by other persons.

(g) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel.

(h) The right of every owner of land that the water of every natural stream which passes by, through or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature; the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(i) The right of every owner of upper land that water naturally rising in, or falling on, such land, and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.

(j) The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating such land, and for the purposes of any manufactory situate thereon, provided that he does not thereby cause material injury to other like owners.

Explanation.—A natural stream is a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or under-ground, which flows by the operation of nature only and in a natural and known course.

CHAPTER II.

THE IMPOSITION, ACQUISITION & TRANSFER OF EASEMENTS.

8. An easement may be imposed by any one in the circumstances, and to the extent, in and to which he may transfer his interest in the heritage on which the liability is to be imposed.

Who may
impose
easements.

Illustrations.

(a) A is tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. A may impose an easement on the land to continue during the time that the lease exists or for any shorter period.

(b) A is tenant for his life of certain land with remainder to B absolutely. A cannot, unless with B's consent, impose an easement thereon which will continue after the determination of his life-interest.

(c) A, B and C are co-owners of certain land. A cannot without the consent of B and C, impose an easement on the land or on any part thereof.

(d) A and B are lessees of the same lessor, A of a field X for a term of five years, and B of a field Y for a term of ten years. A's interest under his lease is transferable; B's is not. A may impose on X, in favour of B, a right of way terminable with A's lease.

Servient
owners.

9. Subject to the provisions of section eight, a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility,

Illustrations.

(a) A has, in respect of his mill, a right to the uninterrupted flow thereto, from sunrise to noon, of the water of B's stream. B may grant to C the right to divert the water of the stream from noon to sunset: provided that A's supply is not thereby diminished.

(b) A has, in respect of his house, a right of way over B's land. B may grant to C, as the owner of a neighbouring farm, the right to feed his cattle on the grass growing on the way: provided that A's right of way is not thereby obstructed.

Lessor and
mortgagor.

10. Subject to the provisions of section eight, a lessor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property, unless it be to take effect on the termination of the lease or the redemption of the mortgage.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

11. No lessee or other person having a derivative interest may impose on the property held by him as such an easement to take effect after the expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor. Lessee.

12. An easement may be acquired by the owner of the immovable property for the beneficial enjoyment of which the right is created, or, on his behalf, by any person in possession of the same. Who may acquire easements.

One of two or more co-owners of immovable property may, as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property.

No lessee of immovable property can acquire, for the beneficial enjoyment of other immovable property of his own, an easement in or over the property comprised in his lease.

13. Where one person transfers or bequeaths immovable property to another,— Easements of necessity and quasi-easements.

(a) if an easement in other immovable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement ; or

(b) if such an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement ;

(c) if an easement in the subject of the transfer or bequest is necessary for enjoying other immovable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or

(d) if such an easement is apparent and continuous and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

Where a partition is made of the joint property of several persons,—

(e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement, or

(f) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

The easements mentioned in this section clauses (a), (c) and (e), are called easements of necessity.

Where immovable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee.

Illustrations.

(a) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold.

(b) A, the owner of two fields, sells one to B, and retains the other. The field retained was at the date of the sale used for agricultural purposes only and is inaccessible

except by passing over the field sold to B. A is entitled to a right of way, for agricultural purposes only, over B's field to the field retained.

(c) A sells B a house with windows overlooking A's land, which A retains. The light which passes over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. B is entitled to the light, and A cannot afterwards obstruct it by building on his land.

(d) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C. Here C cannot obstruct the light by building on the land, for he takes it subject to the burdens to which it was subject in A's hands.

(e) A is owner of a house and adjoining land. The house has windows overlooking the land. A simultaneously sells the house to B and the land to C. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. Here A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(f) A is the owner of a house and adjoining land. The house has windows overlooking the land. A, retaining the house, sells the land to B, without expressly reserving any easement. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. A is entitled to the light, and B cannot build on the land so as to obstruct such light.

(g) A, the owner of a house, sells B a factory built on adjoining land. B is entitled, as against A, to pollute the air, when necessary, with smoke and vapours from the factory.

(h) A, the owner of two joining houses, Y and Z, sells Y to B, and retains Z. B is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and A is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(i) A, the owner of two adjoining buildings, sells one to B, retaining the other. B is entitled to a right to

lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(j) A, the owner of two adjoining buildings, sells one to B, and the other to C. C is entitled to lateral support from B's building, and B is entitled to lateral support from C's building.

(k) A grants lands to B for the purpose of building a house thereon. B is entitled to such amount of lateral and subjacent support from A's land as is necessary for the safety of the house.

(l) Under the Land Acquisition Act, 1970, a Railway Company compulsorily acquires a portion of B's land for the purpose of making a siding. The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

(m) Owing to the partition of joint property, A becomes the owner of an upper room in a building, and B becomes the owner of the portion of the building immediately beneath it. A is entitled to such amount of vertical support from B's portion as is essential for the safety of the upper room.

(n) A lets a house and grounds to B for a particular business. B has no access to them other than by crossing A's land. B is entitled to a right of way over that land suitable to the business to be carried on by B in the house and grounds.

Direction
of way of
necessity.

14. When a right to a way of necessity is created under section thirteen, the transferor, the legal representative of the testator, or the owner of the share over which the right is exercised, as the case may be, is entitled to set out the way; but it must be reasonably convenient for the dominant owner.

When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out.

Acquisition
by pres-
cription.

15. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years,

and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support or other easement shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation I.—Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II.—Nothing is an interruption within the meaning of this section, unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorising the same to be made.

Explanation III.—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV.—In the case of an easement to pollute water, the said period of twenty years begins when

the pollution first prejudices perceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to Government this section shall be read as if for the words "twenty years," the words "sixty years" were substituted.

Illustrations.

(a) A suit is brought in 1883 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him claiming title thereto as an easement and as of right, without interruption, from 1st January, 1862, to 1st January, 1882. The plaintiff is entitled to judgment.

(b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that for a year of that time the plaintiff was entitled to possession of the servient heritage as lessee thereof and enjoyed the right as such lessee. The suit shall be dismissed, for the right of way has not been enjoyed "as an easement" for twenty years.

(c) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had admitted that the user was not of right and asked his leave to enjoy the right. The suit shall be dismissed for the right of way has not been enjoyed "as of right" for twenty years.

Exclusion in favour of reversioner of servient heritage.

16. Provided that, when any land upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C had a life-interest in the land; that on C's death B became entitled to the land; and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

17. Easements acquired under section fifteen are said to be acquired by prescription, and are called prescriptive rights.

Rights which cannot be acquired by prescription.

None of the following rights can be so acquired :—

(a) a right which would tend to the total destruction of the subject of the right, or the property on which, if the acquisition were made, liability would be imposed ;

(b) a right to the free passage of light or air to an open space of ground ;

(c) a right to surface-water not flowing in a stream and not permanently collected in a pool, tank or otherwise;

(d) a right to underground water not passing in a defined channel.

18. An easement may be acquired in virtue of a local custom. Such easements are called customary easements.

Customary easements.

Illustrations.

(a) By the custom of a certain village every cultivator of village land is entitled, as such, to graze his cattle on the common pasture. A having become the tenant of a plot of uncultivated land in the village breaks up and cultivates that plot. He thereby acquires an easement to graze his cattle in accordance with the custom.

(b) By the custom of a certain town no owner or occupier of a house can open a new window therein so as substantially to invade his neighbour's privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new windows in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect to A's house.

Transfer of dominant heritage passes easement.

19. Where the dominant heritage is transferred or devolves, by act of parties or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place.

Illustration.

A has certain land to which a right of way is annexed. A lets the land to B for twenty years. The right of way vests in B and his legal representative so long as the lease continues.

CHAPTER III.

THE INCIDENTS OF EASEMENTS.

Rules controlled by contract or title.

20. The rules contained in this chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument or decree, if any, by which the easement referred to was imposed.

Incidents of customary easements.

And when any incident of any customary easement is inconsistent with such rules, nothing in this chapter shall affect such incident.

Bar to use unconnected with enjoyment.

21. An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage.

Illustrations.

(a) A, as owner of a farm Y, has a right of way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z.

(b) A, as owner of a certain house, has a right of way to and from it. For the purpose of passing to and from the house, the right may be used, not only by A, but by the members of his family, his guests, lodgers, servants, workmen, visitors and customers; for this is a purpose connected with the enjoyment of the dominant heritage. So, if A lets the house, he may use the right of way for the purpose of collecting the rent and seeing that the house is kept in repair

22. The dominant owner must exercise his right in the mode which is least onerous to the servient owner; and when the exercise of an easement can without detriment to the dominant owner be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined.

Exercise of easement.

Confinement of exercise of easement.

Illustrations.

(a) A has a right of way over B's fields. A must enter the way at either end and not at any intermediate point.

(b) A has a right annexed to his house to cut thatching-grass in B's swamp. A, when exercising his easement, must cut the grass so that the plants may not be destroyed.

23. Subject to the provisions of section twenty-two, the dominant owner may, from time to time, alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional burden on the servient heritage.

Right to alter mode of enjoyment.

Exception.—The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

Illustrations.

(a) A, the owner of a saw-mill, has a right to a flow of water sufficient to work the mill. He may convert the saw-mill, into a corn-mill, provided that it can be worked by the same amount of water.

(b) A has a right to discharge on B's land the rain-water from the eaves of A's house. This does not entitle A to advance his eaves if, by so doing, he imposes a greater burden on B's land.

(c) A, as the owner of a paper-mill, acquires a right to pollute a stream by pouring in the refuse-liquor produced by making in the mill paper from rags. He may pollute the stream by pouring in similar liquor produced by making in the mill paper by a new process from bamboos, provided that he does not substantially increase the amount, or injuriously change the nature of the pollution.

(d) A, riparian owner, acquires as against the lower riparian owners, a prescriptive right to pollute a stream by throwing sawdust into it. This does not entitle A to pollute the stream by discharging into it poisonous liquor.

Right to do acts to secure enjoyment.

24. The dominant owner is entitled, as against the servient owner, to do all acts necessary to secure the full enjoyment of the easement¹; but such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible; and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage.

Accessory rights.

Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights.

Illustrations.

(a) A has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state.

(b) A has an easement of a drain through B's land. The sewer with which the drain communicates is altered. A may enter upon B's land and alter the drain, to adapt it to the new sewer, provided that he does not thereby impose any additional burden on B's land.

(c) A, as owner of a certain house, has a right of way over B's land. The way is out of repair, or a tree is blown down and falls across it. A may enter on B's land and repair the way or remove the tree from it.

(d) A, as owner of a certain field, has a right of way over B's land. B renders the way impassable. A may deviate from the way and pass over the adjoining land of B, provided that the deviation is reasonable.

(e) A, as owner of a certain house, has a right of way over B's field. A may remove rocks to make the way.

(f) A has an easement of support from B's wall. The wall gives way. A may enter upon B's land and repair the wall.

1. As to abatement of obstruction of easement, see s. 36 *infra*.

(g) A has an easement to have his land flooded by means of a dam in B's stream. The dam is half swept away by an inundation. A may enter upon B's land and repair the dam.

25. The expenses incurred in constructing works, or making repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

Liability for expenses necessary for preservation of easement.

26. Where an easement is enjoyed by means of an artificial work, the dominant owner is liable to make compensation for any damage to the servient heriitage arising from the want of repair of such work.¹

Liability for damage from want of repair.

27. The servient owner is not bound to do anything for the benefit of the dominant heritage, and he is entitled, as against the dominant owner, to use the servient heritage in any way consistent with the enjoyment of the easement; but he must not do any act tending to restrict the easement or to render its exercise less convenient.

Servient owner not bound to do anything.

Illustrations.

(a) A, as owner of a house, has a right to lead water and send sewage through B's land. B is not bound as servient owner to clear the watercourse or scour the sewer.

(b) A grants a right of way through his land to B as owner of a field. A may feed his cattle on grass growing on the way, provided that B's right of way is not thereby obstructed; but he must not build a wall at the end of his land so as to prevent B from going beyond it, nor must he narrow the way so as to render the exercise of the right less easy than it was at the date of the grant.

(c) A, in respect of his house, is entitled to an easement of support from B's wall. B is not bound as servient owner to keep the wall standing and in repair. But he must not pull down or weaken the wall so as to make it incapable of rendering the necessary support.

(d) A, in respect of his mill, is entitled to a watercourse through B's land. B must not drive stakes so as to obstruct the watercourse.

1. As to extinguishment or suspension of easement, See s. 50, *infra*.

(e) A, in respect of his house, is entitled to a certain quantity of light passing over B's land. B must not plant tree so as to obstruct the passage to A's windows of that quantity of light.

Extent of easements.

28. With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect:—

Easement of necessity.

An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed.

Other easements.

The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties, and the purpose for which the right was imposed or acquired.

In the absence of evidence as to such intention and purpose—

Right of way.

(a) a right of way of any one kind does not include a right of way of any other kind:

Right to light or air acquired by grant.

(b) the extent of a right to the passage of light or air to a certain window, door or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died or non-testamentary instrument was made :

Prescriptive right to light or air.

(c) the extent of a prescriptive light to the passage of light or air to a certain window, door or other opening is that quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period irrespectively of the purposes for which it has been used :

Prescriptive right to pollute air and water.

(d) the extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose : and

Other prescriptive rights.

(e) the extent of every other prescriptive right and the mode of its enjoyment must be determined by the accustomed user of the right.

29. The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement. Increase of easement.

Where an easement has been granted or bequeathed so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately increased and if the dominant heritage is diminished by diluvion, the easement is proportionately diminished.

Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage.

Illustrations.

(a) A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream. A alters the machinery of his mill. He cannot thereby increase his right to divert water.

(b) A has acquired an easement to pollute a stream by carrying on a manufacture on its banks by which a certain quantity of foul matter is discharged into it. A extends his works and thereby increases the quantity discharged. He is responsible to the lower riparian owners for injury done by such increase.

(c) A, as the owner of a farm, has a right to take, for the purpose of manuring his farm, leaves which have fallen from the trees on B's land. A buys a field and unites it to his farm. A is not thereby entitled to take leaves to manure this field.

30. Where a dominant heritage is divided between two or more persons, the easement becomes annexed to each of the shares, but not so as to increase substantially the burden of the servient heritage: provided that such annexation is consistent with the terms of the instrument, decree or revenue proceeding (if any) under which the division was made, and in the case of prescriptive rights, with the user during the prescriptive period. Partition of dominant heritage.

Illustrations.

(a) A house to which a right of way by a particular path is annexed is divided into two parts, one of which is granted to A, the other to B. Each is entitled, in respect of his part, to a right of way by the same path.

(b) A house to which is annexed the right of drawing water from a well to the extent of fifty buckets a day is divided into two distinct heritages, one of which is granted to A, the other to B. A and B are each entitled, in respect of his heritage, to draw from the well fifty buckets a day; but the amount drawn by both must not exceed fifty buckets a day.

(c) A, having in respect of his house an easement of light, divides the house into three distinct heritages. Each of these continues to have the right to have its windows unobstructed.

Obstruction
in case of
excessive
user.

31. In the case of excessive user of an easement the servient owner may, without prejudice to any other remedies to which he may be entitled, obstruct the user, but only on the servient heritage: provided that such user cannot be obstructed when the obstruction would interfere with the lawful enjoyment of the easement.

Illustration.

A, having a right to the free passage over B's land of light to four windows six feet by four, increases their size and number. It is impossible to obstruct the passage of light to the new windows without also obstructing the passage of light to the ancient windows. B cannot obstruct the excessive user.

CHAPTER IV.

THE DISTURBANCE OF EASEMENTS.

Right to
enjoyment
without
disturbance.

32. The owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person.

Illustration.

A, as owner of a house, has a right of way over B's land. C unlawfully enters on B's land, and obstructs A in his right of way. A may sue C for compensation, not for the entry, but for the obstruction.

33. The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto : provided that the disturbance has actually caused substantial damage to the plaintiff. Suit for disturbance of easement.

Explanation I.—The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and section thirty-four.

Explanation II.—Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section, unless it falls within the first Explanation, or interferes materially with the physical comfort of the plaintiff, or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to instituting the suit.

Explanation III.—Where the easement disturbed is a right to the free passage of air to the openings in a house, damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health.

Illustrations.

(a) A places a permanent obstruction in a path over which B, as tenant of C's house, has a right of way. This is substantial damage to C, for it may affect the evidence of his reversionary right to the easement.

(b) A, as owner of a house, has a right to walk along one side of B's house. B builds a verandah overhanging the way about ten feet from the ground, and so as not to occasion any inconvenience to foot-passengers using the way. This is not substantial damage to A.

When cause of action arises for removal of support.

34. The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation, unless and until substantial damage¹ is actually sustained.

Injunction to restrain disturbance.

35. Subject to the provisions of the Cochin Specific Relief Act, IV of 1097, sections 45 to 50 (both inclusive), an injunction may be granted to restrain the disturbance of an easement—

(a) if the easement is actually disturbed,—when compensation for such disturbance might be recovered under this chapter :

(b) if the disturbance is only threatened or intended,—when the act threatened or intended must necessarily, if performed, disturb the easement.

Abatement of obstruction of easement.

36. Notwithstanding the provisions of section twenty-four, the dominant owner cannot himself abate a wrongful obstruction of an easement.

CHAPTER V.

THE EXTINCTION, SUSPENSION AND REVIVAL OF EASEMENTS.

Extinction by dissolution of right of servient owner.

37. When, from a cause which preceded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient heritage, the easement is extinguished.

Exception.—Nothing in this section applies to an easement lawfully imposed by a mortgagor in accordance with section ten.

Illustrations.

(a) A transfers Sultanpur to B on condition that he does not marry C. B imposes an easement on Sultanpur. Then B marries C. B's interest on Sultanpur ends, and with it the easement is extinguished.

1. As to meaning of "substantial damage," see s. 33, Expl. I, *supra*.

(b) A, in 1860, lets Sultanpur to B for thirty years from the date of the lease. B, in 1861, imposes an easement on the land in favour of C, who enjoys the easement peaceably and openly as an easement without interruption for twenty-nine years. B's interest in Sultanpur then ends, and with it C's easement.

(c) A and B, tenants of C, have permanent transferable interests in their respective holdings. A imposes on his holding an easement to draw water from a tank for the purpose of irrigating B's land. B enjoys the easement for twenty years. Then A's rent falls into arrear and his interest is sold. B's easement is extinguished.

(d) A mortgages Sultanpur to B, and lawfully imposes an easement on the land in favour of C in accordance with the provisions of section ten. The land is sold to D in satisfaction of the mortgage-debt. The easement is not thereby extinguished.

38. An easement is extinguished when the dominant owner releases it, expressly or impliedly, to the servient owner. Extinction
by release.

Such release can be made only in the circumstances and to the extent in and to which the dominant owner can alienate the dominant heritage.

An easement may be released as to part only of the servient heritage.

Explanation I.—An easement is impliedly released—

(a) where the dominant owner expressly authorizes an act of a permanent nature to be done on the servient heritage, the necessary consequence of which is to prevent his future enjoyment of the easement, and such act is done in pursuance of such authority :

(b) where any permanent alteration is made in the dominant heritage of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future.

Explanation II.—Mere non-user of an easement is not an implied release within the meaning of this section.

Illustrations.

(a) A, B and C are co-owners of a house to which an easement is annexed. A, without the consent of B and C, releases the easement. This release is effectual only as against A and his legal representative.

(b) A grants B an easement over A's land for the beneficial enjoyment of his house. B assigns the house to C. B then purports to release the easement. The release is ineffectual.

(c) A, having the right to discharge his eavesdroppings into B's yard, expressly authorizes B to build over this yard to a height which will interfere with the discharge. B builds accordingly. A's easement is extinguished to the extent of the interference.

(d) A, having an easement of light to a window, builds up that window with bricks and mortar so as to manifest an intention to abandon the easement permanently. The easement is impliedly released.

(e) A, having a projecting roof by means of which he enjoys an easement to discharge eavesdroppings on B's land, permanently alters the roof, so as to direct the rain-water into a different channel and discharge it on C's land. The easement is impliedly released.

Extinction
by revo-
cation.

39. An easement is extinguished when the servient owner, in exercise of a power reserved in this behalf, revokes the easement.

Extinction
on expiration
of limited
period or
happening of
dissolving
condition.

40. An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled.

Extinction
on termin-
ation of
necessity.

41. An easement of necessity is extinguished when the necessity comes to an end.

Illustration.

A grants B a field inaccessible except by passing over A's adjoining land. B afterwards purchases a part of that land over which he can pass to his field. The right of way over A's land which B had acquired is extinguished.

42. An easement is extinguished when it becomes incapable of being at any time and under any circumstances beneficial to the dominant owner.

Extinction
of useless
easement.

43. Where, by any permanent change in the dominant heritage, the burden on the servient heritage is materially increased and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement, the easement is extinguished, unless—

Extinction
by perman-
ent change
in dominant
heritage.

(a) it was intended for the beneficial enjoyment of the dominant heritage, to whatever extent the easement should be used; or

(b) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it; or

(c) the easement is an easement of necessity.

Nothing in this section shall be deemed to apply to an easement entitling the dominant owner to support of the dominant heritage.

44. An easement is extinguished where the servient heritage is by superior force so permanently altered that the dominant owner can no longer enjoy such easement:

Extinction
on perman-
ent alteration
of servient
heritage by
superior
force.

Provided that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient heritage; and the provisions of section fourteen apply to such way.

Illustrations.

(a) A grants to B, as the owner of a certain house, a right to fish in a river running through A's land. The river changes its course permanently and runs through C's land. B's easement is extinguished.

(b) Access to a path over which A has a right of way is permanently cut off by an earthquake. A's right is extinguished.

Extinction
by destruc-
tion of either
heritage.

45. An easement is extinguished when either the dominant or the servient heritage is completely destroyed.

Illustration.

A has a right of way over a road running along the foot of a sea-cliff. The road is washed away by a permanent encroachment of the sea. A's easement is extinguished.

Extinction
by unity of
ownership.

46. An easement is extinguished when the same person becomes entitled to the absolute ownership of the whole of the dominant and servient heritages.

Illustrations.

(a) A, as the owner of a house, has a right of way over B's field. A mortgages his house, and B mortgages his field to C. Then C forecloses both mortgages and becomes thereby absolute owner of both house and field. The right of way is extinguished.

(b) The dominant owner acquires only part of the servient heritage: the easement is not extinguished, except in the case illustrated in section forty-one.

(c) The servient owner acquires the dominant heritage in connection with a third person: the easement is not extinguished.

(d) The separate owners of two separate dominant heritages jointly acquire the heritage which is servient to the two separate heritages: the easements are not extinguished.

(e) The joint owners of the dominant heritage jointly acquire the servient heritage: the easement is extinguished.

(f) A single right of way exists over two servient heritages for the beneficial enjoyment of a single dominant heritage. The dominant owner acquires one only of the servient heritages. The easement is not extinguished.

(g) A has a right of way over B's road. B dedicates the road to the public. A's right of way is not extinguished.

Extinction
by non-
enjoyment.

47. A continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years.

A discontinuous easement is extinguished when for a like period, it has not been enjoyed as such.

Such period shall be reckoned, in the case of a continuous easement, from the day on which its enjoyment was obstructed by the servient owner, or rendered impossible by the dominant owner; and, in the case of a discontinuous easement, from the day on which it was last enjoyed by any person as dominant owner :

Provided that if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under the Cochin Registration Act V of 1084, a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration.

Where an easement can be legally enjoyed only at a certain place, or at certain times, or between certain hours, or for a particular purpose, its enjoyment during the said period at another place, or at other times, or between other hours, or for another purpose, does not prevent its extinction under this section.

The circumstance that, during the said period, no one was in possession of the servient heritage, or that the easement could not be enjoyed, or that a right accessory thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section.

An easement is not extinguished under this section—

- (a) where the cessation is in pursuance of a contract between the dominant and servient owners;
- (b) where the dominant heritage is held in co-ownership, and one of the co-owners enjoys the easement within the said period; or
- (c) where the easement is a necessary easement.

Where several heritages are respectively subject to rights of way for the benefit of a single heritage, and the

ways are continuous, such rights shall, for the purposes of this section, be deemed to be a single easement.

Illustration.

A has, as annexed to his house, rights of way from the high road thither over the heritages X and Z and the intervening heritage Y. Before the twenty years expire, A exercises his right of way over X. His rights of way over Y and Z are not extinguished.

Extinction
of accessory
rights.

48. When an easement is extinguished, the rights (if any) accessory thereto, are also extinguished.

Illustration.

A has an easement to draw water from B's well. As accessory thereto, he has a right of way over B's land to and from the well. The easement to draw water is extinguished under section forty-seven. The right of way is also extinguished.

Suspension
of easement.

49. An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein.

Servient
owner not
entitled to
require con-
tinuance.

50. The servient owner has no right to require that an easement be continued; and, notwithstanding the provisions of section twenty-six, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement, if the dominant owner has given to the servient owner such notice as will enable him, without unreasonable expense, to protect the servient heritage from such damage.

Compensa-
tion for
damage
caused by
extinguish-
ment.

Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension.

Illustration.

A, in exercise of an easement, diverts to his canal the water of B's stream. The diversion continues for many years, and during that time the bed of the stream partly fills up.

A then abandons his easement, and restores the stream to its ancient course. B's land is consequently flooded. B sues A for compensation for the damage caused by the flooding. It is proved that A gave B a month's notice of his intention to abandon the easement, and that such notice was sufficient to enable B, without unreasonable expense, to have prevented the damage. The suit must be dismissed.

51. An easement extinguished under section forty-five revives (a) when the destroyed heritage is, before twenty years have expired, restored by the deposit of alluvion; (b) when the destroyed heritage is a servient building and before twenty years have expired such building is rebuilt upon the same site; and (c) when the destroyed heritage is a dominant building and before twenty years has expired such building is rebuilt upon the same site and in such a manner as not to impose a greater burden on the servient heritage.

Revival of easements.

An easement extinguished under section forty-six revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause.

A suspended easement revives if the cause of suspension is removed before the right is extinguished under section forty-seven.

Illustration.

A, as the absolute owner of field Y, has a right of way thither over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But when A assigns the lease to C, or surrenders it to B, the right of way revives.

CHAPTER VI.

LICENSES.

52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property, of the grantor, something which would, in the absence of such right, be

"License" defined.

unlawful, and such right does not amount to an easement or an interest in the property the right is called a license.

Who may grant license.

53. A license may be granted by any one in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the license.

Grant may be express or implied.

54. The grant of a license may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.

Accessory licenses annexed by law.

55. All licenses necessary for the enjoyment of any interest, or the exercise of any right, are implied in the constitution of such interest or right. Such licenses are called accessory licenses.

Illustration.

A sells the trees growing on his land to B. B is entitled to go on the land and take away the trees.

License when transferable.

56. Unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee; but, save as aforesaid, a license cannot be transferred by the licensee or exercised by his servants or agents.

Illustrations.

(a) A grants B a right to walk over A's field whenever he pleases. The right is not annexed to any immovable property of B. The right cannot be transferred.

(b) The Government grant B a license to erect and use temporary grainsheds on Government land. In the absence of express provision to the contrary, B's servants may enter on the land for the purpose of erecting sheds, erect the same, deposit grain therein and remove grain therefrom.

Grantor's duty to disclose defects.

57. The grantor of a license is bound to disclose to the licensee any defect in the property affected by the license, likely to be dangerous to the person or property of the licensee, of which the grantor is, and the licensee is not, aware.

58. The grantor of a license is bound not to do anything likely to render the property affected by the license dangerous to the person or property of the licensee.

Grantor's duty not to render property unsafe.

59. When the grantor of the license transfers the property affected thereby, the transferee is not as such bound by the license.

Grantor's transferee not bound by license.

60. A license may be revoked by the grantor, unless—

License when revocable.

(a) it is coupled with a transfer of property and such transfer is in force :

(b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

61. The revocation of a license may be express or implied.

Revocation express or implied.

Illustrations.

(a) A, the owner of a field, grants a license to B to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked.

(b) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked.

62. A license is deemed to be revoked—

(a) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license :

License when deemed revoked.

(b) when the licensee releases it, expressly or impliedly, to the grantor or his representative :

(c) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled :

(d) where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right :

(e) where the licensee becomes entitled to the absolute ownership of the property affected by the license :

(f) where the license is granted for a specified purpose and the purpose is attained, or abandoned, or becomes impracticable :

(g) where the license is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist :

(h) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee :

(i) in the case of an accessory license, when the interests or right to which it is accessory ceases to exist.

Licensee's
rights on re-
vocation.

63. Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property.

Licensee's
rights on
eviction.

64. Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor.

THE COCHIN CONTRACT ACT,
(XXIII OF 1112.)

CONTENTS.

PREAMBLE.

PRELIMINARY.

SECTIONS.

1. Short title.
Extent.
Commencement.
Enactments repealed.
2. Interpretation-clause.

CHAPTER I.

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION
OF PROPOSALS.

3. Communication, acceptance and revocation of proposals.
4. Communication when complete.
5. Revocation of proposals and acceptances.
6. Revocation how made.
7. Acceptance must be absolute.
8. Acceptance by performing conditions, or receiving consideration.
9. Promises, express and implied.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS AND VOID
AGREEMENTS.

10. What agreements are contracts.
11. Who are competent to contract.
12. What is a sound mind for the purposes of contracting.
13. "Consent" defined.
14. "Free consent" defined.
15. "Coercion" defined.
16. "Undue influence" defined.
17. "Fraud" defined.
18. "Misrepresentation" defined.
19. Voidability of agreements without free consent.
20. Power to set aside contract induced by undue influence.

SECTIONS.

21. Agreement void where both parties are under mistake as to matter of fact.
22. Effect of mistakes as to law.
23. Contract caused by mistake of one party as to matter of fact.
24. What considerations and objects are lawful, and what not.

Void Agreements.

25. Agreements void, if considerations and objects unlawful in part.
26. Agreement without consideration void, unless—it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.
27. Agreement in restraint of marriage void.
28. Agreement in restraint of trade void.
Saving of agreement not to carry on business of which good-will is sold.
29. Agreements in restraint of legal proceedings void.
Saving of contract to refer to arbitration dispute that may arise.
Saving of contract to refer questions that have already arisen.
30. Agreements void for uncertainty.
31. Agreements by way of wager void.
Exception in favour of certain prizes for horse-racing.
Section 271 of the Cochin Penal Code not affected.

CHAPTER III.

OF CONTINGENT CONTRACTS.

32. "Contingent contract" defined.
33. Enforcement of contracts contingent on an event happening.
34. Enforcement of contracts "contingent on an event not happening.
35. When event, on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.

SECTIONS.

36. When contracts become void which are contingent on happening of specified event within fixed time. When contracts may be enforced which are contingent on specified event not happening within fixed time.
37. Agreements contingent on impossible events void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

Contracts which must be performed.

38. Obligation of parties to contracts.
39. Effect of refusal to accept offer of performance.
40. Effect of refusal of party to perform promise wholly.

By whom Contracts must be performed.

41. Person by whom promise is to be performed.
42. Effect of accepting performance from third person.
43. Devolution of joint liabilities.
44. Any one of joint promisors may be compelled to perform.
Each promisor may compel contribution:
Sharing of loss by default in contribution.
45. Effect of release of one joint promisor.
46. Devolution of joint rights.

Time and place for Performance.

47. Time for performance of promise where no application is to be made and no time is specified.
48. Time and place for performance of promise, where time is specified and no application to be made.
49. Application for performance on certain day to be at proper time and place.
50. Place for performance of promise where no application to be made and no place fixed for performance.
51. Performance in manner or at time prescribed or sanctioned by promisee.

Performance of Reciprocal Promises.

52. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

SECTIONS.

53. Order of performance of reciprocal promises.
54. Liability of party preventing event on which contract is to take effect.
55. Effect of default as to that promise which should be first performed, in contract, consisting of reciprocal promises.
56. Effect of failure to perform at fixed time in contract in which time is essential.
Effect of such failure when time is not essential.
Effect of acceptance of performance at time other than that agreed upon.
57. Agreement to do impossible act.
Contract to do act afterwards becoming impossible or unlawful.
Compensation for loss through non-performance of act known to be impossible or unlawful.
58. Reciprocal promises to do things legal and also other things illegal.
59. Alternative promise, one branch being illegal.

Appropriation of Payments.

60. Application of payment where debt to be discharged is indicated.
61. Application of payment where debt to be discharged is not indicated.
62. Application of payment where neither party appropriates.

Contracts which need not be performed.

63. Effect of novation, rescission, and alteration of contract.
64. Promisee may dispense with or remit performance of promise.
65. Consequences of rescission of voidable contract.
66. Obligation of person who has received advantage under void agreement or contract that becomes void.
67. Mode of communicating or revoking rescission of voidable contract.
68. Effect of neglect of promisee to afford promisor reasonable facilities for performance.

CHAPTER V.

OF CERTAIN RELATIONS RESEMBLING THOSE
CREATED BY CONTRACT.

SECTIONS.

69. Claim for necessaries supplied to person incapable of contracting or on his account.
70. Reimbursement of person paying money due by another, in payment of which he is interested.
71. Obligation of person enjoying benefit of non-gratuitous act.
72. Responsibility of finder of goods.
73. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

CHAPTER VI.

OF THE CONSEQUENCES OF BREACH OF CONTRACT.

74. Compensation for loss or damage caused by breach of contract.
Compensation for failure to discharge obligation resembling those created by contract.
75. Compensation for breach of contract where penalty stipulated for.
76. Party rightfully rescinding contract entitled to compensation.

CHAPTER VII.

OF INDEMNITY AND GUARANTEE.

77. "Contract of indemnity" defined.
78. Rights of indemnity-holder when sued.
79. "Contract of guarantee," "surety," "principal debtor," and "creditor."
80. Consideration for guarantee.
81. Surety's liability.
82. "Continuing guarantee."
83. Revocation of continuing guarantee.
84. Revocation of continuing guarantee by surety's death.
85. Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default.

SECTIONS.

86. Discharge of surety by variance in terms of contract.
87. Discharge of surety by release or discharge of principal debtor.
88. Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.
89. Surety not discharged when agreement made with third person to give time to principal debtor.
90. Creditor's forbearance to sue does not discharge surety.
91. Release of one co-surety does not discharge others.
92. Discharge of surety by creditor's act or omission impairing surety's eventual remedy.
93. Rights of surety on payment or performance.
94. Surety's right to benefit of creditor's securities.
95. Guarantee obtained by misrepresentation invalid.
96. Guarantee obtained by concealment invalid.
97. Guarantee on contract that creditor shall not act on it until co-surety joins.
98. Implied promise to indemnify surety.
99. Co-sureties liable to contribute equally.
100. Liability of co-sureties bound in different sums.

CHAPTER VIII.

OF BAILMENT.

101. "Bailment," "bailor," and "bailee" defined.
102. Delivery to bailee how made.
103. Bailor's duty to disclose faults in goods bailed.
104. Care to be taken by bailee.
105. Bailee when not liable for loss, etc., of thing bailed.
106. Termination of bailment by bailee's act inconsistent with conditions.
107. Liability of bailee making unauthorized use of goods bailed.
108. Effect of mixture, with bailor's consent, of his goods with bailee's.
109. Effect of mixture, without bailor's consent, when the goods can be separated.
110. Effect of mixture, without bailor's consent, when the goods cannot be separated.

SECTIONS.

111. Re-payment, by bailor, of necessary expenses.
112. Restoration of goods lent gratuitously.
113. Return of goods bailed, on expiration of time or accomplishment of purpose.
114. Bailee's responsibility when goods are not duly returned.
115. Termination of gratuitous bailment by death.
116. Bailor entitled to increase or profit from goods bailed.
117. Bailor's responsibility to bailee.
118. Bailment by several joint owners.
119. Bailee not responsible on re-delivery to bailor without title.
120. Right of third person claiming goods bailed.
121. Right of finder of goods ; may sue for specific reward offered.
122. When finder of thing commonly on sale may sell it.
123. Bailee's particular lien.
124. General lien of bankers, factors, wharfingers, attorneys and policy brokers.

Bailments of Pledges.

125. "Pledge," "pawnor" and "pawnee" defined.
126. Pawnee's right of retainer.
127. Pawnee not to retain for debt or promise other than that for which goods pledged. Presumption in case of subsequent advances.
128. Pawnee's right as to extraordinary expenses incurred.
129. Pawnee's right where pawnor makes default.
130. Defaulting pawnor's right to redeem.
131. Pledge by mercantile agent.
132. Pledge by person in possession under voidable contract.
133. Pledge where pawnor has only a limited interest.

Suits by Bailees or Bailors against Wrong-doers.

134. Suit by bailor or bailee against wrong-doer.
135. Apportionment of relief or compensation obtained by such suits.

CHAPTER IX.

AGENCY.

Appointment and Authority of Agents.

SECTIONS.

- 136. "Agent" and "principal" defined.
- 137. Who may employ agent.
- 138. Who may be an agent.
- 139. Consideration not necessary.
- 140. Agent's authority may be expressed or implied.
- 141. Definitions of express and implied authority.
- 142. Extent of agent's authority.
- 143. Agent's authority in an emergency:

Sub-agents.

- 144. When agent cannot delegate.
- 145. "Sub-agent" defined.
- 146. Representation of principal by sub-agent properly appointed.
Agent's responsibility for sub-agent.
Sub-agent's responsibility.
- 147. Agent's responsibility for sub-agent appointed without authority.
- 148. Relation between principal and person duly appointed by agent to act in business of agency.
- 149. Agent's duty in naming such person.

Ratification.

- 150. Right of person as to acts done for him without his authority. Effect of ratification.
- 151. Ratification may be expressed or implied.
- 152. Knowledge requisite for valid ratification.
- 153. Effect of ratifying unauthorized act forming part of a transaction.
- 154. Ratification of unauthorized act cannot injure third person

Revocation of Authority.

- 155. Termination of agency.
- 156. Termination of agency, where agent has an interest in subject-matter.
- 157. When principal may revoke agent's authority.
- 158. Revocation where authority has been partly exercised.

SECTIONS.

159. Compensation for revocation by principal, or renunciation by agent.
160. Notice of revocation or renunciation.
161. Revocation and renunciation may be expressed or implied.
162. When termination of agent's authority takes effect as to agent, and as to third persons.
163. Agent's duty on termination of agency by principal's death or insanity.
164. Termination of sub-agent's authority.

Agent's duty to Principal.

165. Agent's duty in conducting principal's business.
166. Skill and diligence required from agent.
167. Agent's account.
168. Agent's duty to communicate with principal.
169. Right of principal when agent deals, on his own account, in business of agency without principal's consent.
170. Principal's right to benefit gained by agent dealing on his own account in business of agency.
171. Agent's right of retainer out of sums received on principal's account.
172. Agent's duty to pay sums received for principal.
173. When agent's remuneration becomes due.
174. Agent not entitled to remuneration for business misconducted.
175. Agent's lien on principal's property.

Principal's duty to Agent.

176. Agent to be indemnified against consequences of lawful acts.
177. Agent to be indemnified against consequences of acts done in good faith.
178. Non-liability of employer of agent to do a criminal act.
179. Compensation to agent for injury caused by principal's neglect.

Effect of Agency on Contract with third persons.

180. Enforcement and consequences of agent's contracts.
181. Principal how far bound when agent exceeds authority.

SECTIONS.

182. Principal not bound when excess of agent's authority is not separable.
183. Consequences of notice given to agent.
184. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.
Presumption of contract to contrary.
185. Rights of parties to a contract made by agent not disclosed.
186. Performance of contract with agent supposed to be principal.
187. Rights of person dealing with agent personally liable.
188. Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.
189. Liability of pretended agent.
190. Person falsely contracting as agent not entitled to performance.
191. Liability of principal inducing belief that agent's unauthorized acts were authorized.
192. Effect, on agreement, of misrepresentation or fraud by agent.
193. Reference to Indian Contract Act in other Acts.
194. Repeal.

THE COCHIN CONTRACT [ACT],
(XXIII OF 1112.)

AN ACT TO DEFINE AND AMEND THE LAW
RELATING TO CONTRACTS.

*Passed by His Highness the Maharaja of Cochin on the
26th day of Kumbham 1112, corresponding to the
9th day of March, 1937.*

Preamble.

Whereas it is expedient to define and amend certain parts of the law relating to contracts; It is hereby enacted as follows :—

-
1. Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112

PRELIMINARY.

1. This Act may be called "The Cochin Contract Act, XXIII of 1112." Short title.

It extends to the whole of Cochin ; and it shall come into force at once. Extent, Commencement.

Nothing herein contained shall affect the provisions of any Act not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act. Enactments repealed.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :— Interpretation clause.

- (a) When one person signifies to another the willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal :
- (b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise :
- (c) The person making the proposal is called the "promisor," and the person accepting the proposal is called the "promisee" :
- (d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise :
- (e) Every promise and every set of promises, forming the consideration for each other, is an agreement :

- (f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises :
- (g) An agreement not enforceable by law is said to be void :
- (h) An agreement enforceable by law is a contract :
- (i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others is a voidable contract :
- (j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

CHAPTER I.

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.

Communica-
tion,
acceptance
and revoca-
tion of
proposals.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

Communica-
tion when
complete.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,—
as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor ;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,—
as against the person who makes it, when it is put into a course of transmission to the person to whom it is

made, so as to be out of the power of the person who makes it ;

as against the person to whom it is made, when it comes to his knowledge.

Illustrations.

(a) A proposes by letter, to sell a house to B at a certain price.

The communication of the proposal is complete when B receives the letter.

(b) B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete,—

as against A, when the letter is posted ;

as against B, when the letter is received by A.

(c) A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

Revocation of proposals and acceptances.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations.

A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Revocation
how made.

6. A proposal is revoked—
- (1) by the communication of notice of revocation by the proposer to the other party ;
 - (2) by the lapse of the time prescribed in such proposal for its acceptance or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance ;
 - (3) by the failure of the acceptor to fulfil a condition precedent to acceptance ; or
 - (4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance
must be
absolute.

7. In order to convert a proposal into a promise, the acceptance must—

- (1) be absolute and unqualified ;
- (2) be expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him insist that his proposal shall be accepted in the prescribed manner, and not otherwise ; but if he fails to do so, he accepts the acceptance.

Acceptance
by perform-
ing condi-
tions, or re-
ceiving con-
sideration.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Promises,
express and
implied.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS.

10. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

What agreements are contracts.

Nothing herein contained shall affect any law in force in Cochin, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

Who are competent to contract.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

What is a sound mind for the purposes of contracting

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations.

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

"Consent" defined.

“Free consent” defined.

14. Consent is said to be free when it is not caused by—

- (1) coercion, as defined in section 15, or
- (2) undue influence, as defined in section 16, or
- (3) fraud, as defined in section 17, or
- (4) misrepresentation, as defined in section 18, or
- (5) mistake, subject to the provisions of sections 21, 22 and 23.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

“Coercion” defined.

15. “Coercion” is the committing or threatening to commit, any act forbidden by the Cochin Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.—It is immaterial whether the Cochin Penal Code is or is not in force in the place where the coercion is employed.

Illustration.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Cochin Penal Code.

A afterwards sues B for breach of contract at Ernakulam.

A has employed coercion, although his act is not an offence by the law of England, and although section 486 of the Cochin Penal Code was not in force at the time when or place where the act was done.

“Undue influence” defined.

16. (1) A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872, as made applicable to Cochin.

Illustrations.

(a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a

transaction in the ordinary course of business, and the contract is not induced by undue influence.

“Fraud”
defined.

17. “Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

- (1) the suggestion as a fact, of that which is not true by one who does not believe it to be true ;
- (2) the active concealment of a fact by one having knowledge or belief of the fact ;
- (3) a promise made without any intention of performing it ;
- (4) any other act fitted to deceive ;
- (5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Illustrations.

(a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c) B says to A—“ If you do not deny it, I shall assume that the horse is sound.” A says nothing. Here, A's silence is equivalent to speech.

(d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

18. "Misrepresentation" means and includes—

"Misrepresentation"
defined.

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true ;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him ;
- (3) causing however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

19. When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

Voidability
of agreements
without free
consent.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17 the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(b) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage-debt redeemed.

(d) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an undervalue. The contract is voidable at the option of A.

(e) A is entitled to succeed to an estate at the death of B; B dies; C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

Power to set aside contract induced by undue influence.

20. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b) A, a money-lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

21. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Agreement void where both parties are under mistake as to matter of fact.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

(a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Cochin. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the facts. The agreement is void.

(b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

22. A Contract is not voidable because it was caused by a mistake as to any law in force in Cochin; but a mistake as to a law not in force in Cochin has the same effect as a mistake of fact.

Effect of mistakes as to law.

Illustration.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Cochin Law of Limitation: the contract is not voidable.

23. A Contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

Contract caused by mistake of one party as to matter of fact.

24. The consideration or object of an agreement is lawful, unless—

What considerations and objects are lawful and what not.

it is forbidden by law ; or

is of such a nature that, if permitted, it would defeat the provisions of any law ; or

is fraudulent ; or

involves or implies injury to the person or property of another ; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations.

(a) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(b) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party and they are lawful considerations.

(c) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations.

(d) A promises to maintain B's child and B promises to pay A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A on his principal.

(h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i) A's estate is sold for arrears of revenue under the provisions of an Act, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(j) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Cochin Penal Code.

Void Agreements.

25. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Agreements void, if considerations and objects unlawful in part.

Illustration.

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

26. An agreement made without consideration is void, unless—

Agreement without consideration void unless it is in writing and registered;

(1) it is expressed in writing and registered under the law for the time being in force for the registration of

documents, and is made on account of natural love and affection between parties standing in a near relation to each other, or unless

or is a promise to compensate for something done;

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do, or unless

or is a promise to pay a debt, barred by limitation law.

(3) it is a promise, made in writing and signed by the person to be charged there with, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations.

(a) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(b) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.

(c) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(d) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(f) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(g) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

27. Every agreement in restraint of the marriage of any person, other than a minor, is void.

Agreement in restraint of marriage void.

28. Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Agreement in restraint of trade void.

Exception.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein: Provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

Saving of agreement not to carry on business of which good-will is sold.

29. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Agreements in restraint of legal proceedings void.

Exception 1.—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Savings of contract to refer to arbitration dispute that may arise.

Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any

Saving of contract to refer questions that have already arisen.

law in force for the time being as to references to arbitration.

Agreements
void for
uncertainty.

30. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Illustrations.

(a) A agrees to sell to B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(c) A, who is a dealer in cocoanut oil only, agrees to sell to B "one hundred tons of oil". The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut oil.

(d) A agrees to sell to B "all the grain in my granary at Mattancheri". There is no uncertainty here to make the agreement void.

(e) A agrees to sell to B "one thousand maunds of rice at a price to be fixed by C." As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(f) A agrees to sell to B "my white horse for rupees five hundred or rupees one thousand." There is nothing to show which of the two prices was to be given. The agreement is void.

Agreements
by way of
wager void.

31. Agreements by way of wager are void ; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Exception in
favour of
certain prizes
for horse-
racing.

This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 271 of the Cochin Penal Code apply.

Section 271 of the Cochin Penal Code not affected.

CHAPTER III.

OF CONTINGENT CONTRACTS.

32. A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

"Contingent contract" defined.

Illustration.

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

33. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

Enforcement of contracts contingent on an event happening.

If the event becomes impossible such contracts become void.

Illustrations.

(a) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's life-time.

(b) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(c) A, contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

34. Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before.

Enforcement of contracts contingent on an event not happening.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.

35. If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Illustration.

A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

When contracts become void which are contingent on happening of specified event within fixed time.

36. Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts may be enforced which are contingent on specified event not happening within fixed time.

Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

Illustrations.

(a) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(b) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

Agreements contingent on impossible events void.

37. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustrations.

(a) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(b) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

Contracts which must be performed.

38. The parties to a contract must either perform, or offer to perform their respective promises, unless such performance is dispensed with or excused under the provisions of this Act or of any other law.

Obligation of parties to contracts.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

Illustrations.

(a) A promises to deliver goods to B on a certain day on payment of Rs 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(b) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

39. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Effect of refusal to accept offer of performance.

Every such offer must fulfil the following conditions:—

- (1) it must be unconditional :
- (2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining

that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do :

- (3) if the offer is an offer to deliver anything to the promisee the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration.

A contracts to deliver to B at his warehouse, on the first March 1938, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's warehouse on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

Effect of refusal of party to perform promise wholly.

40. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified by words or conduct, his acquiescence in its continuance.

Illustrations.

(a) A, a singer, enters into a contract with B, the manager of a theatre to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(b) A, a singer, enters into a contract with B, the manager of a theatre to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B

A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

By whom Contracts must be performed.

41. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Person by whom promise is to be performed.

Illustrations.

(a) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(b) A promises to paint a picture for B. A must perform this promise personally.

42. When a promisee accepts performance of the promise, from a third person, he cannot afterwards enforce it against the promisor.

Effect of accepting performance from third person.

43. When two or more persons have made a joint promise then unless a contrary intention appears by the contract, all such persons, during their joint lives, and after the death of any of them, his representative jointly with the survivor, or survivors, and after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Devolution of joint liabilities.

44. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Any one of joint promisors may be compelled to perform.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Each promisor may compel contribution.

Sharing of
loss by de-
fault in
contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation.—Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(a) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(b) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent but his assets are sufficient to pay one half of his debts. C is entitled to receive 500 rupees from A's estate and 1,250 rupees from B.

(c) A, B and C are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

Effect of re-
lease of one
joint pro-
misor.

45. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

Devolution
of joint
rights.

46. 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.

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly.

Time and place for performance.

47. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Time for performance of promise where no application is to be made and no time is specified.

Explanation.—The question “what is a reasonable time” is, in each particular case, a question of fact.

48. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Time and place for performance of promise, where time is specified and no application to be made.

Illustration.

A promises to deliver goods at B's warehouse on the first January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

49. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Application for performance on certain day to be at proper time and place.

Explanation—The question “what is a proper time and place” is in each particular case, a question of fact.

50. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Place for performance of promise where no application to be made and no place fixed for performance.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

Performance in manner or at time prescribed or sanctioned by promisee.

51. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Illustrations.

(a) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(b) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B respectively, of the sums which they owed to each other.

(c) A owes B 2,000 rupees. B accepts some of A's goods in deduction of the debt. The delivery of the goods operates as a part payment.

(d) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

Performance of Reciprocal Promises.

Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

52. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(a) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(b) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

53. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Order of performance of reciprocal promises.

Illustrations.

(a) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(b) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

54. When a contract contains reciprocal promises and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Liability of party preventing event on which contract is to take effect.

Illustration.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The

contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Effect of default as to that promise which should be first performed in contract consisting of reciprocal promises.

55. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Illustrations.

(a) A hires B's ship to take in and convey, from Cochin to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship: A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(b) A contracts with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(c) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(d) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

56. When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of failure to perform at fixed time in contract in which time is essential.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of such failure when time is not essential.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accept performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed unless at the time of such acceptance, he gives notice to the promisor of his intention to do so.

Effect of acceptance of performance at time other than that agreed upon.

57. An agreement to do an act impossible in itself is void.

Agreement to do impossible act.

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Contract to do act afterwards becoming impossible or unlawful.

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Compensation for loss through non-performance of act known to be impossible or unlawful.

Illustrations.

(a) A agrees with B to discover treasure by magic. The agreement is void.

(b) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(c) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.

(d) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(e) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

Reciprocal
promises to
do things
legal, and
also other
things illegal

58. Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

Illustration.

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

Alternative
promise, —
one branch
being illegal.

59. In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Illustration.

A and B agree that A shall pay B, 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice and void agreement as to the opium.

Appropriation of payments.

60. Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Application of payment where debt to be discharged is indicated.

Illustrations.

(a) A owes B, among other debts, 1,000 rupees upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(b) A owes to B among other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

61. Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of payment where debt to be discharged is not indicated.

62. Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Application of payment where neither party appropriates

Contracts which need not be performed.

Effect of
novation,
rescission
and altera-
tion of
contract.

63. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Illustrations.

(a) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, a new debt from C to B has been contracted.

(b) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(c) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

Promisee
may dispense
with or remit
performance
of promise.

64. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

Illustrations.

(a) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(c) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(d) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A without ascertaining the amount gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(e) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B to pay them a composition of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

65. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

Consequences
of rescission
of voidable
contract.

66. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Obligation
of person who
has received
advantage
under void
agreement or
contract that
becomes void.

Illustrations.

(a) A pays B 1,000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(b) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the 1st of May. He is bound to pay A for them.

(c) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(d) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

Mode of communicating or revoking rescission of voidable contract.

67. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

68. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract if it is caused by such neglect or refusal.

CHAPTER V.

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

Claim for necessities supplied to person incapable of contracting, or on his account.

69. If a person, incapable of entering into a contract, or any one whom he is legally bound to support is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(a) A supplies B, a lunatic, with necessities suitable to his condition in life. A is entitled to be reimbursed from B's property.

(b) A supplies the wife and children of B, a lunatic, with necessities suitable to their condition in life. A is entitled to be reimbursed from B's property.

Reimbursement of person paying money due by another in payment of which he is interested.

70. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

B holds land, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease, B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

71. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Obligation of person enjoying benefit of non-gratuitous act.

Illustrations.

(a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

72. A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.

Responsibility of finder of goods.

73. A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it.

Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

Illustrations.

(a) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

CHAPTER VI.

OF THE CONSEQUENCES OF BREACH OF CONTRACT.

Compensation for loss or damage caused by breach of contract.

74. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations.

(a) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo which A is to provide and to bring it to Cochin, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(e) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(f) A contracts to repair B's house in certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(g) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freights rise, and on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(h) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(i) A delivers to B, a common carrier, a machine to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(j) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(k) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(l) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(m) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this

warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(n) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B in consequence of not receiving the money on that day is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(o) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(p) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mills.

(q) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(r) A, a ship-owner, contracts with B to convey him from Cochin to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one half of his passage money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Cochin for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to

B his deposit, with interest, and the expense to which he is put by his detention in Cochin, and the excess, if any, of the passage money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

Compensation for breach of contract where penalty stipulated for.

75. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or under the provisions of any law, or under the orders of the Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations.

(a) A contracts with B to pay B Rs. 1,000 if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

(b) A contracts with B that, if A practises as a surgeon within Ernakulam, he will pay B Rs. 5,000. A practises as a surgeon in Ernakulam. B is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(c) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

(d) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent. at the end of six months, with a stipulation that in case of default, interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.

(e) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.

(f) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments with a stipulation that in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(g) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.

76. A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Party rightfully rescinding contract entitled to compensation.

Illustration.

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

CHAPTER VII.

OF INDEMNITY AND GUARANTEE.

“Contract of indemnity” defined.

77. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a “contract of indemnity.”

Illustration.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

Rights of indemnity holder when sued.

78. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

- (1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies ;
- (2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit ;
- (3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

“Contract of guarantee,” “surety,” “principal debtor,” and “creditor.”

79. A “contract of guarantee” is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the “surety”; the person in respect of whose default the guarantee is given is called the

“principal debtor”, and the person to whom the guarantee is given is called the “creditor”. A guarantee may be either oral or written.

80. Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee. Consideration for guarantee.

Illustrations.

(a) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(b) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

81. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. Surety's liability.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.

82. A guarantee which extends to a series of transactions is called a “continuing guarantee”. Continuing guarantee.

Illustrations.

(a) A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b) A guarantees payment to B, a tea-dealer, to the amount of £ 100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £ 100, and C pays B for it. Afterwards B supplies C with tea to the value

of £ 200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(c) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Revocation
of continu-
ing gua-
rantee.

83. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Illustrations.

(a) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(b) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

Revocation
of continu-
ing guaran-
tee by su-
rety's death.

84. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Liability of
two persons,
primarily
liable, not
affected by
arrangement
between
them that
one shall be
surety on
other's
default.

85. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Illustration.

A and B make a joint and several promissory note to C. A makes it in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

86. Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance. Discharge of surety by variance in terms of contract.

Illustrations.

(a) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the Bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(b) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

(c) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duty, accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(d) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payment shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(e) C contracts to lend B 5,000 rupees on the 1st March. A guarantees repayment. C pays the 5,000 rupees to B on the 1st January. A is discharged from his liability, as the contract has been varied inasmuch as C might sue B for the money before the 1st of March.

Discharge of surety by release of discharge of principal debtor.

87. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Illustrations.

(a) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(b) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for irrigation of A's land and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(c) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

Discharge of surety when creditor compounds with, gives time to or agrees not to sue, principal debtor.

88. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Surety not discharged when agreement made with third person to give time to principal debtor.

89. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

90. Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary discharge the surety.

Creditor's forbearance to sue does not discharge surety.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

91. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.

Release of one co-surety does not discharge others.

92. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

Illustrations.

(a) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

(b) C lends money to B on the security of a joint and several promisory note made in C's favour by B, and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realised. A is discharged from liability on the note.

(c) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

Rights of surety on payment or performance.

93. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Surety's right to benefit of creditor's securities.

94. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Illustrations.

(a) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree and then, without the knowledge of A, withdraws the execution. A is discharged.

(c) A, as surety for B, makes a bond jointly with B to C to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

Guarantee obtained by misrepresentation invalid.

95. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee obtained by concealment invalid.

96. Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

Illustrations.

(a) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence

calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(b) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

97. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Guarantee on contract that creditor shall not act on it until co-surety joins.

98. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Implied promise to indemnify surety.

Illustrations.

(a) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(b) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(c) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A

payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

Co-sureties
liable to con-
tribute
equally.

99. Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Illustrations.

(a) A, B and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay 1,000 rupees each.

(b) A, B and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one quarter, B to the extent of one-quarter and C to the extent of one half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

Liability of
co-sureties
bound in
different
sums.

100. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Illustrations.

(a) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are each liable to pay 10,000 rupees.

(b) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(c) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the

penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B and C have to pay each the full penalty of his bond.

CHAPTER VIII.

OF BAILMENT.

101. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee".

"Bailment."
"bailor" and
"bailee"
defined.

Explanation.—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

102. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf.

Delivery to
bailee how
made.

103. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and, if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

Bailor's duty
to disclose
faults in
goods bailed.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(a) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(b) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

Care to be taken by bailee.

104. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

Bailee when not liable for loss, etc., of thing bailed.

105. The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 104.

Termination of bailment by bailee's act inconsistent with conditions.

106. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Illustration.

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

Liability of bailee making unauthorised use of goods bailed.

107. If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Illustrations.

(a) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(b) A hires a horse at Trichur from B expressly to march to Shoranur. A rides with due care, but marches to Ernakulam instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

108. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture, with bailor's consent of his goods with bailee's.

109. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Effect of mixture, without bailor's consent, when the goods can be separated.

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark: A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

110. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Effect of mixture without bailor's consent, when the goods cannot be separated.

Illustration.

A bails a barrel of Cape flour worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

111. Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Repayment by bailor of necessary expenses.

112. The lender of a thing for use may at any time require its return, if the loan was gratuitous even though he lent it for a specified time or purpose. But if, on the

Restoration of goods lent gratuitously.

faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Return of goods bailed on expiration of time or accomplishment of purpose.

113. It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

Bailee's responsibility when goods are not duly returned.

114. If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

Termination of gratuitous bailment by death.

115. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

Bailor entitled to increase or profit from goods bailed.

116. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor or according to his directions, any increase or profit which may have accrued from the goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

Bailor's responsibility to bailee.

117. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions respecting them.

Bailment by several joint owners.

118. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

119. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

Bailee not responsible on re-delivery to bailor without title.

120. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor; and to decide the title to the goods.

Right of third person claiming goods bailed.

121. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

Right of finder of goods; may sue for specific reward offered.

122. When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

When finder of thing commonly on sale may sell it.

(1) When the thing is in danger of perishing or of losing the greater part of its value, or,

(2) when the lawful charges of the finder in respect of the thing found, amount to two-thirds of its value.

123. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Bailee's particular lien.

Illustrations.

(a) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(b) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months' credit for the price. B is not entitled to retain the coat until he is paid.

General lien of bankers, factors, wharfingers, attorneys, and policy-brokers.

124. Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

Bailments of Pledges.

"Pledge," "pawnor" and "pawnee" defined.

125. The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor." The bailee is called the "pawnee."

Pawnee's right of retainer.

126. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Pawnee not to retain for debt or promise other than that for which goods pledged. Presumption in case of subsequent advances.

127. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Pawnee's right as to extraordinary expenses incurred.

128. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right where Pawnor makes default.

129. If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a

collateral security; or he may sell the thing pledged on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

130. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Defaulting pawnor's right to redeem.

131. Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not authority to pledge.

Pledge by mercantile agent.

Explanation.—In this section, the expressions 'mercantile agent' and 'documents of title' shall have the meanings assigned to them in the Cochin Sale of Goods Act.

132. When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 20, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

Pledge by person in possession under voidable contract.

133. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Pledge where pawnor has only a limited interest.

Suits by Bailees or Bailors against Wrong-doers.

Suit by bailor or bailee against wrong-doer.

134. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of relief or compensation obtained by such suits.

135. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER IX.

AGENCY.

Appointment and Authority of Agents.

"Agent" and "principal" defined.

136. An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal."

Who may employ agent.

137. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

Who may be an agent.

138. As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Consideration not necessary.

139. No consideration is necessary to create an agency.

Agent's authority may be expressed or implied.

140. The authority of an agent may be expressed or implied.

Definitions of express and implied authority.

141. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the

circumstances of the case ; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustration.

A owns a shop in Mattancheri, living himself in Trichur, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

142. An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act. Extent of agent's authority.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations.

(a) A is employed by B, residing in London, to recover at Cochin a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b) A constitutes B his agent to carry on his business of a shipbuilder. B may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business.

143. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances. Agent's authority in an emergency.

Illustrations.

(a) An agent for sale may have goods repaired if it be necessary

(b) A consigns provisions to B at Cochin, with directions to send them immediately to C at Trichur. B may sell the provisions at Cochin, if they will not bear the journey to Trichur without spoiling.

Sub-agents.

When agent cannot delegate.

144. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or from the nature of the agency, a sub-agent must, be employed.

“Sub-agent” defined.

145. A “sub-agent” is a person employed by, and acting under the control of, the original agent in the business of the agency.

Representation of principal by sub-agent properly appointed.

146. Where a sub-agent is properly appointed the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

Agent's responsibility for sub-agents.

The agent is responsible to the principal for the acts of the sub-agent

Sub-agent's responsibility.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

Agent's responsibility for sub-agent appointed without authority.

147. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

Relation between principal and person duly appointed by Agent to act in business of agency.

148. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Illustrations.

(a) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(b) A authorises B, a merchant in Cochin, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co., for the recovery of the money. D is not a sub-agent, but is solicitor for A.

149. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and if he does this he is not responsible to the principal for the acts or negligence of the agent so selected.

Agent's duty in naming such person.

Illustrations.

(a) A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

(b) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

150. Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

Right of person as to acts done for him without his authority. Effect of ratification.

151. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Ratification may be expressed or implied.

Illustrations.

(a) A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

b) A, without B's authority, lends B's money to C. Afterwards B accepts interests on the money from C. B's conduct implies a ratification of the loan.

Knowledge requisite for valid ratification.

152. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorized act forming part of a transaction.

153 A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Ratification of unauthorized act cannot injure third person.

154. An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Illustrations.

(a) A, not being authorized thereto by B, demands on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B so as to make C liable for damages for his refusal to deliver.

(b) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

Revocation of Authority.

Termination of agency.

155. An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Termination of agency, where agent has an interest in subject-matter.

156. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations.

(a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A.

A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b) A consigns 1,000 bales of Cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price, the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

157. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

When principal may revoke agent's authority.

158. The principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise from acts already done in the agency.

Revocation where authority has been partly exercised.

Illustrations.

(a) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

159. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Compensation for revocation by principal, or renunciation by agent.

160. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Notice of revocation or renunciation.

Revocation and renunciation may be expressed or implied.

161. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

When termination of agent's authority takes effect as to agent, and as to third persons,

162. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or so far as regards third persons, before it becomes known to them.

Illustrations.

(a) A directs B to sell goods for him, and agrees to give B five per cent commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(b) A, at Cochin, by letter directs B to sell for him some cotton lying in a warehouse in Trichur, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Cochin. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(c) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

Agent's duty on termination of agency by principal's death or insanity.

163. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Termination of sub-agent's authority.

164. The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Agent's Duty to Principal.

165. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Agent's duty in conducting principal's business.

Illustrations.

(a) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(b) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

166. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

Skill and diligence required from agent.

Illustrations.

(a) A, a merchant in Cochin, has an agent, B, in London to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as e. g., by variation of rate of exchange—but not further.

(b) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(c) A, an insurance-broker, employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(d) A, a merchant in England, directs B, his agent at Cochin, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's
accounts.

167. An agent is bound to render proper accounts to his principal on demand.

Agent's duty
to communi-
cate with
principal.

168. It is the duty of an agent, in cases of difficulty to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

Right of
principal
when agent
deals, on
his own
account, in
business of
agency
without
principal's
consent.

169. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations.

(a) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(b) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

170. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

Illustration.

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

171. An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's right of retainer out of sums received on principal's account.

172. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

Agent's duty to pay sums received for principal.

173. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

When agent's remuneration becomes due.

174. An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Agent not entitled to remuneration for business misconducted.

Illustrations.

(a) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees and he must make good the 2,000 rupees to B.

(b) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

Agent's
lien on
principal's
property.

175. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

Principal's Duty to Agent.

Agent to be
indemnified
against con-
sequences of
lawful acts.

176. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Illustrations.

(a) B, at Cochin, under instructions from A of Trichur, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

(b) B, a broker at Cochin by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

177. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Agent to be indemnified against consequences of acts done in good faith.

Illustrations.

(a) A, a decree-holder and entitled to execution of B's goods, requires the officer of the Court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

(b) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C and for B's own expenses.

178. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

Non-liability of employer of agent to do a criminal act.

Illustrations.

(a) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(b) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

179. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Compensation to agent for injury caused by principal's neglect.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of agency on contract with third persons.

Enforcement and consequences of agent's contracts.

180. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

(a) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot in a suit by the principal, set off against that claim a debt due to himself from B.

(b) A, being B's agent with authority to receive money on his behalf receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

Principal how far bound when agent exceeds authority.

181. When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority, is binding as between him and his principal.

Illustration.

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

Principal not bound when excess of agent's authority is not separable.

182. Where an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Illustration.

A authorizes B to buy 500 sheep for him, B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

183. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Consequences of notice given to agent.

Illustrations.

(a) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(b) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set off against the price of the goods a debt owing to him from C.

184. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

Such a contract shall be presumed to exist in the following cases:—

Presumption of contract to contrary.

(1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad:

(2) where the agent does not disclose the name of his principal:

(3) where the principal, though disclosed, cannot be sued.

Rights of parties to a contract made by agent not disclosed.

185. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

Performance of contract with agent supposed to be principal.

186. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A, who owes 500 rupees to B, sells, 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

Right of person dealing with agent personally liable.

187. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

188. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be

held liable, he cannot afterwards hold liable the agent or principal respectively.

189. A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Liability of pretended agent.

190. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

Person falsely contracting as agent not entitled to performance.

191. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Liability of principal inducing belief that agent's unauthorized acts were authorized.

Illustrations.

(a) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(b) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

192. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Effect, on agreement, of misrepresentation or fraud by agent.

Illustrations.

(a) A being B's Agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

(b) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

Reference to
Indian
Contract
Act, etc., in
other Acts.

193. All references in other Acts to the Indian Contract Act, IX of 1872, as made applicable to Cochin or to any section or sections of the said Act shall after the coming into force of this Act, the Cochin Sale of Goods Act and the Cochin Partnership Act, be read as applying to the corresponding sections of these Acts.

Repeal.

194. The Proclamation dated 30th Karkadagam 1083 as amended by Proclamation dated 17th Vrischigam 1084 making the provisions of the Indian Contract Act, IX of 1872 applicable to Cochin with certain amendments is hereby repealed.

THE COCHIN PARTNERSHIP ACT,

(XXIV OF 1112.)

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.
3. Application of provisions of the Cochin Contract Act.

CHAPTER II.

THE NATURE OF PARTNERSHIP.

SECTIONS.

4. Definition of "partnership," "partner," "firm" and "firm name".
5. Partnership not created by status.
6. Mode of determining existence of partnership.
7. Partnership at will.
8. Particular partnership.

CHAPTER III.

RELATIONS OF PARTNERS TO ONE ANOTHER.

9. General duties of partners.
10. Duty to indemnify for loss caused by fraud.
11. Determination of rights and duties of partners by contract between the partners.
Agreements in restraint of trade.
12. The conduct of the business.
13. Mutual rights and liabilities.
14. The property of the firm.
15. Application of the property of the firm.
16. Personal profits earned by partners.
17. Rights and duties of partners after a change in the firm, after the expiry of the term of the firm, and where additional undertakings are carried out.

CHAPTER IV.

RELATIONS OF PARTNERS TO THIRD PARTIES.

18. Partner to be agent of the firm.
19. Implied authority of partner as agent of the firm.
20. Extension and restriction of partner's implied authority.
21. Partner's authority in an emergency.
22. Mode of doing act to bind firm.
23. Effect of admissions by a partner.
24. Effect of notice to acting partner.
25. Liability of a partner for acts of the firm.
26. Liability of the firm for wrongful acts of a partner.

SECTIONS.

27. Liability of firm for misapplication by partners.
28. Holding out.
29. Rights of transferee of a partner's interest:
30. Minors admitted to the benefits of partnership.

CHAPTER V.

INCOMING AND OUTGOING PARTNERS.

31. Introduction of a partner.
32. Retirement of a partner.
33. Expulsion of a partner.
34. Insolvency of a partner.
35. Liability of estate of deceased partner.
36. Rights of outgoing partner to carry on competing business.
Agreements in restraint of trade.
37. Right of outgoing partner in certain cases to share subsequent profits.
38. Revocation of continuing guarantee by change in firm.

CHAPTER VI.

DISSOLUTION OF A FIRM.

39. Dissolution of a firm.
40. Dissolution by agreement.
41. Compulsory dissolution.
42. Dissolution on the happening of certain contingencies.
43. Dissolution by notice of partnership at will.
44. Dissolution by the Court.
45. Liability for acts of partners done after dissolution.
46. Right of partners to have business wound up after dissolution.
47. Continuing authority of partners for purposes of winding up.
48. Mode of settlement of accounts between partners.
49. Payment of firm debts and of separate debts.
50. Personal profits earned after dissolution.
51. Return of premium on premature dissolution.

SECTIONS.

52. Rights where partnership contract is rescinded for fraud or mis-representation.
53. Right to restrain from use of firm name or firm property.
54. Agreements in restraint of trade.
55. Sale of goodwill after dissolution.
Rights of buyer and seller of goodwill.
Agreements in restraint of trade.

CHAPTER VII.

REGISTRATION OF FIRMS.

56. Power to exempt from application of this Chapter.
57. Appointment of Registrars.
58. Application for registration.
59. Registration.
60. Recording of alterations in firm name and principal place of business.
61. Noting of closing and opening of branches.
62. Noting of changes in names and addresses of partners.
63. Recording of changes in and dissolution of a firm.
Recording of withdrawal of a minor.
64. Rectification of mistakes.
65. Amendment of Register by order of Court.
66. Inspection of Register and filed documents.
67. Grant of copies.
68. Rules of evidence.
69. Effect of non-registration.
70. Penalty for furnishing false particulars.
71. Power to make rules.

CHAPTER VIII.

SUPPLEMENTAL.

72. Mode of giving public notice.
73. Savings.

SCHEDULE.

THE COCHIN PARTNERSHIP ¹ [ACT],
(XXIV OF 1112.)

AN ACT TO DEFINE AND AMEND THE LAW
RELATING TO PARTNERSHIP.

*Passed by His Highness the Maharaja of Cochin on the
26th day of Kumbham 1112, corresponding to the
9th day of March, 1937.*

Preamble.

Whereas it is expedient to define and amend the law relating to partnership; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Cochin Partnership Act, XXIV of 1112.

(2) It extends to the whole of Cochin.

(3) It shall come into force at once.

Definitions.

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

(a) an “act of a firm” means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm;

(b) “business” includes every trade, occupation and profession;

(c) “prescribed” means prescribed by rules made under this Act;

(d) “third party” used in relation to a firm or to a partner therein means any person who is not a partner in the firm; and

(e) expressions used but not defined in this Act and defined in the Cochin Contract Act, shall have the meanings assigned to them in that Act.

1. Substituted for ‘Regulation’ throughout the enactment by Proclamation V of 1112.

3. The provisions of the Cochin Contract Act, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to firms.

Application of provisions of the Cochin Contract Act.

CHAPTER II.

THE NATURE OF PARTNERSHIP.

4. "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Definition of "partnership," "partner," "firm" and "firm name".

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm" and the name under which their business is carried on is called the "firm name."

5. The relation of partnership arises from contract and not from status ;

Partnership not created by status.

and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business.

6. In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

Mode of determining existence of partnership.

Explanation 1.—The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

Explanation 2.—The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business ;

and, in particular, the receipt of such share or payment—

(a) by a lender of money to persons engaged or about to engage in any business,

(b) by a servant or agent as remuneration,

(c) by the widow or a child of a deceased partner, as annuity, or

(d) by a previous owner or part owner of the business, as consideration for the sale of the goodwill or share thereof,

does not of itself make the receiver a partner with the persons carrying on the business.

Partnership
at will.

7. Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will".

Particular
partnership.

8. A person may become a partner with another person in particular adventures or undertakings.

CHAPTER III.

RELATIONS OF PARTNERS TO ONE ANOTHER.

General
duties of
partners.

9. Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.

Duty to
indemnify for
loss caused
by fraud.

10. Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

Determin-
ation of
rights and
duties of
partners by
contract
between the
partners.

11. (1) Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing.

Such contract may be varied by consent of all the partners and such consent may be express or may be implied by a course of dealing.

(2) Notwithstanding anything contained in section 28 of the Cochin Contract Act, such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

Agreements
in restraint
of trade.

12. Subject to contract between the partners—

The conduct
of the
business.

(a) every partner has a right to take part in the conduct of the business ;

(b) every partner is bound to attend diligently to his duties in the conduct of the business ;

(c) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners ; and

(d) every partner has a right to have access to and to inspect and copy any of the books of the firm.

13. Subject to contract between the partners—

Mutual
rights and
liabilities.

(a) a partner is not entitled to receive remuneration for taking part in the conduct of the business ;

(b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm ;

(c) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits ;

(d) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent per annum ;

(e) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him—

(i) in the ordinary and proper conduct of the business, and

(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances ; and

(f) a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

The property of the firm.

14. Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

Application of the property of the firm.

15. Subject to the contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

Personal profits earned by partners.

16. Subject to contract between the partners,—

(a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm ;

(b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

Rights and duties of partners after a change in the firm.

17. Subject to contract between the partners,—

(a) where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be ;

(b) where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership at will; and

after the expiry of the term of the firm, and

(c) where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.

where additional undertakings are carried out.

CHAPTER IV.

RELATIONS OF PARTNERS TO THIRD PARTIES.

18. Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm.

Partner to be agent of the firm.

19. (1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

Implied authority of partner as agent of the firm.

The authority of a partner to bind the firm conferred by this section is called his "implied authority."

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

(a) submit a dispute relating to the business of the firm to arbitration,

(b) open a banking account on behalf of the firm in his own name,

(c) compromise or relinquish any claim or portion of a claim by the firm,

(d) withdraw a suit or proceeding filed on behalf of the firm,

(e) admit any liability in a suit or proceeding against the firm,

(f) acquire immovable property on behalf of the firm,

(g) transfer immovable property belonging to the firm, or

(h) enter into partnership on behalf of the firm.

Extension and restriction of partner's implied authority.

20. The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.

Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

Partner's authority in an emergency.

21. A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

Made of doing act to bind firm.

22. In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Effect of admissions by a partner.

23. An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

Effect of notice to acting partner.

24. Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

25. Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

Liability of a partner for acts of the firm.

26. Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

Liability of the firm for wrongful acts of a partner.

27. Where—

(a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

Liability of firm for misapplication by partners.

(b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

28. (1) Any one who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to any one who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

Holding out.

(2) Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

29. (1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm,

Rights of transferee of a partner's interest.

to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

Minors
admitted to
the benefits
of part-
nership.

30. (1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

(3) Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.

(4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in section 48 :

Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners.

(5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm :

Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

(6) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the person asserting that fact.

(7) Where such person becomes a partner,—

(a) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and

(b) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

(8) Where such person elects not to become a partner—

(a) his rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice,

(b) his share shall not be liable for any acts of the firm done after the date of the notice, and

(c) he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section (4).

(9) Nothing in sub-sections (7) and (8) shall affect the provisions of section 28.

CHAPTER V.

INCOMING AND OUTGOING PARTNERS.

Introduction
of a partner.

31. (1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

(2) Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

Retirement
of a partner.

32. (1) A partner may retire—

(a) with the consent of all the other partners,

(b) in accordance with an express agreement by the partners, or

(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement.

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

33. (1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners. Expulsion of a partner.

(2) The provisions of sub-sections (2), (3) and (4) of section 32 shall apply to an expelled partner as if he were a retired partner.

34. (1) Where a partner in a firm is adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved. Insolvency of a partner.

(2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

35. Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate, of a deceased partner is not liable for any act of the firm done after his death. Liability of estate of deceased partner.

36. (1) An outgoing partner may carry on a business competing with that of the firm and he may advertise such business, but, subject to contract to the contrary, he may not— Rights of outgoing partner to carry on competing business.

(a) use the firm name,

(b) represent himself as carrying on the business of the firm, or.

(c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

Agreements
in restraint
of trade.

(2) A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits; and, notwithstanding anything contained in section 28 of the Cochin Contract Act, such agreement shall be valid if the restrictions imposed are reasonable.

Right of
outgoing
partner in
certain
cases to
share subse-
quent
profits.

37. Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm :

Provided that where by contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

Revocation
of continu-
ing guaran-
tee by
change in
firm.

38. A continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

CHAPTER VI.

DISSOLUTION OF A FIRM.

39. The dissolution of partnership between all the partners of a firm is called the "dissolution of the firm".

Dissolution of a firm.

40. A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

Dissolution by agreement.

41. A firm is dissolved—

Compulsory dissolution.

(a) by the adjudication of all the partners or of all the partners but one as insolvent, or

(b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership :

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

42. Subject to contract between the partners a firm is dissolved—

Dissolution on the happening of certain contingencies.

(a) if constituted for a fixed term, by the expiry of that term ;

(b) if constituted to carry out one or more adventures or undertakings, by the completion thereof ;

(c) by the death of a partner ; and

(d) by the adjudication of a partner as an insolvent.

43. (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

Dissolution by notice of partnership at will.

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no

date is so mentioned, as from the date of the communication of the notice.

Dissolution
by the
Court.

44. At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely:—

(a) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;

(b) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;

(c) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;

(d) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;

(e) that a partner other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 47 of Order XXI of the first Schedule to the Cochin Code of Civil Procedure, or has allowed it to be sold in the recovery of arrears of land-revenue or of any dues recoverable as arrears of land-revenue due by the partner;

(f) that the business of the firm cannot be carried on save at a loss; or

(g) on any other ground which renders it just and equitable that the firm should be dissolved.

45. (1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution :

Liability for acts of partners done after dissolution.

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

(2) Notices under sub-section (1) may be given by any partner.

46. On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

Right of partners to have business wound up after dissolution.

47. After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise :

Continuing authority of partners for purposes of winding up.

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

48. In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:—

Mode of settlement of accounts between partners.

(a) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

(b) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:—

(i) in paying the debts of the firm to third parties ;

(ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital ;

(iii) in paying to each partner rateably what is due to him on account of capital ; and

(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

Payment of
firm debts
and of
separate
debts.

49. Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Personal
profits
earned after
dissolution.

50. Subject to contract between the partners, the provisions of clause (a) of section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up :

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

51. Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium or of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner, unless—

Return of premium on premature dissolution.

(a) the dissolution is mainly due to his own misconduct, or

(b) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

52. Where a contract creating partnership is rescinded on the ground of the fraud or misrepresentation of any of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

Rights where partnership contract is rescinded for fraud or misrepresentation.

(a) to a lien on, or a right of retention of, the surplus of the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him ;

(b) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and

(c) to be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm.

53. After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up :

Right to restrain from use of firm name or firm property.

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

Agreements
in restraint
of trade.

54. Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits; and notwithstanding anything contained in section 28 of the Cochin Contract Act such agreement shall be valid if the restrictions imposed are reasonable.

Sale of
goodwill
after
dissolution.

55. (1) In settling the accounts of a firm after dissolution the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.

Rights of
buyer and
seller of
goodwill.

(2) Where the goodwill of a firm is sold after dissolution a partner may carry on a business competing with that of the buyer and he may advertise such business, but, subject to agreement between him and the buyer, he may not—

(a) use the firm name,

(b) represent himself as carrying on the business of the firm, or

(c) solicit the custom of persons who were dealing with the firm before its dissolution.

Agreements
in restraint
of trade.

(3) Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits and, notwithstanding anything contained in section 28 of the Cochin Contract Act such agreement shall be valid if the restrictions imposed are reasonable.

CHAPTER VII.

REGISTRATION OF FIRMS.

56. Government may, by notification in the Cochin Government Gazette, direct that the provisions of this Chapter shall not apply to any part of the State specified in the notification.

Power to exempt from application of this Chapter.

57. (1) Government may appoint Registrars of Firms for the purposes of this Act and may define the areas within which they shall exercise their powers and perform their duties.

Appointment of Registrars.

(2) Every Registrar shall be deemed to be a public servant within the meaning of section 15 of the Cochin Penal Code.

58. (1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form, and accompanied by the prescribed fee, stating—

Application for registration.

- (a) the firm name,
- (b) the place or principal place of business of the firm,
- (c) the names of any other places where the firm carries on business,
- (d) the date when each partner joined the firm,
- (e) the names in full and permanent addresses of the partners, and
- (f) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorized in this behalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain any of the following words, namely :—

“Crown”, “Emperor”, “Empress”, “Empire”, “Imperial”, “King”, “Queen”, “Royal”, or words expressing or implying the sanction, approval or patronage of the Crown or the Government of India or the Government of His Highness the Maharaja except when the Government signify their consent to the use of such words as part of the firm name by order in writing under the hand of the Secretary to Government.

Registration.

59. When the Registrar is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement.

Recording of alterations in firm name and principal place of business.

60. (1) When an alteration is made in the firm name or in the location of the principal place of business of a registered firm, a statement may be sent to the Registrar accompanied by the prescribed fee, specifying the alteration, and signed and verified in the manner required under section 58.

(2) When the Registrar is satisfied that the provisions of sub-section (1) have been duly complied with, he shall amend the entry relating to the firm in the Register of Firms in accordance with the statement, and shall file it along with the statement relating to the firm filed under section 59.

Noting of closing and opening of branches.

61. When a registered firm discontinues business at any place or begins to carry on business at any place, such place not being its principal place of business, any partner or agent of the firm may send intimation thereof to the Registrar, who shall make a note of such intimation in the entry relating to the firm in the Register of Firms, and shall file the intimation along with the statement relating to the firm filed under section 59.

Noting of changes in names and addresses of partners.

62. When any partner in a registered firm alters his name or permanent address, an intimation of the alteration may be sent by any partner or agent of the firm to the Registrar, who shall deal with it in the manner provided in section 61.

63. (1) When a change occurs in the constitution of a registered firm any incoming, continuing or outgoing partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorized in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed under section 59.

Recording of changes in and dissolution of a firm.

(2) When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become a partner and the firm is then a registered firm, he or his agent specially authorized in this behalf, may give notice to the Registrar that he has or has not become a partner, and the Registrar shall deal with the notice in the manner provided in sub-section (1).

Recording of withdrawal of a minor.

64. (1) The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the Register of Firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter.

Rectification of mistakes.

(2) On application made by all the parties who have signed any document relating to a firm filed under this Chapter, the Registrar may rectify any mistake in such document or in the record or note thereof made in the Register of Firms.

65. A Court deciding any matter relating to a registered firm may direct that the Registrar shall make any amendment in the entry in the Register of Firms relating to such firm which is consequential upon its decision; and the Registrar shall amend the entry accordingly.

Amendment of Register by order of Court.

Inspection of Register and filed documents.

66. (1) The Register of Firms shall be open to inspection by any person on payment of such fee as may be prescribed.

(2) All statements, notices and intimations filed under this Chapter shall be open to inspection, subject to such conditions and on payment of such fee as may be prescribed.

Grant of copies.

67. The Registrar shall on application furnish to any person, on payment of such fee as may be prescribed, a copy, certified under his hand, of any entry or portion thereof in the Register of Firms.

Rules of evidence.

68. (1) Any statement, intimation or notice recorded or noted in the Register of Firms shall as against any person by whom or on whose behalf such statement, intimation or notice was signed, be conclusive proof of any fact therein stated.

(2) A certified copy of an entry relating to a firm in the Register in the Firms may be produced in proof of the fact of the registration of such firm, and of the contents of any statement, intimation or notice recorded or noted therein.

Effect of non-registration.

69. (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the register of Firms as partners in the firm.

-
1. Section kept in abeyance until rules are framed under section 71 and the requisite machinery is set up for the registration of firms and the fact is notified in the Gazette by notification No. 121 dated 26-9-1112.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect--

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm, or

(b) the powers of an official receiver or Court under the Cochin Insolvency Act to realize the property of an insolvent partner.

(4) This section shall not apply—

(a) to firms or to partners in firms which have no place of business in Cochin, or whose places of business in Cochin are situated in areas to which, by notification under section 56, this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which is not of a kind specified in Schedule II of Act III of 1976, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

70. Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particular which he knows to be false or does not believe to be true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with imprisonment which may extend to three months, or with fine, or with both.

Penalty for
furnishing
false parti-
culars.

71. (1) Government may make rules prescribing the fees which shall accompany documents sent to the Registrar of Firms, or which shall be payable for the inspection of documents in the custody of the Registrar of Firms, or for copies from the Register of Firms :

Power to
make rules.

Provided that such fees shall not exceed the maximum fees specified in the Schedule below.

(2) Government may make rules—

(a) prescribing the form of statement submitted under section 58, and of the verification thereof ;

(b) requiring statements, intimations and notices under sections 60, 61, 62 and 63 to be in prescribed form, and prescribing the form thereof ;

(c) prescribing the form of the Register of Firms, and the mode in which entries relating to firms are to be made therein and the mode in which such entries are to be amended or notes made therein ;

(d) regulating the procedure of the Registrar when disputes arise ;

(e) regulating the filing of documents received by the Registrar ;

(f) prescribing conditions for the inspection of original documents ;

(g) regulating the grant of copies ;

(h) regulating the elimination of registers and documents ;

(i) providing for the maintenance and form of an Index to the Register of Firms ; and

(j) generally, to carry out the purposes of this Chapter.

(3) All rules made under this section shall be subject to the condition of previous publication.

CHAPTER VIII.

SUPPLEMENTAL.

Mode of giving public notice.

72. A public notice under this Act is given—

(a) where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of Firms under section 63, and by publication in the Cochin Government Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business, and

(b) in any other case, by publication in the Cochin Government Gazette and in at least one vernacular newspaper circulating in the district where the

firm to which it relates has its place or principal place of business.

73. Nothing in this Act shall affect or be deemed to affect— Savings.

(a) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(b) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the commencement of this Act, or

(c) anything done or suffered before the commencement of this Act, or

(d) any enactment relating to partnership not expressly repealed by this Act, or

(e) any rule of insolvency relating to partnership, or

(f) any rule of law not inconsistent with this Act.

SCHEDULE.

MAXIMUM FEES.

[See sub-section (1) of section 71.]

Document or Act in respect of which the fee is payable.	Maximum fee.
Statement under section 58 ...	Three rupees.
Statement under section 60 ...	One rupee.
Intimation under section 61 ...	One rupee.
Intimation under section 62 ...	One rupee.
Notice under section 63 ...	One rupee.
Application under section 64 ...	One rupee.
Inspection of the Register of Firms under sub-section (1) of section 66 ...	Eight anna for inspecting one volume of the Register.
Inspection of documents relating to a Firm under sub-section (2) of section 66 ...	Eight annas for the inspection of all documents relating to one Firm.
Copies from the Register of Firms ...	Two annas for each hundred words or part thereof.

THE COCHIN SALE OF GOODS ACT,
(XXV OF 1112.)

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.
3. Application of provisions of the Cochin Contract Act.

CHAPTER II.

FORMATION OF THE CONTRACT.

CONTRACT OF SALE.

4. Sale and agreement to sell.
Formalities of the contract.
5. Contract of sale how made.
Subject-matter of the contract.
6. Existing or future goods.
7. Goods perishing before making of contract.
8. Goods perishing before sale but after agreement to sell.
The price.
9. Ascertainment of price.
10. Agreement to sell at valuation.
Conditions and Warranties.
11. Stipulations as to time.
12. Condition and warranty.
13. When condition to be treated as warranty.
14. Implied undertaking as to title, etc.
15. Sale by description.
16. Implied conditions as to quality or fitness.
17. Sale by sample.

CHAPTER III.

EFFECTS OF THE CONTRACT.

Transfer of property as between seller and buyer.

SECTIONS.

18. Goods must be ascertained.
19. Property passes when intended to pass.
20. Specific goods in a deliverable state.
21. Specific goods to be put into a deliverable state.
22. Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price.
23. Sale of unascertained goods and appropriation.
Delivery to carrier.
24. Goods sent on approval or "on sale or return".
25. Reservation of right of disposal.
26. Risk *prima facie* passes with property.
Transfer of title.
27. Sale by person not the owner.
28. Sale by one of joint owners.
29. Sale by person in possession under voidable contract.
30. Seller or buyer in possession after sale.

CHAPTER IV.

PERFORMANCE OF THE CONTRACT.

31. Duties of seller and buyer.
32. Payment and delivery are concurrent conditions.
33. Delivery.
34. Effect of part delivery.
35. Buyer to apply for delivery.
36. Rules as to delivery.
37. Delivery of wrong quantity.
38. Instalment deliveries.
39. Delivery to carrier or wharfinger.
40. Risk where goods are delivered at distant place.
41. Buyer's right of examining the goods.
42. Acceptance.
43. Buyer not bound to return rejected goods.

SECTIONS.

44. Liability of buyer for neglecting or refusing delivery of goods.

CHAPTER V.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

45. "Unpaid seller" defined.
 46. Unpaid seller's rights.
 Unpaid seller's lien.
 47. Seller's lien.
 48. Part delivery.
 49. Termination of lien.
 Stoppage in transit.
 50. Right of stoppage in transit.
 51. Duration of transit.
 52. How stoppage in transit is effected.
 Transfer by buyer and seller.
 53. Effect of sub-sale or pledge by buyer.
 54. Sale not generally rescinded by lien or stoppage in transit.

CHAPTER VI.

SUITS FOR BREACH OF THE CONTRACT.

55. Suit for price.
 56. Damages for non-acceptance.
 57. Damages for non-delivery.
 58. Specific performance.
 59. Remedy for breach of warranty.
 60. Repudiation of contract before due date.
 61. Interest by way of damages and special damages.

CHAPTER VII:

MISCELLANEOUS.

62. Exclusion of implied terms and conditions;
 63. Reasonable time—a question of fact.
 64. Auction sale.
 65. Savings.

THE COCHIN SALE OF GOODS : [ACT],
(XXV OF 1112.)

AN ACT TO DEFINE AND AMEND THE LAW
RELATING TO THE SALE OF GOODS.

*Passed by His Highness the Maharaja of Cochin on the
26th day of Kumbham 1112, corresponding to the
9th day of March, 1937.*

Whereas it is expedient to define and amend the law relating to the sale of goods; It is hereby enacted as follows:— Preamble.

CHAPTER I.

1. (1) This Act may be called the Cochin Sale of Goods Act, XXV of 1112. Short title,
extent and
commence-
ment.

(2) It extends to the whole of Cochin and shall come into force at once.

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

(1) “buyer” means a person who buys or agrees to buy goods;

(2) “delivery” means voluntary transfer of possession from one person to another;

(3) goods are said to be in a “deliverable state” when they are in such state that the buyer would under the contract be bound to take delivery of them;

(4) “document of title to goods” includes a bill of lading, dock-warrant, warehouse-keeper’s certificate, wharfinger’s certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to

1. Substituted for ‘Regulation’ throughout the enactment by Proclamation V of 1112.

authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented ;

(5) “ fault ” means wrongful act or default ;

(6) “ future goods ” means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale ;

(7) “ goods ” means every kind of movable property other than actionable claims and money , and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale ;

(8) a person is said to be “ insolvent ” who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not ;

(9) “ mercantile agent ” means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods ;

(10) “ price ” means the money consideration for a sale of goods ;

(11) “ property ” means the general property in goods, and not merely a special property ;

(12) “ quality of goods ” includes their state or condition ;

(13) “ seller ” means a person who sells or agrees to sell goods ;

(14) “ specific goods ” means goods identified and agreed upon at the time a contract of sale is made ; and

(15) expressions used but not defined in this Act and defined in the Cochin Contract Act have the meanings assigned to them in that Act.

3. The provisions of the Cochin Contract Act, save in so far as they are inconsistent with the express provisions of this Act shall continue to apply to contracts for the sale of goods.

Application of provisions of the Cochin Contract Act.

CHAPTER II.

FORMATION OF THE CONTRACT.

Contract of sale.

4. (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

Sale and agreement to sell.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Formalities of the Contract.

5. (1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.

Contract of sale how made.

(2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Subject matter of Contract.

Existing or
future
goods.

6. (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

Goods
perishing
before
making of
contract.

7. Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

Goods
perishing
before sale
but after
agreement
to sell.

8 Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

The Price.

Ascertain-
ment of
price.

9. (1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Agreement
to sell at
valuation.

10. (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided:

Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

Conditions and Warranties.

11. Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

Stipulations
as to time.

12. (1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

Condition
and
warranty.

(2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

(3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

(4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.

13. (1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

When condi-
tion to be
treated as
warranty.

(2) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

(3) Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.

Implied
undertaking
as to title,
etc.

14. In a contract of sale, unless the circumstances of the contract are such as to show a different intention there is—

(a) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;

(b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;

(c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

Sale by
description.

15. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Implied
conditions as
to quality
or fitness.

16. Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any

particular purpose of goods supplied under a contract of sale, except as follows :—

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose :

Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality :

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

17. (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect. Sale by sample.

(2) In the case of a contract for sale by sample there is an implied condition—

(a) that the bulk shall correspond with the sample in quality ;

(b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample ;

(c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

CHAPTER III.

EFFECTS OF THE CONTRACT.

Transfer of property as between seller and buyer.

Goods must be ascertained.

18. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Property passes when intended to pass.

19. (1) Where there is a contract for sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Specific goods in a deliverable state.

20. Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

Specific goods to be put into a deliverable state.

21. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

22. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price.

23. (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

Sale of unascertained goods and appropriation.

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

Delivery to carrier.

24. When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer—

Goods sent on approval or "on sale or return."

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction ;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

25. (1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the

Reservation of right of disposal.

contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(2) Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

Risk *prima facie* passes with property.

26. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not:

Provided that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault:

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

Transfer of title.

Sale by person not the owner.

27. Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to

the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell:

Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorized by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

28. If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

Sale by one of joint owners.

29. When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 20 of the Cochin Contract Act, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

Sale by person in possession under voidable contract.

30. (1) Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

Seller or buyer in possession after sale.

(2) Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

CHAPTER IV.

PERFORMANCE OF THE CONTRACT.

Duties of seller and buyer.

31. It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Payment and delivery are concurrent conditions.

32. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Delivery.

33. Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorized to hold them on his behalf.

Effect of part delivery.

34. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Buyer to apply for delivery.

35. Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

36. (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, or, if not then in existence, at the place at which they are manufactured or produced.

Rules as to delivery.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

37. (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate.

Delivery of wrong quantity.

(2) When the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer

accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

Instalment deliveries.

38. (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

Delivery to carrier or wharfinger.

39. (1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, *prima facie* deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable

having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit or whilst in the custody of the wharfinger, the buyer may decline to treat the delivery to the carrier or wharfinger as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him to insure them during their sea transit, and if the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit.

40. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer shall, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Risk where goods are delivered at distant place.

41. (1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

Buyer's right of examining the goods.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

42. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Acceptance.

Buyer not bound to return rejected goods.

43. Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Liability of buyer for neglecting or refusing delivery of goods.

44. When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods:

Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

CHAPTER V.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

"Unpaid seller"—defined.

45. (1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act—

(a) when the whole of the price has not been paid or tendered;

(b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Chapter, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

Unpaid seller's rights.

46. (1) Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

(a) a lien on the goods for the price while he is in possession of them ;

(b) in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them ;

(c) a right of re-sale as limited by this Act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

Unpaid seller's lien.

47. (1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely :—

Seller's lien.

(a) where the goods have been sold without any stipulation as to credit ;

(b) where the goods have been sold on credit, but the term of credit has expired ;

(c) where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

48. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Part delivery.

49. (1) The unpaid seller of goods loses his lien thereon.—

Termination of lien.

(a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods ;

(b) when the buyer or his agent lawfully obtains possession of the goods ;

(c) by waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

Stoppage in transit.

Right of
stoppage
in transit.

50. Subject to the provisions of this Act when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.

Duration of
transit.

51. (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the

circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods.

52. (1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, shall be given at such time and in such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

How stoppage in transit is effected.

(2) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of the seller. The expenses of such re-delivery shall be borne by the seller.

Transfer by buyer and seller.

53. (1) Subject to the provisions of this Act, the unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto :

Effect of sub-sale or pledge by buyer

Provided that where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller's right of lien or stoppage in transit is defeated, and, if such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the transferee.

(2) Where the transfer is by way of pledge, the unpaid seller may require the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledgee and available against the buyer.

Sale not generally rescinded by lien or stoppage in transit.

54. (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or stoppage in transit.

(2) Where the goods are of a perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit gives notice to the buyer of his intention to re-sell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender the price, re-sell the goods within a reasonable time and recover from the original buyer damages for any loss occasioned by his breach of contract, but the buyer shall not be entitled to any profit which may occur on the re-sale. If such notice is not given, the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the re-sale.

(3) Where an unpaid seller who has exercised his right of lien or stoppage in transit re-sells the goods, the buyer acquired a good title thereto as against the original

buyer, notwithstanding that no notice of the re-sale has been given to the original buyer.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and, on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim which the seller may have for damages.

CHAPTER VI.

SUITS FOR BREACH OF THE CONTRACT.

55. (1) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods. Suit for price.

(2) Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

56. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. Damages for non-acceptance.

57. Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. Damages for non-delivery.

58. Subject to the provisions of Chapter II of the Specific Relief Act, 1097, in any suit for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, on the application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The decree may be unconditional, or upon such terms Specific performance.

and conditions as to damages, payment of the price or otherwise, as the Court may deem just, and the application of the plaintiff may be made at any time before the decree.

Remedy for
breach of
warranty.

59. (1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—

(a) set up against the seller the breach of warranty in diminution or extinction of the price; or

(b) sue the seller for damages for breach of warranty.

(2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage.

Repudiation
of contract
before due
date.

60. Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

Interest by
way of dam-
ages and spe-
cial damages.

61. (1) Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

(2) In the absence of a contract to the contrary, the Court may award interest at such rate as it thinks fit on the amount of the price—

(a) to the seller in a suit by him for the amount of the price—from the date of the tender of the goods or from the date on which the price was payable ;

(b) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller—from the date on which the payment was made.

CHAPTER VII.

MISCELLANEOUS.

62. Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract.

Exclusion of implied terms and conditions.

63. Where in this Act any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

Reasonable time a question of fact.

64. In the case of sale by auction—

Auction sale.

(1) Where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale ;

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner ; and, until such announcement is made, any bidder may retract his bid ;

(3) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction ;

(4) where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person ;

and any sale contravening this rule may be treated as fraudulent by the buyer ;

(5) the sale may be notified to be subject to a reserved or upset price ;

(6) if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Savings.

65. (1) Nothing in this Act shall affect or be deemed to affect—

(a) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(b) any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability, or

(c) anything done or suffered before the commencement of this Act, or

(d) any enactment relating to the sale of goods which is not expressly repealed by this Act, or

(e) any rule of law not inconsistent with this Act.

(2) The rules of insolvency relating to contracts for the sale of goods shall continue to apply thereto, notwithstanding anything contained in this Act.

(3) The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.

THE COCHIN DEBT CONCILIATION ACT,
(XXVI OF 1112.)

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.
3. Establishment and constitution of boards.
4. Application for settlement between debtor and his creditors.
5. Verification of application.
6. Particulars to be stated in application.
7. Rejection of application.
8. Procedure on application.
9. Dismissal of application.
10. Notice calling upon creditors to submit statements of debts.
11. Procedure on submission of statement of debts.
12. Power of board to decide dispute as to the existence or amount of debts or assets.
13. Power of board to require attendance of persons and production of documents.
14. Agreement of amicable settlement, its registration and effect.
15. Properties exempt from attachment not to be taken into account.
16. Maximum amount allowable in satisfaction of a debt.
17. Power of board to dismiss application.
18. Grant of certificate in respect of certain debts.
Power of court to disallow cost or interest.
Decrees in suits after registration of agreement not to be executed.
19. Bar of civil suits.
20. Avoidance of certain transfers of debtors' property.
21. Alienation made with sanction of board not to be considered as a fraudulent preference.
22. Bar of appeal or revision.

SECTIONS.

23. Power of board to review its order.
24. Appearance of parties before board.
25. Stay of pending suits or other proceedings.
26. Report by board regarding sums due to Government.
27. Computation of period of limitation for suits and proceedings.
28. Members of the board deemed to be public servants.
29. Power to make rules.

THE COCHIN DEBT CONCILIATION [ACT],
(XXVI OF 1112.)

*Passed by His Highness the Maharaja of Cochin on the
26th day of Kumbham 1112, corresponding to the
9th day of March, 1937.*

Preamble.

Whereas it is expedient to relieve agriculturists from indebtedness by amicable settlement between them and their creditors ; It is hereby enacted as follows :—

Short title,
extent and
commence-
ment

1. (1) This Act may be called the Cochin Debt Conciliation Act, XXVI of 1112.

(2) It extends to the whole of Cochin.

(3) ² It shall come into force on such date as the Government may, by notification, appoint.

Definitions.

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

(a) 'landlord' means a person immediately under whom a tenant holds;

(b) 'tenant' with its grammatical variations and cognate expressions means and includes a person who, as lessee, sub-lessee, mortgagee, or sub-mortgagee, or in

1. Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

2. Brought into force from 30-10-1112 by Notification No. 121 dated 22-10-1112.

good faith believing himself to be lessee, sub-lessee, mortgagee or sub-mortgagee of land, is in possession thereof or who with the intention of paying the customary rent to the person entitled to cultivate or let waste land, brings such land under cultivation and is in occupation thereof as cultivator after giving due notice of his intention to do so in writing to such person and if such person has not within 30 days of the receipt of the notice raised any objection thereto in writing;

(c) 'agriculture' includes horticulture, the use of land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry or bees, sericulture and the growing of fruits, vegetables and the like;

(d) 'board' means a Debt Conciliation Board established under sub-section (1) of section 3;

(e) 'creditor' means a person to whom a debt is owing and includes a co-operative society;

(f) 'debt' means all liabilities owing to a creditor, in cash or kind, secured or unsecured, whether payable under a decree or order of a civil court or otherwise, and whether mature or not, but shall not include arrears of wages, land revenue or anything recoverable as an arrear of land revenue, or any debt or other liability due to the Government¹ [or any Municipal taxes or other Municipal dues] or any money for the recovery of which a suit is barred by limitation;

(g) 'debtor' means a person—

(i) who earns his livelihood mainly by agriculture or who is a tenant or landlord whether he cultivates the land personally or otherwise; and

(ii) whose debts exceed one hundred rupees;

(h) 'prescribed' means prescribed by rules made under this Act;

(i) 'secured debt' includes mortgage debt or any debt for which there is security, lien or charge on immovable property created by deed, statute or otherwise;

¹. Inserted by section 2 of Act X of 1113.

(j) 'secured creditor' means a creditor who holds for his debt a security by way of mortgage, lien or charge on immovable property created by a deed, statute or otherwise.

Establishment and constitution of boards.

3. (1) The Government may establish a Debt Conciliation Board for such areas as may be specified by Government. Such board shall consist of a Chairman and two members appointed by the Government. One at least of the members shall be a non-official. The Government may, for reasons to be recorded in writing, cancel the appointment of the Chairman or any member of the board or dissolve any board and from the date of such dissolution the board shall cease to exist.

(2) The Chairman and every member of a board so established shall be appointed for a term not exceeding three years. Such Chairman or member may, on the expiration of the period for which he has been appointed, be again appointed for a further term not exceeding three years.

(3) A board shall have such quorum as may be prescribed.

(4) Where the Chairman and members of a board are unable to agree, the opinion of the majority shall prevail. Where the board is equally divided the Chairman shall have a casting vote.

(5) When a board is dissolved or otherwise ceases to exist, the Government may, at any time, establish another board for the area for which the former board was established and may declare the board newly established to be the successor-in-office of the board which has ceased to exist and such board shall exercise all the powers under this Act.

(6) The Government may define the local and pecuniary jurisdiction of each board.

Application for settlement between debtor and his creditors.

4. (1) A debtor may make an application for the settlement of his debts to the board established for the local area within which he ordinarily resides, or if no

board has been established for that local area to the board established for any local area in which he holds immovable property, if any, but he shall not apply to more than one board.

(2) Unless the debtor has already made an application under sub-section (1), any of his creditors may make an application to a board to which the debtor might have applied under that sub-section.

(3) If applications for the settlement of the debts of the same debtor are made to more than one board, such applications shall, in accordance with rules made under this Act, be transferred to and dealt with by one board as one single application.

5. Every application to the board shall be in writing and shall be signed and verified in the manner prescribed by the Cochin Civil Procedure Code for signing and verifying plaints. Verification of application.

6. (1) Every application made by a debtor to a board shall contain the following particulars namely:— Particulars to be stated in application.

(a) a statement that the debtor is unable to pay his debts,

(b) the place where he resides,

(c) the amount and particulars of all claims against him together with the names and residences of his creditors so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by him; and

(d) particulars of the debtor's property, both movable and immovable (including claims due to him), a specification of the value thereof and of the places where the same may be found and details of any mortgage, lien or charge subsisting thereon.

(2) Every application made by a creditor shall contain the following particulars, namely:—

(a) the place where the debtor resides; and

(b) the amount and particulars of his claim against such debtor.

Rejection of application.

7. The application shall be rejected if it does not comply with any of the requirements mentioned in sections 5 and 6.

The rejection of an application under this section shall not preclude the applicant from making a fresh application.

Procedure on application.

8. (1) On receipt of an application under section 4 the board shall, unless it rejects the application under section 7, pass an order fixing a date and place for hearing the application.

(2) Notice of the order under sub-section (1) shall be sent by registered post to the debtor and creditors.

(3) If the application is made by a creditor the debtor shall, on his appearance, furnish the particulars mentioned in sub-section (1) of section 6 and notice shall be sent to all the creditors specified by him.

Dismissal of application.

9. An application under section 4 may be dismissed by the board at any stage of the proceedings—

(a) if, for reasons to be stated in writing, the board does not consider it desirable or practicable to effect a settlement of debts ; or

(b) if, in the opinion of the board, the applicant fails to pursue his application with due diligence :

Provided that, when such applicant is a creditor, the board, instead of dismissing such application, may substitute the debtor or any other creditor, who shall thereafter be deemed to be the applicant for the purposes of this Act ; or

(c) if the application includes a claim, which, in the opinion of the board, is collusive and intended to defraud any creditor.

10. (1) If, after examining the debtor, it is in the opinion of the board desirable to attempt to effect a settlement between him and his creditors, a notice shall be issued and served or published in the manner prescribed, calling upon every creditor of the debtor to submit a statement of debts owed to such creditor by the debtor. Such statement shall be in writing and shall be signed and verified in the manner prescribed by the Cochin Civil Procedure Code for signing and verifying claims and shall be submitted to the board within two months from the date of service or publication of the notice as the case may be :

Notice calling upon creditors to submit statements of debts.

Provided that, if the board is satisfied that any creditor was, for good and sufficient cause, unable to comply with such direction, it may extend the period for the submission of his statement of the debt owed to him.

(2) Subject to the provisions of sub-section (3) every debt of which a statement is not submitted to the board in compliance with the provisions of sub-section (1) shall be deemed for all purposes and all occasions to have been duly discharged.

(3) If a creditor proves to the satisfaction of the board or a civil court that the notice was not served on him or that he had no knowledge of the publication thereof or that for some other sufficient reason, he was unable to submit the statement, the board or court may revive the debt, if the creditor files an application in that behalf within two months after he becomes aware of the proceedings taken under this section :

Provided that a creditor shall not be entitled to apply under this sub-section to the board and to a civil court simultaneously or to apply to either the board or a civil court after having applied to the other.

11. (1) Every creditor submitting a statement of the debts owed to him in compliance with a notice issued under sub-section (1) of section 10 shall furnish, along

Procedure on submission of statement of debts.

with such statement, full particulars of all such debts and shall, at the same time produce all documents, including entries in books of account on which he relies to support his claims together with a true copy of every such document.

(2) The board shall, after marking for the purpose of identification, every original document so produced and verifying the correctness of the copy, retain the copy and return the original to the creditor.

(3) If any document which is in the possession or under the control of the creditor is not produced by him as required by sub-section (1) the document shall not be admissible in evidence against the debtor in any suit brought by the creditor or by any person claiming under him for the recovery of the debt :

Provided the board or the court shall have power to excuse for valid reasons any default or delay in producing the document and to grant reasonable time for producing the same in any proceeding pending before it.

Power of board to decide dispute as to the existence or amount of debts or assets.

12. (1) The board shall call upon the debtor and each creditor respectively to explain his case regarding each debt.

(2) If there is a dispute as to the existence or the amount of the debt due to any creditor or the assets of any debtor, the board may decide the matter after taking such evidence as may be adduced by all the parties concerned and such decision shall be binding on all parties in all proceedings before the board:

Provided that a decree of a civil court relating to a debt shall be conclusive evidence as to the existence and amount of the debt.

(3) The board shall prepare a complete schedule of the creditors and of the assets and liabilities of the debtor.

13. (1) Subject to rules made under this Act, a board may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on a Civil Court by the Cochin Civil Procedure Code.

Power of board to require attendance of persons and production of documents.

(2) Any person present may be required by a board to furnish any information or to produce any document then and there in his possession or power.

14. (1) If the creditors to whom more than fifty per cent of the total amount of the debtor's debts is owing come to an amicable settlement with the debtor, such settlement shall forthwith be reduced to writing in the form of an agreement recording the amounts payable to such creditors and the manner in which, the assets from which and the times at which, they are to be paid. Such agreement if considered equitable by the board shall be read out and explained to the parties concerned, and shall be signed or otherwise authenticated by the board and the parties who have agreed to the amicable settlement :

Agreement of amicable settlement, its registration and effect.

Provided that, when a co-operative society is one of such creditors no settlement, in so far as it affects the debts owing to such society, shall be valid without the previous approval in writing of the Registrar of Co-operative Societies :

Provided further that when a secured creditor does not agree to the settlement, such settlement shall not affect his rights to proceed against the secured property except as qualified by the provisions contained in section 18 (2).

Explanation.—The board shall not consider an agreement equitable unless, in addition to the assets, if any, set apart for the satisfaction of the agreed debts, there are in the opinion of the board sufficient assets of the debtor to satisfy at least to the same extent the non-agreed debts.

(2) An agreement made under sub-section (1) shall, within thirty days from the date of the making thereof, be registered under the Cochin Registration Act, V of 1084, by the Chairman of the board in such manner as may be prescribed and it shall then take effect as if it were a decree of a civil court and be executable as such.

(3) For the purpose of the registration of an agreement under sub-section (2), the Chairman of the board shall be deemed to be an officer of the Government empowered to execute such agreement within the meaning of section 78 of the Cochin Registration Act, V of 1084.

(4) If, after the making of an agreement under sub-section (1), any debt is revived by the board or a civil court under sub-section (3) of section 10, the agreement and all proceedings taken in pursuance thereof shall stand cancelled; the application under section 4 shall be deemed to have been received in the office of the board on the date of such revival; and all the provisions of this Act shall apply in respect of the application accordingly.

Properties exempt from attachment not to be taken into account.

15. In any scheme of debt conciliation under this Act such properties as are exempt from attachment under the Cochin Civil Procedure Code shall not be taken into account and shall be left to the judgment-debtor free from any liability for his debts.

Maximum amount allowable in satisfaction of a debt.

16. In any scheme of debt conciliation under this Act, no creditor shall be allowed a greater amount in satisfaction of both principal and interest than twice the amount of the principal.

Power of board to dismiss application.

17. If no amicable settlement is arrived at under sub-section (1) of section 14 within twelve months from the date of the application under section 4, the board shall dismiss the application and such dismissal shall be a bar to the presentation of any further application under section 4.

Grant of certificate in respect of certain debts.

18. (1) Where, during the hearing of any application made under section 4 any creditor refuses to agree

to an amicable settlement, the board shall, if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept, grant the debtor a certificate, in such form as may be prescribed in respect of the debts owed by him to such creditor. The dismissal of the application under section 17 shall not be a bar to the granting of such certificate.

The board in coming to a decision whether the offer made is fair or not may take into consideration—

(i) the fall or rise in the value of land and its produce, in the locality ;

(ii) the amount of consideration actually received ;

(iii) the reasonableness of the rate of interest ;

(iv) the onerous conditions, if any, subject to which the loan was granted ;

(v) whether at any time, the creditor or the debtor was offered settlement of the debt in full or part and if so what the terms were ; and

(vi) any other particulars which the board thinks it desirable to take into account.

(2) Where any creditor institutes or continues a suit or other proceeding in a civil court for the recovery of a debt in respect of which a certificate has been granted under sub-section (1), the court shall, notwithstanding the provisions of any law for the time being in force, not allow him any costs in such suit or proceeding incurred after the date of such certificate or any interest on the debt after the date of such certificate in excess of simple interest at 4 per cent per annum on the principal amount due on the date of such certificate.

Power of court to disallow cost or interest.

(3) Where after the registration of an agreement under sub-section (2) of section 14 any unsecured creditor institutes or continues a suit or other proceeding for the recovery of a debt (other than a debt incurred

Decrees in suits after registration of agreement not to be executed.

subsequent to such agreement) in respect of which a certificate has been granted under sub-section (1) or any creditor sues for the recovery of a debt incurred after the date of such agreement, any decree or order passed in such suit or proceeding shall, notwithstanding anything contained in the Cochin Code of Civil Procedure, not be executed as against the assets, if any, set apart in the agreement for the satisfaction of the agreed debts until all amounts recorded as payable under such agreement have been paid.

Bar of civil suits.

19. No civil court shall entertain—

(a) any suit in respect of—

(1) any matter pending before a board; or

(2) the validity of any procedure or the legality of any agreement made under this Act; or

(3) the recovery of a debt recorded as wholly or partly payable under an agreement registered under sub-section (2) of section 14 from any person who, as a debtor, was party to such agreement; or

(4) the recovery of a debt which has been deemed to have been duly discharged under sub-section (2) of section 10, except a debt which is revived under sub-section (3) of that section; or

(b) any application to execute a decree, to the extent to which it is suspended under sub-section (3) of section 18.

Avoidance of certain transfers of debtors' property.

20. Every transfer of property by a debtor made without the sanction of the board after an application by him or by a creditor has been made to a board under section 4 and until the agreement registered in pursuance of such application has been fully carried out shall be void.

Alienation made with sanction of board not to be considered as a fraudulent preference.

21. Any alienation of land for a fair price made with the sanction of the board in pursuance of or to carry out the agreement mentioned in section 14 shall not be considered as a fraudulent preference under the Cochin

Insolvency Act, nor shall such alienation be voidable as made with intent to defeat or delay creditors.

22. No appeal or application for revision shall lie against any order passed by a board.

Bar of appeal or revision.

23. A board may, on application from any person interested made within ninety days of the passing of an order, or on its own motion at any time, review any order passed by it and pass such order in reference thereto as it thinks fit:

Power of board to review its order.

Provided that no order shall be varied or reversed unless notice has been given to the persons interested to appear and be heard in support of such order.

24. In any proceedings before a board any party may appear in person or with the permission of the board by a legal practitioner or an agent authorised in writing.

Appearance of parties before board.

25. When an application has been made to a board under section 4, any suit or other proceedings then pending before a civil court in respect of any debt for the settlement of which application has been made shall not be proceeded with until the board has disposed of the application.

Stay of pending suits or other proceedings.

26. Where in the course of an enquiry into an application made under section 4 a board finds that there is any sum owing to Government the board shall report the fact to the Government.

Report by board regarding sums due to Government.

27. (1) In calculating the period of limitation for any suit filed in, or proceedings before, a civil court for the recovery of a debt which was the subject of any proceedings under this Act, the time during which such proceedings were pending as well as the time taken for the obtaining of certified copies of the order of the board shall be excluded.

Computation of period of limitation for suits and proceedings.

(2) The period during which proceedings under this Act have been pending including the actual period fixed in the agreement for payment of all the debts shall, in all suits filed or proceedings taken, in civil courts to recover debts, be excluded from computation

under section 42 of the Cochin Civil Procedure Code, or under the Cochin Limitation Act.

Members of the board deemed to be public servants.

28. The members of a board shall be deemed to be public servants within the meaning of the Cochin Penal Code.

Power to make rules.

29. (1) The Government may make rules to carry out all or any of the purposes of this Act and not inconsistent therewith.

(2) In particular and without prejudice to the generality of the foregoing power they shall have power to make rules—

(a) with reference to all matters expressly required or allowed by this Act to be prescribed ;

(b) regulating the procedure before a board ;

(c) prescribing the charges to be made by a board for anything done under this Act and the persons by whom and the manner in which such charges shall be paid ;

(d) prescribing the records to be kept and the returns to be made by a board ;

(e) prescribing the allowances, if any, to be paid to the Chairman and members of a board ;

(f) regulating the power of a board to summon parties and witnesses and the production of documents under section 13 and the grant of expenses to witnesses ; and

(g) prescribing the place at which and the manner in which an agreement shall be registered under sub-section (2) of section 14.

(3) All rules made under this Act shall be subject to the condition of the rules being made after previous publication.

(4) In making any rule, the Government may direct that a breach thereof shall be punishable with fine which may extend to fifty rupees, and in case of a continuing breach with fine which may extend to ten rupees for every day during which the breach continues after the first breach.

THE COCHIN OATHS ACT,
(XXXI OF 1112.)

CONTENTS.

PREAMBLE.

I.—PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.

II.—AUTHORITY TO ADMINISTER OATHS AND
AFFIRMATIONS.

2. Authority to administer oaths and affirmations.

III.—PERSONS BY WHOM OATHS OR AFFIRMATIONS
MUST BE MADE.

3. Oaths or affirmations to be made by—

witnesses:

interpreters.

4. Affirmation by Indians or by persons objecting to oaths.

IV.—FORMS OF OATHS AND AFFIRMATIONS.

5. Forms of oaths and affirmations.
6. Power of Court to tender certain oaths.
7. Court may ask party or witness whether he will make oath proposed by opposite party.
8. Administration of oath if accepted.
9. Evidence conclusive as against person offering to be bound.
10. Procedure in case of refusal to make oath.

V.—MISCELLANEOUS.

11. Proceedings and evidence not invalidated by omission of oath irregularity.
 12. Persons giving evidence bound to state the truth.
 13. Amendment of Penal Code, sections 164 and 167.
-

THE COCHIN OATHS : [ACT],
(XXXI OF 1112.)

AN ACT TO CONSOLIDATE THE LAW RELATING TO
JUDICIAL OATHS, AND FOR OTHER PURPOSES.

*Passed by His Highness the Maharaja of Cochin on the
26th day of Kumbham 1112, corresponding to the
9th day of March, 1937.*

Preamble.

Whereas it is expedient to enact a law relating to judicial oaths, affirmations and declarations; It is hereby enacted as follows :—

I.—Preliminary.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called “ The Cochin Oaths Act, XXXI of 1112 ” ;

(2) It extends to the whole of Cochin State ; and

(3) It shall come into force at once.

II.—Authority to administer Oaths and Affirmations.

Authority
to administer
oaths and
affirmations.

2. All Courts and persons having by law or consent of parties authority to receive evidence are authorised to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law.

*III.—Persons by whom Oaths or Affirmations
must be made.*

Oaths or
affirmations
to be made
by—

3. Oaths or affirmations shall be made by the following persons :—

Witnesses.

(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence ; and

1. Substituted for ‘ Regulation ’ throughout the enactment by Proclamation V of 1112.

(b) interpreters of questions put to, and evidence given by witnesses. Interpreters.

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

4. Where the witness, or interpreter is a Hindu or Muhammadan,

or has an objection to making an oath, he shall, instead of making an oath, make an affirmation.

In every other case the witness or interpreter shall make an oath.

Affirmation by Indians or by persons objecting to oaths.

IV.—The Forms of Oaths and Affirmations.

5. All oaths and affirmations made under section 3 shall be administered according to such forms as the Chief Court may from time to time prescribe.

Forms of oaths and affirmations.

And until any such forms are prescribed by the Chief Court, such oaths and affirmations shall be administered according to the forms now in use.

6. If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

Power of Court to tender certain oaths.

7. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 6, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation :

Court may ask party or witness whether he will make oath proposed by opposite party.

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

Administra-
tion of oath
if accepted.

8. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

Evidence
conclusive as
against per-
son offering
to be bound.

9. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

Procedure in
case of
refusal to
make oath.

10. If the party or witness refuses to make the oath or solemn affirmation referred to in section 6, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

V.—Miscellaneous.

Proceedings
and evidence
not invali-
dated by
omission of
oath or
irregularity.

11. No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever, in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

Persons
giving evi-
dence bound
to state the
truth.

12. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.

Amendment
of Penal
Code, sec-
tions 164
and 167.

13. The Cochin Penal Code, sections 164 and 167, shall be construed as if, after the word "oath", the words "or affirmation" were inserted.

PROCLAMATION.
(IV of 1112)

BY HIS HIGHNESS SIR SREE RAMA VARMA. G. C. I. E.,
MAHARAJA OF COCHIN.

Issued under date the 13th day of Meenam 1112 corresponding to the 26th day of March 1937.

WHEREAS the provisions of Act VII of 1913 of British India entitled the 'Indian Companies Act, 1913' with all the amendments thereof up to the 4th November 1921 were brought into force, *mutatis mutandis*, throughout Our State, by Proclamation dated 4th November 1921 corresponding to the 19th day of Thulam 1097; WHEREAS the aforesaid Indian Companies Act, 1913, as made applicable to Cochin by the aforesaid Proclamation was amended by ¹ [Act] XII of 1108; WHEREAS the aforesaid Indian Companies Act, VII of 1913 has since been further amended by the Indian Companies Amendment Act, XXII of 1936; and WHEREAS it is deemed expedient to bring into force *mutatis mutandis*, throughout Our State, the amendments introduced into the Indian Companies Act, 1913, by the aforesaid Amendment Act, XXII of 1936,

We are pleased to declare that from and after the 1st day of April 1937 corresponding to the 19th day of Meenam 1112 the aforesaid amendments introduced by the Indian Companies Amendment Act, XXII of 1936, shall, *mutatis mutandis*, come into force in Our State as amendments to the Indian Companies Act, VII of 1913, already brought into force throughout Our State as aforesaid.

1. Substituted for 'Regulation' by Proclamation V of 1112.

THE COCHIN PETROLEUM ACT,
(XXXVI OF 1112)

CONTENTS.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.

CHAPTER I.

CONTROL OVER PETROLEUM.

3. Import, transport and storage of petroleum.
4. Rules for the import, transport and storage of petroleum.
5. Production, refining and blending of petroleum.
6. Receptacles of dangerous petroleum to show a warning.
7. No licence needed for small stocks of non-dangerous petroleum not in bulk.
8. No licence needed for small quantities of dangerous petroleum.
9. Exemptions for motor conveyances and stationary engines.
10. No licence needed by railway administration acting as carrier.
11. Exemption of heavy oils.
12. General power of exemption.
13. Inspection of places.

CHAPTER II.

THE TESTING OF PETROLEUM.

14. Inspection and sampling of petroleum.
15. Standard Test Apparatus.
16. Certification of other test apparatus.
17. Testing officers.
18. Manner of test.
19. Certificate of testing.
20. Right to require retest.
21. Power to make rules regarding tests.

SECTIONS.

22. Special rules for testing viscous or solid forms of petroleum.

CHAPTER III.

PENALTIES AND PROCEDURE.

23. General penalty for offences under this Act.
 24. Confiscation of petroleum and receptacles.
 25. Jurisdiction.
 26. Power of entry and search.
 27. Reports of accidents with petroleum.
 28. Inquiries into serious accidents with petroleum.

CHAPTER IV.

SUPPLEMENTAL.

29. Provisions relating to rules.
 30. Power to apply Act to other substances.
 31. Power to limit powers of local authorities over petroleum.
 32. Repeals.

THE SCHEDULE.

THE COCHIN PETROLEUM [ACT]

(XXXVI of 1112)

Passed by His Highness the Maharaja of Cochin on the 31st day of Medam 1112, corresponding to the 13th day of May, 1937.

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO THE IMPORT, TRANSPORT, STORAGE, PRODUCTION, REFINING AND BLENDING OF PETROLEUM AND OTHER INFLAMMABLE SUBSTANCES.

WHEREAS it is expedient to consolidate and amend the law relating to the import, transport, storage, production, refining and blending of petroleum and other inflammable substances; It is hereby enacted as follows:—

-
1. Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

PRELIMINARY.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Cochin Petroleum Act, XXXVI of 1112.

(2) It extends to the whole of Cochin.

(3) It shall come into force on such date as the Government may, by notification in the Cochin Government Gazette, appoint.

Definitions.

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

- (a) “petroleum” means any liquid hydrocarbon or mixture of hydrocarbons, and any inflammable mixture (liquid, viscous or solid) containing any liquid hydrocarbon ;
- (b) “dangerous petroleum” means petroleum having its flashing-point below seventy-six degrees Fahrenheit ;
- (c) “flashing-point” of any petroleum means the lowest temperature at which it yields a vapour which will give a momentary flash when ignited, determined in accordance with the provisions of Chapter II and the rules made thereunder ;
- (d) “to transport” petroleum means to move petroleum from one place to another in Cochin, and includes moving from one place to another in Cochin by sea or across territory in India which is not part of Cochin ;
- (e) “to import” petroleum means to bring it into Cochin by land, sea or air, otherwise than during the course of transport ;
- (f) “to store” petroleum means to keep it in any one place, but does not include any detention happening during the ordinary course of transport ;

-
1. Brought into force from 1st Chingam 1113 by notification No. 128 dated 32nd Edavam 1112.

- (g) "motor conveyance" means any vehicle, vessel or aircraft for the conveyance of human beings, animals or goods, by land, water or air, in which petroleum is used to generate the motive power ;
- (h) "prescribed" means prescribed by rules made under this Act.

CHAPTER I.

CONTROL OVER PETROLEUM.

3. (1) No one shall import, transport or store any petroleum save in accordance with the rules made under section 4.

Import,
transport
and storage
of petroleum.

(2) Save in accordance with the conditions of any licence for the purpose which he may be required to obtain by rules made under section 4, no one shall import any dangerous petroleum, and no one shall transport or store any petroleum.

4. The Government may make rules—

- (a) prescribing places where petroleum may be imported and prohibiting its import elsewhere;
- (b) regulating the import of petroleum ;
- (c) prescribing the periods within which licenses for the import of dangerous petroleum shall be applied for, and providing for the disposal, by confiscation or otherwise, of any dangerous petroleum in respect of which a licence has not been applied for within the prescribed period or has been refused and which has not been exported ;
- (d) regulating the transport of petroleum ;
- (e) specifying the nature and condition of all receptacles and pipe-lines in which petroleum may be transported ;
- (f) regulating the places at which and prescribing the conditions subject to which petroleum may be stored ;

Rules for
the import,
transport
and storage
of petroleum.

- (g) specifying the nature, situation and condition of all receptacles in which petroleum may be stored ;
- (h) prescribing the form and conditions of licences for the import of dangerous petroleum, and for the transport or storage of any petroleum, the manner in which applications for such licences shall be made, the authorities which may grant such licences and the fees which may be charged for such licences ;
- (i) determining in any class of cases whether a licence for the transport of petroleum shall be obtained by the consignor, consignee or carrier ;
- (j) providing for the granting of combined licences for the import, transport and storage of petroleum, or for any two of such purposes :
- (k) prescribing the proportion in which any specified poisonous substance may be added to petroleum, and prohibiting the import transport or storage of petroleum in which the proportion of any specified poisonous substance exceeds the prescribed proportion ; and
- (l) generally, providing for any matter which in its opinion is expedient for proper control over the import, transport and storage of petroleum.

Production,
refining and
blending of
petroleum.

5. (1) No one shall produce, refine or blend petroleum save in accordance with the rules made under sub-section (2).

(2) The Government may make rules—

- (a) prescribing the conditions subject to which petroleum may be produced, refined or blended ; and

- (b) regulating the removal of petroleum from places where it is produced, refined or blended and preventing the storage therein and removal therefrom except as dangerous petroleum, of any petroleum which has not satisfied the prescribed tests.

6. All receptacles containing dangerous petroleum shall have a stamped, embossed, painted or printed warning, either on the receptacle itself or, where that is impracticable, displayed near the receptacle, exhibiting in conspicuous characters the words "Petrol" or "Motor Spirit", or an equivalent warning of the dangerous nature of the petroleum.

Receptacles of dangerous petroleum to show a warning.

Provided that this section shall not apply to—

- (a) any securely stoppered glass, stoneware or metal receptacle of less than two gallons capacity containing dangerous petroleum which is not for sale, or
- (b) a tank incorporated in a motor conveyance, or attached to an internal combustion engine and containing petroleum intended to be used to generate motive power for the motor conveyance or engine, or
- (c) a pipe line for the transport of petroleum, or
- (d) any tank which is wholly underground, or
- (e) any class of receptacles which the Government may, by notification in the Cochin Government Gazette exempt from the operation of this section.

7. Notwithstanding anything contained in this Chapter, a person need not obtain a licence for the transport or storage of non-dangerous petroleum if the total quantity in his possession at any one place does not exceed five hundred gallons and none of it is contained in a receptacle exceeding two hundred gallons in capacity.

No licence needed for small stocks of non-dangerous petroleum not in bulk.

No licence
needed for
small quanti-
ties of
dangerous
petroleum.

8. (1) Notwithstanding anything contained in this Chapter, a person need not obtain a licence for the import, transport or storage of dangerous petroleum not intended for sale if the total quantity in his possession does not exceed six gallons.

(2) Dangerous petroleum possessed without a licence under this section shall be kept in securely stoppered receptacles of glass, stoneware or metal which shall not in the case of receptacles of glass or stoneware exceed one quart in capacity or in the case of receptacles of metal five gallons in capacity.

Exemptions
for motor
conveyance
and station-
ary engines.

9. (1) The owner of a motor conveyance, who complies with the requirements of the law for the time being in force relating to the registration and licensing of such conveyance and its driver or pilot and the owner of any stationary internal combustion engine, shall not be required to obtain a licence—

- (a) for the import, transport or storage of any petroleum contained in any fuel tank incorporated in the conveyance or attached to the internal combustion engine, or
- (b) for the transport or storage of dangerous petroleum, not exceeding twenty gallons in quantity in addition to any quantity possessed under clause (a):

Provided the petroleum is intended to be used to generate motive power for the motor conveyance or engine.

(2) The dangerous petroleum transported or stored without a licence under clause (b) shall be kept as provided in sub-section (2) of section 8, and, if it exceeds six gallons in quantity, shall be stored in an isolated place which does not communicate with any room where any person resides or works or in any room where persons assemble.

10. Notwithstanding anything contained in this Chapter, a railway administration, as defined in section 2 of the Cochin Railways Act, XI of 1111, need not obtain any licence for the import or transport of any petroleum in its possession in its capacity as carrier.

No licence needed by railway administration acting as carrier.

11. Nothing in this Chapter shall apply to any petroleum which has its flashing point not below two hundred degrees Fahrenheit.

Exemption of heavy oils.

12. The Government may, by notification in the Cochin Government Gazette, exempt any petroleum specified in the notification from all or any of the provisions of this Chapter.

General power of exemption.

13. (1) The Government may authorise any officer by name or by virtue of office to enter any place where petroleum is being imported, stored, produced, refined or blended, or is under transport, and inspect all receptacles, plant and appliances used in connection with petroleum in order to ascertain if they are in accordance with the provisions of this Chapter and the rules made thereunder.

Inspection of places.

(2) The Government may make rules regulating the procedure of officers authorised under this section.

CHAPTER II.

THE TESTING OF PETROLEUM.

14. (1) The Government may, by notification in the Cochin Government Gazette, authorise any officer by name or by virtue of office to enter any place where petroleum is being imported, transported, stored, produced, refined or blended and to inspect and take samples for testing of any petroleum found therein.

Inspection and sampling of petroleum.

(2) The Government may make rules—

- (a) regulating the taking of samples of petroleum for testing,
- (b) determining the cases in which payment shall be made for the value of samples taken, and the mode of payment, and

- (c) generally, regulating the procedure of officers exercising powers under this section.

Standard
Test Ap-
paratus.

15. (1) A standard apparatus for determining the flashing-point of petroleum shall be deposited with an officer to be appointed in this behalf by the Government by notification in the Cochin Government Gazette.

(2) Such apparatus shall be engraved with the words "Standard Test Apparatus", and shall be verified and corrected from time to time and replaced when necessary, in accordance with rules made under section 21.

(3) The Standard Test Apparatus shall, on payment of the prescribed fee, be open to inspection at all reasonable times by any person wishing to inspect it.

Certification
of other test
apparatus.

16. (1) The officer appointed under section 15 shall, on payment of the prescribed fee, if any, compare with the Standard Test Apparatus any apparatus for determining the flashing-point of petroleum which may be submitted to him for this purpose.

(2) If any apparatus is found by him to agree with the Standard Test Apparatus within prescribed limits, the officer shall engrave such apparatus with a special number and with the date of the comparison, and shall give a certificate in respect of it in the prescribed form, certifying that on the said date the apparatus was compared with the Standard Test Apparatus and was found to agree with it within the prescribed limits, and specifying any corrections to be made in the results of tests carried out with the apparatus.

(3) A certificate granted under this section shall be valid for such period as may be prescribed.

(4) A certificate granted under this section shall, during the period for which it is valid, be proof, until the contrary is proved, of any matter stated therein.

(5) The officer shall keep a register in the prescribed form of all certificates granted by him under this section.

17. The Government may authorise any officer by name or by virtue of office to test petroleum of which samples have been taken under this Act or which may have been submitted to him for test by any person, and to grant certificates of the results of such tests.

Testing officers.

18. All tests of petroleum made under this Act shall be made with a test apparatus in respect of which there is a valid certificate under section 16, shall have due regard to any correction specified in that certificate, and shall be carried out in accordance with rules made under section 21.

Manner of test.

19. (1) The testing officer after testing samples of petroleum shall make out a certificate in the prescribed form, stating whether the petroleum is dangerous or non-dangerous, and, if the petroleum is non-dangerous, the flashing-point of the petroleum.

Certificate of testing.

(2) The testing officer shall furnish the person concerned, at his request, with a certified copy of the certificate, on payment of the prescribed fee, and such certified copy may be produced in any Court in proof of the contents of the original certificate.

(3) A certificate given under this section shall be admitted as evidence in any proceedings which may be taken under this Act in respect of the petroleum from which the samples were taken, and shall, until the contrary is proved, be conclusive proof that the petroleum is dangerous or non-dangerous, as the case may be, and, if the petroleum is non-dangerous, of its flashing-point.

20. (1) The owner of any petroleum, or his agent, who is dissatisfied with the result of the test of the petroleum may, within seven days from the date on which he received intimation of the result of the test, apply to the officer empowered under section 14 to have fresh samples of the petroleum taken and tested.

Right to require re-test.

(2) On such application and on payment of the prescribed fee, fresh samples of the petroleum shall be

taken in the presence of such owner or agent or person deputed by him, and shall be tested in the presence of such owner or agent or person deputed by him.

(3) If, on such re-test, it appears that the original test was erroneous, the testing-officer shall cancel the original certificate granted under section 19, shall make out a fresh certificate, and shall furnish the owner of the petroleum, or his agent, with a certified copy thereof, free of charge.

Power to
make rules
regarding
tests.

21. The Government may make rules—

- (a) for the specification, verification, correction and replacement of the Standard Test Apparatus ;
- (b) prescribing fees for the inspection of the Standard Test Apparatus ;
- (c) regulating the procedure in comparing a test apparatus with the Standard Test Apparatus ;
- (d) prescribing the form of certificate to be given in respect of a test apparatus so compared, and the period for which such certificates shall be valid ;
- (e) prescribing the form of the register of such certificates ;
- (f) prescribing fees for comparing a test apparatus with the Standard Test Apparatus ;
- (g) regulating the procedure of testing officers in carrying out tests of petroleum, providing for the averaging of results where several samples of the same petroleum are tested, and prescribing the variations from standard temperatures which may be allowed ;
- (h) prescribing the form of certificates of tests of petroleum and the fees which may be charged therefore ;

- (i) providing, where the results of the testing of samples raise a doubt as to the uniformity of the quality of the petroleum in any lot under test, for the division of the lot into sub-lots, and for the selection and testing of samples of each sub-lot and for the averaging of results in accordance with the results of tests of those samples ;
- (j) prescribing fees for re-tests under section 20 and providing for their refund where the original test was erroneous ; and
- (k) generally, regulating the procedure of all officers performing duties connected with the testing of petroleum, and providing for any matter incidental to such testing.

22. The Government may also make rules providing specially for the testing of any form of petroleum which is viscous or solid or contains sediment or thickening ingredients, and such rules may modify or supplement any of the provisions of this Chapter or of the rules made under section 21 in order to adapt them to the special needs of such tests.

Special rules for testing viscous or solid forms of petroleum.

CHAPTER III

PENALTIES AND PROCEDURE.

23. (1) Whoever—

- (a) in contravention of any of the provisions of Chapter I or of any of the rules made thereunder, imports, transports, stores, produces, refines or blends any petroleum, or
- (b) contravenes any rule made under section 4 or section 5, or
- (c) breaks the condition of any licence held by him issued under section 4, or
- (d) being for the time being in control or in charge of any place where petroleum is being

General penalty for offences under this Act.

imported, stored, produced, refined or blended or is under transport, refuses or neglects to show to any officer authorised under section 13 any receptacle, plant or appliance used in such place in connection with petroleum, or in any way obstructs or fails to render reasonable assistance to such officer during an inspection, or

- (e) being for the time being in control or in charge of any place where petroleum is being imported, transported, stored, produced, refined or blended, refuses or neglects to show to any officer authorised under section 14 any petroleum in such place, or to give him such assistance as he may require for the inspection of such petroleum, or refuses to allow him to take samples of the petroleum, or
- (f) being required, under section 27, to give information of an accident, fails to give such information as so required by that section,

shall be punishable with fine which may extend to five hundred rupees.

(2) If any person, having been convicted of an offence punishable under sub-section (1), is again guilty of any offence punishable under that sub-section, he shall be punishable for every such subsequent offence with fine which may extend to two thousand rupees.

Confiscation
of petroleum
and recept-
acles.

24. (1) In any case in which an offence under clause (a) or clause (b) or clause (c) of sub-section (1) of section 23 has been committed, the convicting Magistrate may direct that—

- (a) the petroleum in respect of which the offence has been committed, or
- (b) where the offender is convicted of importing, transporting or storing petroleum exceeding

the quantity he is permitted to import, transport or store, as the case may be, the whole of the petroleum in respect of which the offence was committed,

shall together with the receptacles in which it is contained, be confiscated.

(2) This power may also be exercised by the Chief Court in the exercise of its appellate or revisional powers.

25. Offences punishable under this Act shall be triable, by a Magistrate of the first class, or by a Magistrate of the second class who has been specially empowered by the Government in this behalf. Jurisdiction.

26. (1) The Government may, by notification in the Cochin Government Gazette, authorise any officer by name or by virtue of office to enter and search any place where he has reason to believe that any petroleum is being imported, transported, stored, produced, refined or blended otherwise than in accordance with the provisions of this Act and the rules made thereunder, and to seize, detain or remove any or all of the petroleum in respect of which in his opinion an offence under this Act has been committed. Power of entry and search.

(2) The provisions of the Cochin Code of Criminal Procedure, 1086, relating to searches shall, so far as they are applicable, apply to searches by officers authorised under this section.

(3) The Government may make rules regulating the procedure of authorised officers in the exercise of their powers under this section subject, however, to the provisions of sub-section (2).

27. Where any accident by explosion or fire, which is attended with loss of human life or serious injury to person or property occurs as the result of the ignition of petroleum or petroleum vapour, or occurs in or near any Reports of accidents with petroleum.

place where petroleum is kept and under circumstances making it likely that it was the result of such ignition, the person for the time being in charge of the petroleum shall forthwith give information to the nearest Magistrate or to the officer in charge of the nearest police station.

Inquiries
into serious
accidents
with petro-
leum.

28. (1) The inquiry mentioned in section 157 of the Cochin Code of Criminal Procedure, 1086, shall be held in all cases where any person has been killed by an accident which the Magistrate has reason to believe was the result of the ignition of petroleum or petroleum vapour.

(2) Any Magistrate empowered to hold an inquest may also hold an inquiry under the said section into the cause of any accident which he has reason to believe was the result of the ignition of petroleum or petroleum vapour, if such accident was attended by serious injury to person or property, notwithstanding that no person was killed thereby.

(3) The result of all inquiries held in pursuance of this section shall be submitted as soon as may be to the Government.

CHAPTER IV

SUPPLEMENTAL.

Provisions
relating
rules.

29. (1) In making any rules under this Act, the Government may—

- (a) provide for any matter ancillary to such rules for which in its opinion provision is necessary to protect the public from danger arising from the import, transport, storage, production, refining or blending of petroleum, and
- (b) make special provision for the special circumstances of any place.

(2) Every power to make rules conferred by this Act is subject to the condition of previous publication.

(3) All rules made under this Act shall be published in the Cochin Government Gazette.

30. (1) The Government may, by notification in the Cochin Government Gazette, apply any or all of the provisions of this Act and of the rules made thereunder with such modifications as it may specify, to any dangerously inflammable substance, other than an explosive, and thereupon the provisions so applied shall have effect as if such substance had been included in the definition of petroleum.

Power to apply Act to other substances.

(2) The Government may make rules providing specially for the testing of any substance to which any of the provisions of this Act have been applied by notification under sub-section (1) and such rules may supplement any of the provisions of Chapter II in order to adapt them to the special needs of such tests.

31. Where any enactment confers powers upon any local authority in respect of the transport or storage of petroleum, the Government may, by notification in the Cochin Government Gazette,—

Power to limit powers of local authorities over petroleum.

- (a) limit the operation of such enactment, or
- (b) restrict the exercise of such powers, in any manner it deems fit.

32. The enactment mentioned in the Schedule is hereby repealed to the extent specified in the fourth column thereof.

Repeal.

THE SCHEDULE.

ENACTMENT REPEALED.

(See section 32.)

Year	Number	Short title	Extent of repeal
1084	III	The Cochin Petroleum Act, III of 1084	The whole

THE COCHIN MAJORITY ACT,
(XXXVII OF 1112.)

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title, extent, commencement and operation.
 2. Savings.
 3. Age of Majority.
 4. Age of majority how computed.
 5. Enactments repealed.
- Schedule of enactments repealed.

THE COCHIN MAJORITY [ACT],
(XXXVII OF 1112.)

AN ACT TO AMEND AND CONSOLIDATE THE LAW RESPECTING
THE AGE OF MAJORITY.

*Passed by His Highness the Maharaja of Cochin on the
31st day of Medam 1112, corresponding to the
13th day of May, 1937.*

- Preamble. WHEREAS it is expedient to amend and consolidate the law respecting the age of majority in the Cochin State; It is hereby enacted as follows:—
- Short title. 1. This Act may be called “The Cochin Majority Act, XXXVII of 1112”;
- Local extent. It extends to the whole of Cochin State;
- Commencement and operation. and it shall come into force and have effect only on the expiration of three months from the passing thereof.

-
1. Substituted for ‘Regulation’ throughout the enactment by Proclamation V of 1112.

2. Nothing herein contained shall affect :—

Savings.

(a) the capacity of any person to act in the following matters, *viz.*, marriage, dower, divorce and adoption ;

(b) the religion or religious rites and usages of any class of the subjects of His Highness the Maharaja of Cochin or of persons domiciled in Cochin State ;

(c) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.

3. Subject as aforesaid every minor of whose person or property or both, a guardian, other than a guardian for a suit within the meaning of the Code of Civil Procedure has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age, shall, notwithstanding anything contained in any other enactment be deemed to have attained his majority when he shall have completed his age of 21 years and not before :

Age of majority.

Subject as aforesaid, every other person whether he is a subject of Cochin State or is domiciled in Cochin State shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.

4. In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section 3, at the beginning of the eighteenth anniversary of that day.

Age of majority how computed.

Illustrations.

(a) A is born on the first day of Chingam 1094. A guardian of his person is appointed by a Court of

Justice. *A* attains majority at the first moment of the first day of Chingam, 1115.

(b) *A* is born on the thirtieth day of Vrischigam 1094. A guardian of his property is appointed by a Court of Justice. *A* attains majority at the first moment of the 29th day of Vrischigam 1115, if in that year, the month of Vrischigam has only 29 days.

(c) *A* is born on the first day of Chingam 1094. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. *A* attains majority at the first moment of the first day of Chingam 1112.

Enactments
repealed.

5. The enactments mentioned in the schedule are repealed to the extent specified in the fourth column thereof from the date on which this Act comes into force.

SCHEDULE OF ENACTMENTS REPEALED.

Serial No.	Year	No.	Short title	Extent of repeal
1	1090	IV	The Cochin Majority Act	The whole.
2	1097	XIII	The Court of Wards Act	Section 3.

THE COCHIN MERCHANDISE MARKS ACT,
(XLI OF 1112)

CONTENTS.

SECTIONS.

PREAMBLE.

1. Title, extent and commencement.
2. Definitions.

TRADE DESCRIPTIONS.

SECTIONS.

3. Provisions supplemental to the definition of false trade description.
4. Application of trade descriptions.
5. Penalty for applying a false trade description.
6. Penalty for selling goods to which a false trade description is applied.

UNINTENTIONAL CONTRAVENTION OF THE LAW RELATING
TO MARKS AND DESCRIPTION.

7. Unintentional contravention of the law relating to marks and descriptions.

FORFEITURE OF GOODS

8. Forfeiture of goods.

STAMPING OF LENGTH OF PIECE-GOODS MANUFACTURED
IN COCHIN STATE.

9. Stamping of length of piece-goods manufactured in Cochin State.

SUPPLEMENTAL PROVISIONS.

10. Evidence of origin of goods imported by sea.
 11. Costs of defence or prosecution.
 12. Limitation of prosecution.
 13. Authority of the Government to issue instructions as to administration of this Act.
 14. Implied warranty on sale of marked goods.
 15. Savings.
 16. Definition of piece-goods.
 17. Determination of character of goods by sampling.
 18. Information as to commission of offences.
 19. Punishment of abetment in Cochin State of acts done out of Cochin State.
-

THE COCHIN MERCHANDISE MARKS ' [ACT],
(XLI OF 1112.)

*Passed by His Highness the Maharaja of Cochin on the
31st day of Medam 1112 corresponding to the
13th day of May 1937.*

Preamble.

Whereas it is expedient to amend the law relating to fraudulent marks on merchandise; It is hereby enacted as follows :—

Title, extent
and
commence-
ment.

1. (1) This Act may be called "The Cochin Merchandise Marks Act, XLI of 1112.";

(2) It extends to the whole of Cochin State; and

(3) It shall come into force at once.

Definitions.

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

(1) "trade mark" has the meaning assigned to that expression in section 458 of the Cochin Penal Code.

(2) "trade description" means any description, statement or other indication, direct or indirect,—

(a) as to the number, quantity, measure, gauge or weight of any goods. or

(b) as to the place or country in which, or the time at which, any goods were made or produced, or

(c) as to the mode of manufacturing or producing any goods, or

(d) as to the material of which any goods are composed, or

(e) as to any goods being the subject of an existing patent, privilege or copyright; and the use of any numeral, word or mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters shall be deemed to

1. Substituted for ' Regulation ' throughout the enactment by Proclamation V of 1112.

be a trade description within the meaning of this Act :

(3) "false trade description" means a trade description which is untrue in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Act :

(4) "goods" means anything which is the subject of trade or manufacture : and

(5) "name" includes any abbreviation of a name.

TRADE DESCRIPTIONS.

3. (1) The provisions of this Act respecting the application of a false trade description to goods or respecting goods to which a false trade description is applied, shall extend to the application to goods of any such numerals, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are or is reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are, and to goods having such numerals, words or marks, or arrangement or combination, applied thereto.

Provisions supplemental to the definition of false trade description.

(2) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description and

for the purpose of this enactment the expression false name or initials means as applied to any goods any name or initials—

(a) not being a trade mark, or part of a trade mark and

(b) being identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description and not having authorised the use of such name or initials.

(3) A trade description which denotes or implies that there are contained in any goods to which it is applied more yards, feet or inches than there are contained therein standard yards, standard feet or standard inches is a false trade description.

Application
of trade
descriptions.

4. (1) A person shall be deemed to apply a trade description to goods who—

(a) applies it to the goods themselves, or

(b) applies it to any covering label, reel or other thing in or with which the goods are sold or are exposed or had in possession for sale or any purpose of trade or manufacture, or

(c) places, encloses or annexes any goods which are sold, or are exposed or had in possession for sale or any purpose of trade or manufacture, in, with or to any covering, label, reel or other thing to which a trade description has been applied, or

(d) uses a trade description in any manner reasonably calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade description.

(2) A trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed or affixed to the goods or any covering, label, reel or other thing.

(3) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper, and the expression "label" includes any band or ticket.

5. If a person applies a false trade description to goods, he shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, and in the case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

Penalty for applying a false trade description.

6. If a person sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, he shall, unless he proves—

Penalty for selling goods to which a false trade description is applied.

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade description, and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently, be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

UNINTENTIONAL CONTRAVENTION OF THE LAW RELATING TO
MARKS AND DESCRIPTIONS.

7. Where a person is accused under section 462 of the Cochin Penal Code of using a false trade mark, or property mark by reason of his having applied a mark to

Unintentional contravention of the law relating to marks and descriptions.

any goods, property or receptacle in the manner mentioned in section 460 or section 461 of that Code, as the case may be, or under section 5 of this Act of applying to goods any false trade description or under section 465 of the Cochin Penal Code of making any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark and proves—

(a) that in the ordinary course of his business he is employed, on behalf of other persons, to apply trade marks or property marks, or trade descriptions, or, as the case may be, to make dies, plates or other instruments for making, or being used in making, trade marks or property marks, and that in the case which is the subject of the charge he was so employed and was not interested in the goods or other thing by way of profit or commission dependent on the sale thereof, and

(b) that he took reasonable precautions against committing the offence charged, and

(c) that, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or description, and

(d) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the mark or description was applied,

he shall be acquitted.

FORFEITURE OF GOODS.

Forfeiture
of goods.

8. (1) When a person is convicted under section 462 of the Cochin Penal Code of using a false trade mark or under section 466 of that code of selling or exposing or having in possession for sale or any purpose of trade or manufacture any goods or things with a counterfeit trade mark applied thereto, or under section 467 or section 468 of that code of making or making use of, a false mark, or under section 5 or section 6 of this Act of

applying a false trade description to goods or of selling, or exposing or having in possession for sale or any purpose of trade or manufacture any goods or things to which a false trade description is applied, or is acquitted on proof of the matter or matters specified in section 466 of the Cochin Penal Code or section 6 or section 7 of this Act, the Court convicting or acquitting him may direct the forfeiture to the Government of all goods and things by means of, or in relation to, which the offence has been committed or, but for such proof as aforesaid, would have been committed.

(2) When a forfeiture is directed on a conviction and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

(3) When a forfeiture is directed on an acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the Court to which in appealable cases appeals lie from sentences of the Court which directed the forfeiture.

STAMPING OF LENGTH OF PIECE-GOODS MANUFACTURED

IN COCHIN STATE.

9. (1) Piece-goods, such as are ordinarily sold by length or by the piece, which have been manufactured in premises which are a factory as defined in the Cochin Factories Act, ¹ VII of 1083, shall not be removed from those premises without having conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece.

Stamping of length of piece-goods manufactured in Cochin State.

(2) If any person removes or attempts to remove any such piece-goods from any such premises without the length of each piece being stamped in the manner mentioned in sub-section (1), every such piece,

1. Now Act II of 1113.

and everything used for the packing or removal thereof, shall be forfeited to the Government and such person shall be punished with fine which may extend to one thousand rupees.

SUPPLEMENTAL PROVISIONS.

Evidence of origin of goods imported by sea.

10. In the case of goods brought into Cochin State by sea, evidence of the port of shipment shall, in a prosecution for an offence against this Act or section 17 of the Cochin Sea Customs Act, XII of 1109, be *prima facie* evidence of the place or country in which the goods were made or produced.

Costs of defence or prosecution.

11. (1) On any such prosecution as is mentioned in the last foregoing section or on any prosecution for an offence against any of the sections of the Cochin Penal Code which relate to trade, property and other marks, the Court may order costs to be paid to the defendant by the prosecutor or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

(2) Such costs shall, on application to the Court, be recoverable as if they were a fine.

Limitation of prosecution.

12. No such prosecution as is mentioned in the last foregoing section shall be commenced after the expiration of three years next after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens.

Authority of the Government to issue instructions as to administration of this Act.

13. (1) The Government may, by notification in the Cochin Government Gazette, issue instructions for observance by Criminal Courts in giving effect to any of the provisions of this Act.

(2) Instructions under sub-section (1) may provide, among other matters, for the limits of variation, as regards number, quantity, measure, gauge or weight, which are to be recognised by Criminal Courts as permissible in the case of any goods.

14. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the seller shall be deemed to warrant that the mark is a genuine mark and not counterfeit or falsely used, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the seller and delivered at the time of the sale or contract to and accepted by the buyer.

Implied warranty on sale of marked goods.

15. (1) Nothing in this Act shall exempt any person from any suit or other proceeding which might, but for anything in this Act, be brought against him.

Savings,

(2) Nothing in this Act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution as is mentioned in section 11.

(3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in Cochin State who in good faith acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

16. For the purposes of section 9 of this Act and clause (e) of section 17 of the Sea Customs Act, XII of 1109, the Government may, by notification in the Cochin Government Gazette, declare what classes of goods are included in the expression 'piece-goods, such as are ordinarily sold by length or by the piece.'

Definition of piece-goods.

17. (1) The Government may make rules, for the purposes of this Act, to provide, with respect to any goods which purport or are alleged to be of uniform number, quantity, measure, guage or weight, for the number of samples to be selected and tested and for the selection of the samples.

Determination of character of goods by sampling.

(2) With respect to any goods for the selection and testing of samples of which provision is not made in any rules for the time being in force under sub-section (1), the Court or officer of customs, as the case may be, having occasion to ascertain the number, quantity, measure, guage or weight of the goods, shall, by order in writing, determine the number of samples to be selected and tested and the manner in which the samples are to be selected.

(3) The average of the results of the testing in pursuance of rules under sub-section (1) or of an order under sub-section (2) shall be *prima facie* evidence of the number, quantity, measure, guage or weight, as the case may be, of the goods.

(4) If a person having any claim to, or in relation to, any goods of which samples have been selected and tested in pursuance of rules under sub-section (1) or of an order under sub-section (2) desires that any further samples of the goods be selected and tested, they shall, on his written application and on the payment in advance by him to the Court or officer of customs, as the case may be, of such sums for defraying the cost of the further selection and testing as the Court or officer may, from time to time require, be selected and tested to such extent as may be permitted by rules to be made by the Government in this behalf or, as, in the case of goods with respect to which provision is not made in such rules the Court or officer of customs may determine in the circumstances to be reasonable, the samples being selected in manner prescribed under sub-section (1), or in sub-section (2), as the case may be.

(5) The average of the results of the testing referred to in sub-section (3) and of the further testing under sub-section (4) shall be conclusive proof of the number, quantity, measure, guage or weight, as the case may be, of the goods.

(6) Rules under this section shall be made after previous publication.

18. An officer of the Government whose duty it is to take part in the enforcement of this Act shall not be compelled in any Court to say whence he got any information as to the commission of any offence against this Act.

Information
as to
commission
of offences.

19. If any person, being within Cochin State, abets the commission, without Cochin State, of any act which, if committed in Cochin State, would under this Act, or under any section of that part of Chapter XVII of the Cochin Penal Code, which relates to trade, property and other marks, be an offence, he may be tried for such abetment in any place in Cochin State in which he may be found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.

Punishment
of abetment
in Cochin
State of acts
done out of
Cochin
State.

THE COCHIN PRISONERS' ACT,

(XLVI OF 1112)

CONTENTS.

PREAMBLE.

PART I.

Preliminary.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.

PART II.

General.

3. Officers in charge of prisons to detain persons duly committed to their custody.
4. Officers in charge of prisons to return writs, etc., after execution or discharge.

PART III.

Prisoners.

5. Power for officers in charge of prisons to give effect to sentences of Courts.

SECTIONS.

6. Warrant of officer of such Court to be sufficient authority.
7. Procedure where officer in charge of prison doubts the legality of warrant sent to him for execution under this part.

PART IV.

Removal of Prisoners.

8. Removal of prisoners from one prison to another.
9. Lunatic prisoners how to be dealt with.

PART V.

Provisions for requiring the attendance of Prisoners and obtaining their evidence.

10. Power for Civil Courts to require appearance of prisoner to give evidence.
11. District Judge in certain cases to countersign orders made under section 10.
12. Power for certain Criminal Courts to require attendance of prisoner to give evidence or answer to charge.
13. Prisoner to be brought up.
14. Power to Government to exempt certain prisoners from operation of this Part.
15. Officer in charge of prison when to abstain from carrying out orders.

Commission for Examinations of Prisoners.

16. Commissions for examination of prisoners.
17. Commission how to be directed.

Service of process on Prisoners.

18. Process how served on prisoners.
19. Process served to be transmitted at prisoner's request.
20. Deposit of costs.
21. Power to make rules under this Part.
22. Power to declare who shall be deemed officer in charge of prison.

The First Schedule.

The Second Schedule.

THE COCHIN PRISONERS' [ACT],
(XLVI OF 1112.)

Passed by His Highness the Maharaja of Cochin on the 28th day of Edavam 1112, corresponding to the 10th day of June 1937.

Whereas it is expedient to enact a law relating to prisoners confined by order of a Court; It is hereby enacted as follows:—

Preamble.

PART I.

PRELIMINARY.

1. (1) This Act may be called "The Cochin Prisoners' Act, XLVI of 1112";

Short title, extent and commencement.

(2) It extends to the whole of Cochin State; and

(3) It shall come into force at once.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(a) "court" includes any officer lawfully exercising Civil, Criminal, or Revenue jurisdiction; and

(b) "prison" includes any place which has been declared by Government, by general or special order, to be a subsidiary Jail.

(2) All references to prisons or to imprisonment or confinement in Parts III, IV and V of this Act shall be construed as referring also to Senior Certified and Junior Certified Schools or to detention therein.

PART II.

GENERAL.

3. The officer in charge of a prison shall receive and detain all persons duly committed to his custody, under this Act or otherwise, by any Court, according to the exigency of any writ, warrant or order by which such

Officers in charge of prisons to detain persons duly committed to their custody.

1. Substituted for 'Regulation' throughout the enactment by Proclamation V of 1112.

person has been committed or until such person is discharged or removed in due course of law.

Officers in charge of prisons to return writs, etc., after execution or discharge.

4. The officer in charge of a prison shall forthwith, after the execution of every such writ, order or warrant as aforesaid, other than a warrant of commitment for trial, or after the discharge of the person committed thereby, return such writ, order or warrant to the Court by which the same was issued or made, together with a certificate endorsed thereon and signed by him showing how the same has been executed or why the person committed thereby has been discharged from custody before the execution thereof.

PART III.

PRISONERS.

Power for officers in charge of prisons to give effect to sentences of Courts.

5. Officers in charge of prisons within Cochin State may give effect to any sentence or order or warrant for the detention of any person passed or issued—

(a) by any Court or tribunal acting within Cochin State under the general or special authority of Government, or

(b) by any other Court or tribunal in British India or in the territories of any Native Prince or State in India with the previous sanction of Government in the case of each such sentence, order or warrant.

Warrant of officer of such Court to be sufficient authority.

6. A warrant under the official signature of an officer of such Court or tribunal as is referred to in section 5 shall be sufficient authority for holding any person in confinement in pursuance of the sentence passed upon him.

Procedure where officer in charge of prison doubts the legality of warrant sent to him for execution under this Part.

7. (1) Where an officer in charge of a prison doubts the legality of a warrant or order sent to him for execution under this Part or the competency of the person whose official seal or signature is affixed thereto to pass the sentence and issue the warrant or order, he shall refer the matter to Government, by whose order on the case he and all other public officers shall be guided as to the future disposal of the prisoner.

(2) Pending a reference made under sub-section (1), the prisoner shall be detained in such manner, and with such restrictions or mitigations, as may be specified in the warrant or order.

PART IV.

REMOVAL OF PRISONERS.

8. Government and (subject to its orders and under its control) the Inspector-General of Prisons may provide for the removal of prisoners from one prison to another within the State.

Removal of prisoners from one prison to another.

9. (1) Where it appears to Government that any person detained or imprisoned under any order or sentence of any Court is of unsound mind, Government may, by a warrant setting forth the grounds of belief that the person is of unsound mind, order his removal to a Lunatic Asylum or other place of safe custody within Cochin State, there to be kept and treated, as Government directs, during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned, or, if, on the expiration of that term, it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

Lunatic prisoners how to be dealt with.

(2) Where it appears to Government that the prisoner has become of sound mind, Government shall, by a warrant directed to the person having charge of the prisoner, if still liable to be kept in custody, remand him to the prison from which he was removed, or to another prison within Cochin State, or, if the prisoner is no longer liable to be kept in custody, order him to be discharged.

(3) The provisions of the Cochin Lunacy Act, VII of 1096, shall apply to every person confined in a Lunatic Asylum under sub-section (1) after the expiration of the term for which he was ordered or sentenced to be detained or imprisoned; and the time during which a prisoner is confined in a Lunatic Asylum under that

sub-section shall be reckoned as part of the term of detention or imprisonment, which he may have been ordered or sentenced by the Court to undergo.

(4) In any case in which Government is competent under sub-section (1) to order the removal of a prisoner to a Lunatic Asylum or other place of safe custody within the State, Government may order his removal to any such asylum or place within British India or within the territories of any Native Prince or State in India by agreement with the Government of such State, as the case may be; and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed under sub-section (1) shall, so far as they can be made applicable, apply to a prisoner removed under this sub-section.

PART V.

Provisions for requiring the attendance of Prisoners and obtaining their evidence.

ATTENDANCE OF PRISONERS IN COURT.

Power for Civil Courts to require appearance of prisoner to give evidence.

10. Any Civil Court may, if it thinks that the evidence of any person confined in any prison within the State is material in any matter pending before it, make an order in the form set forth in the first schedule, directed to the officer in charge of the prison.

District Judge in certain cases to countersign orders made under section 10.

11. (1) Where an order under section 10 is made in any Civil matter pending in a Court subordinate to the District Judge, it shall not be forwarded to the officer to whom it is directed, or acted upon by him, until it has been submitted to, and countersigned by the District Judge to whom the Court is subordinate.

(2) Every order submitted to the District Judge under sub-section (1) shall be accompanied by a statement under the hand of the Munsiff of the facts which, in his opinion, render the order necessary, and the District Judge may, after considering such statement, decline to countersign the order.

12. Any Criminal Court may, if it thinks that the evidence of any person confined in any prison within the State is material in any matter pending before it, or if a charge of an offence against such person is made or pending, make an order in the form set forth in the first or second schedule, as the case may be directed to the officer in charge of the prison :

Power for certain Criminal Courts to require attendance of prisoner to give evidence or answer to charge.

Provided that, if such Criminal Court is inferior to the Court of a Magistrate of the first class, the order shall be submitted to, and countersigned by, the District Magistrate.

13. Upon delivery of any order under this Part to the officer in charge of the prison in which the person named therein is confined, that officer shall cause him to be taken to the Court in which his attendance is required, so as to be present in the Court at the time in such order mentioned, and shall cause him to be detained in custody in or near the Court until he has been examined, or until the Judge or presiding officer of the Court authorises him to be taken back to the prison in which he was confined.

Prisoner to be brought up.

14. Government may, by notification in the Cochin Government Gazette, direct that any person or any class of persons shall not be removed from the prison in which he or they may be confined ; and thereupon, and so long as such notification remains in force, the provisions of this Part, other than those contained in sections 16 and 17, shall not apply to such person or class of persons.

Power to Government to exempt certain prisoners from operation of this Part.

15. In any of the following cases, that is to say :—

(a) where the person named in any order made under section 10 or 12 appears to be, from sickness or other infirmity, unfit to be removed, the officer in charge of the prison in which he is confined shall apply to the District Magistrate and if the District Magistrate, by writing under his hand, declares himself to be of opinion that the person named in the order is, from sickness or other infirmity, unfit to be removed, or

Officer in charge of prison when to abstain from carrying out orders.

(b) where the person named in any such order is under committal for trial ; or

(c) where the person named in any such order is under a remand pending trial or pending a preliminary investigation ; or

(d) where the person named in any such order is in custody for a period which would expire before the expiration of the time required for removing him under this Part and for taking him back to the prison in which he is confined,

the officer in charge of the prison shall abstain from carrying out the order, and shall send to the Court from which the order has been issued a statement of the reason for so abstaining :

Provided that such officer as aforesaid shall not so abstain where—

(i) the order has been made under section 12 ; and

(ii) the person named in the order is confined under committal for trial, or under a remand pending trial or pending a preliminary investigation, and does not appear to be, from sickness or other infirmity, unfit to be removed ; and

(iii) the place, where the evidence of the person named in the order is required, is not more than five miles distant from the prison in which he is confined.

COMMISSION FOR EXAMINATIONS OF PRISONERS.

16. In any of the following cases, that is to say,—

(a) where it appears to any Civil Court that the evidence of a person confined in any prison within the State, who for any of the causes mentioned in section 14 or 15, cannot be removed is material in any matter pending before it ; or

(b) where it appears to any such Court as aforesaid that the evidence of a person confined in any

prison so situate, and more than ten miles distant from the place at which such Court is held, is material in any such matter; or

(c) where the District Judge declines, under section 11, to countersign an order for removal,

the Court may, if it thinks fit, issue a commission, under the provisions of the Code of Civil procedure for the examination of the person in the prison in which he is confined.

17. Every commission for the examination of a person issued under section 16 shall be directed to the District Judge within the local limits of whose jurisdiction the prison in which the person is confined is situate, and the District Judge shall commit the execution of the commission to the officer in charge of the prison, or to such other person as he may think fit.

Commission
how to be
directed.

SERVICE OF PROCESS ON PRISONERS.

18. When any process directed to any person confined in any prison is issued from any Criminal or Revenue Court, it may be served by exhibiting to the officer in charge of the prison the original of the process, and depositing with him a copy thereof.

Process how
served on
prisoners.

19. (1) Every officer in charge of a prison upon whom service is made under section 18 shall, as soon as may be, cause the copy of the process deposited with him to be shown and explained to the person to whom it is directed, and shall thereupon endorse upon the process, and sign a certificate to the effect that such person as aforesaid is confined in the prison under his charge, and has been shown and had explained to him a copy of the process.

Process
served to be
transmitted
at prisoner's
request.

(2) Such certificate as aforesaid shall be *prima facie* evidence of the service of the process, and, if the person to whom the process is directed requests that the

copy shown and explained to him be sent to any other person, and provides the cost of sending it by post, the officer in charge of the prison shall cause it to be so sent.

Deposit of costs.

20. No order in any Civil matter shall be made by a Court under any of the provisions of this Part until the amount of the costs and charges of the execution of such order (to be determined by the Court) is deposited in such Court :

Provided that, if, upon any application for such order, it appears to the Court to which the application is made that the applicant has not sufficient means to meet the said costs and charges, the Court may pay the same out of any fund applicable to the contingent expenses of such Court, and every sum so expended may be recovered by the Government from any person ordered by the Court to pay the same, as if it were costs in a suit recoverable under the Code of Civil Procedure.

Power to make rules under this Part.

21. (1) Government may make rules—

(a) for regulating the escort of prisoners to and from Courts in which their attendance is required and for their custody during the period of such attendance ;

(b) for regulating the amount to be allowed for the costs and charges of such escort ; and

(c) for the guidance of officers in all other matters connected with the enforcement of this Part.

(2) All rules made under sub-section (1) shall be published in the Cochin Government Gazette and shall, from the date of such publication, have the same force as if enacted by this Act.

Power to declare who shall be deemed officer in charge of prison.

22. Government may declare what officer shall, for the purposes of this Part, be deemed to be the officer in charge of a prison.

THE FIRST SCHEDULE.

(SEE SECTIONS 10 AND 18)

Court of... ..
 To the officer in charge of the
(state name of prison).
 You are hereby required to produce
 now a prisoner in under safe and sure
 conduct before the Court of at...
 on the day of... .. next by
of the clock in the forenoon of the
 same day, there to give evidence in a matter now pending
 before the said Court and after the said has then
 and there given his evidence before the said Court or the
 said Court has dispensed with his further attendance, cause
 him to be conveyed under safe and sure conduct back to
 the said prison.

The day ofA. B.

(Countersigned) C. D.

THE SECOND SCHEDULE.

(SEE SECTION 12.)

Court of... ..
 To the officer in charge of the
(state name of prison.)
 You are hereby required to produce
now a prisoner in
 under safe and sure conduct before the Court of
 at on the
 day of next by...
 of the clock in the forenoon of the same day, there to answer
 a charge now pending before the said Court, and, after such
 charge has been disposed of, or the said Court has dispensed
 with his further attendance, cause him to be conveyed under
 safe and sure conduct back to the said prison.

The day of

A. B.

(Countersigned) C. D.

THE COCHIN DANGEROUS DRUGS ACT,
(XLIX OF 1112.)

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.
3. Calculation of percentages in liquid preparations.

CHAPTER II.

PROHIBITION AND CONTROL.

4. Prohibition of certain operations.
5. Control of Government over production and supply of opium.
6. Control of Government over manufacture of manufactured drug.
7. Control of Government over operations at frontiers and internal traffic in dangerous drugs.
8. Control of Government over external dealings in dangerous drugs.

CHAPTER III.

OFFENCES AND PENALTIES.

9. Punishment for contravention of section 4.
10. Punishment for contravention of section 5.
11. Punishment for contravention of section 6.
12. Punishment for contravention of section 7.
13. Punishment for allowing premises to be used for the commission of an offence.
14. Enhanced punishment for certain offences after previous conviction.
15. Enhanced punishment for offence under section 13 after previous conviction.
16. Security for abstaining from commission of certain offences.

SECTIONS.

17. Penalty for contravention of section 8.
18. Attempts.
19. Abetments.

CHAPTER IV.

PROCEDURE.

20. Power to issue warrants.
21. Power of entry, search, seizure and arrest, without warrant.
22. Power of seizure and arrest in public place.
23. Mode of making searches and arrests.
24. Obligations on officers to assist each other.
25. Report of arrests and seizure.
26. Punishment for vexatious entry, search, seizure or arrest.
27. Disposal of persons arrested and of articles seized.
28. Power to invest Excise Officers with powers of an officer in charge of a police station.
29. Jurisdiction to try offence.
30. Presumption from possession of illicit articles.
31. Liability of illicit articles to confiscation.
32. Procedure in making confiscations.
33. Power to make rules regulating disposal of confiscated articles and rewards.

CHAPTER V.

MISCELLANEOUS.

34. Provision regarding rules.
35. Recovery of sums due to Government.
36. Application of the Sea Customs Act.
37. Validity of the Opium Act.

SCHEDULE.

Bond to abstain from the commission of offences under the Dangerous Drugs Act.

THE COCHIN DANGEROUS DRUGS ' [ACT],
(XLIX OF 1112)

Passed by His Highness the Maharaja of Cochin on the 9th day of Mithunam 1112, corresponding to the 23rd day of June, 1937.

Preamble.

Whereas it is expedient to define and amend the law relating to dangerous drugs in the Cochin State and to take further measures to suppress the contraband traffic in and abuse of dangerous drugs especially those derived from opium, Indian hemp and coca leaf ;

And whereas it is also expedient that the penalties for certain offences relating to dangerous drugs should be increased ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called " The Cochin Dangerous Drugs Act, XLIX of 1112 " ;

(2) It extends to the whole of Cochin State; and

(3) It shall come into force at once.

Definitions.

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

(a) ' Coca leaf ' means,—

(i) the leaf and young twigs of any coca plant, that is of the *erythroxylon coca* (*Lank*) and the *erythroxylon novo-granatense* (*Hiern*) and their varieties, and of any other species of this genus which the Government may, by notification in the Cochin Government Gazette, declare to be coca plants for the purposes of this Act ; and

(ii) any mixture thereof with or without neutral materials ;

1. Substituted for ' Regulation ' throughout the enactment by Proclamation V of 1112.

but does not include any preparation containing not more than 0·1 per cent of cocaine;

(b) "Coca derivative" means,—

(i) crude cocaine, that is, any extract of coca leaf which can be used, directly or indirectly, for the manufacture of cocaine;

(ii) ecgonine, that is, lævo-ecgonine having the chemical formula $C_9 H_{15} NO_3 H_2O$, and all the derivatives of lævo-ecgonine from which it can be recovered;

(iii) cocaine, that is methyl-benzoyl—lævo-ecgonine having the chemical formula $C_{17} H_{21} NO_4$, and its salts; and

(iv) all preparations, officinal and non-officinal, containing more than 0·1 per cent of cocaine;

(c) "hemp" means,—

(i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis Sativa L*) including all forms known as *bhang*, *siddhi*, or *ganja*;

(ii) charas, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport; and

(iii) any mixture, with or without neutral materials, of any of the above forms of hemp or any drink prepared therefrom;

(d) "medicinal hemp" means any extract or tincture of hemp;

(e) "opium" means,—

(i) the capsules of the poppy (*Papaver Somniferum L*);

(ii) the spontaneously coagulated juice of such capsules which has not been submitted to any manipulations other than those necessary for packing and transport; and

(iii) any mixture, with or without neutral materials, of any of the above forms of opium ; but does not include any preparation containing not more than 0·2 per cent of morphine ;

(f) “Opium derivative” means,—

(i) medicinal opium, that is, opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the British Pharmacopœia, whether in powder form or granulated or otherwise or mixed with neutral materials ;

(ii) prepared opium, that is, any product of opium obtained by any series of operations designed to transform opium into an extract suitable for smoking, and the dross or other residue remaining after opium is smoked ;

(iii) morphine, that is, the principal alkaloid of opium having the chemical formula $C_{17}H_{19}NO_3$, and its salts ;

(iv) diacetylmorphine, that is, the alkaloid, also known as diamorphine or heroin, having the chemical formula $C_{21}H_{23}NO_5$ and its salts ; and

(v) all preparations, officinal and non-officinal, containing more than 0·2 per cent of morphine, or containing any diacetylmorphine ;

(g) “manufactured drug” includes,—

(i) all coca derivatives, medicinal hemp and opium derivatives ; and

(ii) any other narcotic substance which the Government may, by notification in the Cochin Government Gazette, declare to be a manufactured drug ; but does not include any preparation which the Government may, by notification in the Cochin Government Gazette, declare not to be a manufactured drug ;

(h) "dangerous drug" includes coca leaf, hemp and opium and all manufactured drugs;

(i) "to import" means to bring into Cochin State by land, sea or air;

(j) "to export" means to take out of Cochin State by land, sea or air; and

(k) "to transport" means to take from one place to another within Cochin State.

3. The Government may make rules prescribing the method by which percentages in the case of liquid preparations shall be calculated for the purposes of clauses (a), (b), (e) and (f) of section 2:

Calculation of percentages in liquid preparations.

Provided that unless and until such rules are made, such percentages shall be calculated on the basis that a preparation containing one per cent of a substance means a preparation in which one gramme of the substance, if a solid, or one millilitre of the substance, if a liquid, is contained in every one hundred millilitres of the preparation, and so in proportion for any greater or less percentage.

CHAPTER II.

PROHIBITION AND CONTROL.

4. (1) No one shall—

(a) cultivate any coca plant or gather any portion of a coca plant,

(b) manufacture or possess prepared opium, unless it is prepared from opium lawfully possessed for the consumption of the person so possessing it, or

(c) import, export, tranship or sell prepared opium.

Prohibition of certain operations.

(2) The Government may make rules restricting and regulating the manufacture and possession of prepared opium from opium which is lawfully possessed under clause (b) of sub section (1).

Control of
Government
over produc-
tion and
supply of
opium.

5. (1) No one shall—
- (a) cultivate the poppy (*Papaver Somniferum* L), or
- (b) manufacture opium, within Cochin State.

(2) The Government may make rules permitting and regulating the sale of opium from Treasuries to any licensed vendor, or to any licensed dealer in morphia or any licensed chemist as defined in the Cochin Morphia Rules.

Control of
Government
over manu-
facture of
manufac-
tured drug.

6. (1) No one shall manufacture any manufactured drug, other than prepared opium, save in accordance with rules made under sub-section (2) and with the conditions of any license for that purpose which he may be required to obtain under those rules.

(2) The Government may make rules permitting and regulating the manufacture of manufactured drugs, other than prepared opium, and such rules may prescribe the form and conditions of licenses for such manufacture, the authorities by which such licenses may be granted and the fees that may be charged therefor, and any other matter requisite to render effective the control of Government over such manufacture.

(3) Nothing in this section shall apply to the manufacture of medicinal opium or of preparations containing morphine, diacetylmorphine or cocaine from materials which the maker is lawfully entitled to possess.

Control of
Government
over opera-
tions at
frontiers and
internal traf-
fic in danger-
ous drugs.

7. (1) No one shall import, export, tranship, transport, possess or sell any dangerous drug other than prepared opium, save in accordance with the rules made under sub-section (2) and with the conditions of any license for that purpose which he may be required to obtain under those rules.

(2) The Government may make rules either prohibiting, or permitting and regulating, the import into

and export from Cochin State, the transport, transshipment, possession and sale of dangerous drugs or any class of dangerous drugs other than prepared opium.

Such rules may prescribe the ports or places at which any kind of dangerous drug may be imported, exported or transhipped, the form and conditions of licenses for such import, export, transshipment, transport, possession or sale, the authorities by which such licenses may be granted; the fees that may be charged therefor and any other matters requisite to render effective the control of the Government over such import, export, transport, transshipment, possession and sale.

(3) Save in so far as may be expressly provided in rules made under sub-section (2), nothing in this section shall apply to manufactured drugs which are the property and in the possession of Government :

Provided that such drugs shall not be sold or otherwise delivered to any person who, under the rules made by the Government under this section, is not entitled to their possession.

8. No one shall engage in or control any trade whereby a dangerous drug is obtained outside Cochin State and supplied to any person outside Cochin State, save in accordance with the conditions of a license granted by and at the discretion of the Commissioner of Excise.

Control of Government over external dealings in dangerous drugs.

CHAPTER III.

OFFENCES AND PENALTIES.

9, Whoever—

(a) cultivates any coca plant or gathers any portion of a coca plant,

(b) manufactures or possesses prepared opium otherwise than as permitted under section 4, or

(c) imports, exports, tranships or sells prepared opium, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Punishment for contravention of section-4.

Punishment
for contra-
vention of
section 5.

10. Whoever, in contravention of section 5—

- (a) cultivates the poppy, or
- (b) manufactures opium,

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Punishment
for contra-
vention of
section 6.

11. Whoever in contravention of section 6, or any rule made under that section, or any condition of a license granted thereunder, manufactures any manufactured drug, shall be punished with imprisonment which may extend to two years, or with fine or with both.

Punishment
for contra-
vention of
section 7.

12. Whoever in contravention of section 7, or any rule made under that section or any condition of a license granted thereunder,

- (a) imports,
- (b) exports,
- (c) tranships,
- (d) transports,
- (e) possesses, or
- (f) sells,

any dangerous drug shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Punishment
for allowing
premises to
be used for
the commis-
sion of an
offence.

13. Whoever, being the owner or occupier or having the use of any house, room, enclosure, space, vessel, vehicle or place, knowingly permits it to be used for the commission by any other person of an offence punishable under sections 9, 10, 11 or 12, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Enhanced
punishment
for certain
offences
after pre-
vious con-
viction.

14. Whoever, having been convicted of an offence punishable under sections 9, 10, 11 or 12, is guilty of any offence punishable under any of those sections, shall be subject for every such subsequent offence to imprisonment which may extend to four years, or to fine, or to both.

15. Whoever, having been convicted of an offence punishable under section 13, is again guilty of an offence punishable under that section, shall be subject for every such subsequent offence to imprisonment which may extend to four years, or to fine, or to both.

Enhanced punishment for offence under section 13 after previous conviction.

16. (1) Whenever any person is convicted of an offence punishable under sections 9, 10, 11 or 12, and the Court convicting him is of opinion that it is necessary to require such person to execute a bond for abstaining from the commission of offences punishable under those sections, the Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties for abstaining from the commission of such offences during such period, not exceeding three years, as it thinks fit to fix.

Security for abstaining from commission of certain offences.

(2) The bond shall be in the form contained in the Schedule, and the provisions of the Code of Criminal Procedure, shall, in so far as they are applicable, apply to all matters connected with such bond as if it were a bond to keep the peace ordered to be executed under section 91 of that Code.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(4) An order under this section may also be made by an Appellate Court, or by the Chief Court when exercising its powers of revision.

17. Whoever engages in or controls any trade whereby a dangerous drug is obtained outside Cochin State and supplied to any person outside Cochin State, otherwise than in accordance with the conditions of a license granted under section 8, shall be punished with fine which may extend to one thousand rupees.

Penalty for contravention of section 8.

18. Whoever attempts to commit an offence punishable under this Chapter, or to cause such an offence to be committed, and in such attempt does any act towards

Attempts.

the commission of the offence, shall be punished with the punishment provided for the offence.

Abetments.

19. (1) Whoever abets an offence punishable under this Chapter shall, whether such offence be or be not committed in consequence of such abetment, and notwithstanding anything contained in section 111 of the Cochin Penal Code, be punished with the punishment provided for the offence.

(2) A person abets an offence within the meaning of this section who, in Cochin State, abets the commission of any act in a place without and beyond Cochin State which—

(a) would constitute an offence if committed within Cochin State; or

(b) under the laws of such place, is an offence relating to dangerous drugs having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within Cochin State.

CHAPTER IV.

PROCEDURE.

Power to
issue
warrants.

20. (1) The Commissioner of Excise or other officer authorised by the Government in this behalf, or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Government in this behalf, may issue a warrant for the arrest of any person whom he has reason to believe to have committed an offence punishable under Chapter III, or for the search, whether by day or by night of any building, vessel or place in which he has reason to believe any dangerous drug in respect of which an offence punishable under Chapter III has been committed is kept or concealed.

(2) The officer to whom a search warrant under sub-section (1) is addressed shall have all the powers of an officer acting under section 21.

21. (1) Any officer of the department of Excise, Police, Customs, Salt, Opium or Revenue, superior in rank to a peon or constable, authorised in this behalf by the Government, who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that any dangerous drug in respect of which an offence punishable under Chapter III has been committed is kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,

Power of entry, search, seizure and arrest, without warrant.

(a) enter into any such building, vessel, or place ;

(b) in case of resistance, break open any door and remove any other obstacle to such entry ;

(c) seize such drug and all materials used in the manufacture thereof and any other article which he has reason to believe to be liable to confiscation under section 31 and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter III relating to such drug ; and

(d) detain and search, and, if he think proper, arrest any person whom he has reason to believe to have committed an offence punishable under Chapter III relating to such drug.

Provided that if such officer has reason to believe that a search warrant cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, vessel or enclosed place at any time between sunset and sunrise, after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1), or records grounds for his belief under the proviso thereto, he shall forthwith send a copy thereof to his immediate official superior.

Power of seizure and arrest in public place.

22. Any officer of any of the departments mentioned in section 21 may—

(a) seize in any public place or in transit, any dangerous drug in respect of which he has reason to believe an offence punishable under Chapter III has been committed, and, along with such drug, any other article liable to confiscation under section 31, and any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under Chapter III relating to such drug ;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under Chapter III, and, if such person has any dangerous drug in his possession and such possession appears to him to be unlawful, arrest him and any other persons in his company.

Mode of making searches and arrests.

23. The provisions of the Code of Criminal Procedure shall apply, in so far as they are not inconsistent with the provisions of sections 20, 21 and 22, to all warrants issued and arrests and searches made under those sections.

Obligations on officers to assist each other.

24. All officers of the several departments mentioned in section 21, shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Report of arrests and seizure.

25. Whenever any person makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Punishment for vexatious entry, search, seizure or arrest.

26. Any person empowered under section 21 or section 22 who—

(a) without reasonable grounds of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place ;

(b) vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any dangerous drug or other article liable to be confiscated under section 31, or of seizing any document or other article liable to seizure under section 21 or section 22; or

(c) vexatiously and unnecessarily detains, searches or arrests any person;

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

27. (1) Every person arrested and article seized under a warrant issued under section 20 shall be forwarded without delay to the authority by whom the warrant was issued; and every person arrested and article seized under section 21 or section 22 shall be forwarded without delay to the officer in charge of the nearest police station or to the nearest officer of the Excise department empowered under section 28.

Disposal of persons arrested and of articles seized.

(2) The authority or officer to whom any person or article is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or article.

28. The Government may invest any officer of the Excise Department or any class of such officers with the powers of an officer in charge of a police station for the investigation of offences under this Act.

Power to invest Excise Officers with powers of an officer in charge of a police station.

29. No Magistrate shall try an offence under this Act unless he is a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Government in this behalf.

Jurisdiction to try offence.

Presumption
from possession
of illicit
articles.

30. In trials under this Act it may be presumed, unless and until the contrary is proved that the accused has committed an offence under Chapter III in respect of—

(a) any dangerous drug ;

(b) any poppy or coca plant growing on any land which he has cultivated ;

(c) any apparatus specially designed or any group of utensils specially adapted for the manufacture of any dangerous drug ; or

(d) any materials which have undergone any process towards the manufacture of a dangerous drug, or any residue left of the materials from which a dangerous drug has been manufactured, for the possession of which he fails to account satisfactorily.

Liability of
illicit
articles to
confiscation.

31. (1) Whenever any offence has been committed which is punishable under Chapter III, the coca or poppy cultivated, the dangerous drug, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any dangerous drug lawfully imported, transported, manufactured, possessed, or sold along with, or in addition to, any dangerous drug which is liable to confiscation under sub-section (1), and the receptacles, packages, and coverings in which any dangerous drug, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages, and the animals, vehicles, vessels and other conveyances used in carrying the same, shall likewise be liable to confiscation :

Provided that no animal, vehicle, vessel or other conveyance shall be liable to confiscation unless it is proved that the owner thereof knew that the offence was being, or was to be or was likely to be, committed.

32. (1) In the trial of offences under this Act, whether the accused is convicted or acquitted, the Court shall decide whether any article seized under this Chapter is liable to confiscation under section 31; and if it decides that the article is so liable, it may order confiscation accordingly.

Procedure in making confiscations.

(2) Where any article seized under this Chapter appears to be liable to confiscation under section 31, but the person who committed the offence in connection therewith is not known or cannot be found, the Commissioner of Excise or other officer authorised by the Government in this behalf, may inquire into and decide such liability, and may order confiscation accordingly :

Provided that no order of confiscation of an article shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim :

Provided, further, that, if any such article other than a dangerous drug, is liable to speedy and natural decay, or if the Commissioner of Excise or other officer is of opinion that its sale would be for the benefit of its owner, he may, at any time, direct it to be sold, and the provision of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.

(3) Any person not convicted who claims any right to property which has been confiscated under this section may appeal to the Court of Sessions against the order of confiscation.

33. The Government may make rules to regulate—

(a) the disposal of all articles confiscated under this Act; and

(b) the rewards to be paid to officers, informers and other persons out of the proceeds of fines and confiscations under this Act.

Power to make rules regulating disposal of confiscated articles and rewards.

CHAPTER V.

MISCELLANEOUS.

Provision
regarding
rules.

34. All rules made under this Act shall be subject to the condition of previous publication in the Cochin Government Gazette.

Recovery of
sums due to
Government.

35. (1) Any arrear of any license fee chargeable by any rule made under this Act may be recovered from the person primarily liable to pay the same or from his surety (if any) as if it were an arrear of land revenue.

(2) When any person, in compliance with any rule made under this Act, gives a bond (other than a bond under section 16) for the performance of any act, or for his abstention from any act, such performance or abstention shall be deemed to be a public duty, within the meaning of section 75 of the Cochin Contract Act, XXIII of 1112, and upon breach of the conditions of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him or from his surety (if any) as if it were an arrear of land revenue.

Application
of the Sea
Customs
Act.

36. All prohibitions and restrictions imposed by or under this Act on the import, the export, and the transshipment of dangerous drugs shall be deemed to be prohibitions and restrictions imposed under section 18 or section 133 of the Cochin Sea Customs Act, XII of 1109, and the provisions of that Act shall apply accordingly :

Provided that, where the doing of anything is an offence punishable under that Act and under this Act, nothing in that Act or in this section shall prevent the offender from being punished under this Act.

Validity of
the Opium
Act.

37. Nothing in this Act or in the rules made thereunder shall affect the validity of the Opium Act, VIII of 1076, or the rules made thereunder :

Provided that, where the doing of anything is an offence punishable under that Act and under this Act,

nothing in that Act or in this section shall prevent the offender from being punished under this Act.

SCHEDULE

BOND TO ABSTAIN FROM THE COMMISSION OF OFFENCES
UNDER THE DANGEROUS DRUGS ACT.

(See Section 16).

Whereas I (name), inhabitant of (place), have been called upon to enter into a bond to abstain from the commission of offences under sections 9, 10, 11, and 12 of the Dangerous Drugs Act, for the term of _____, I hereby bind myself not to commit any such offence during the said term and, in case of my making default therein, I hereby bind myself to forfeit to the Government of Cochin the sum of rupees—

Dated this _____ day of _____ 11 .

(Signature)

(Where a bond with sureties is to be executed, add—)

We do hereby declare ourselves sureties for the above named _____ that he will abstain from the commission of offences under sections 9, 10, 11, and 12 of the Dangerous Drugs Act during the said term; and, in case of his making default therein, we bind ourselves jointly and severally, to forfeit to the Government of Cochin the sum of rupees—

Dated this _____ day of _____

(Signatures)

PROCLAMATION,
(No. V of 1112).

BY HIS HIGHNESS SIR SREE RAMA VARMA, G. C. I. E.,
MAHARAJA OF COCHIN.

*Issued under date the 12th day of Mithunam 1112
corresponding to the 26th day of June 1937.*

Whereas it is deemed desirable that all enactments in Our State heretofore called "Regulations" shall be styled "Acts";

We are hereby pleased to command as follows:—

1. All enactments heretofore passed or that may hereafter be passed and heretofore styled "Regulations" shall be called "Acts."

2. The word "Act" shall be substituted for the word "Regulation" in all the enactments heretofore passed wherever the latter word is used to denote an enactment heretofore styled "Regulation."

PROCLAMATION,
(No. VI of 1112).

BY HIS HIGHNESS SIR SREE RAMA VARMA, G. C. I. E.,
MAHARAJA OF COCHIN.

*Issued under date the 26th day of Mithunam 1112
corresponding to the 10th day of July 1937.*

Whereas Our Government have noticed that of late the news-papers "Malayali" and "Bharata Patrika" published from Trivandrum in the Travancore State have been publishing matter that brings or attempts to bring into hatred or contempt or excites or attempts to excite dis-affection towards Our Government;

Whereas We are satisfied that the import into or circulation in Cochin of the aforesaid news-papers "Malayali" and "Bharata Patrika" is undesirable and inexpedient in the interests of the tranquillity and safety of Cochin;

We are hereby pleased to command that no issue of the aforesaid newspapers "Malayali" and "Bharata Patrika" daily or any other edition and in whatever language published, shall hereafter be imported into Cochin, or sold, circulated or distributed in any manner whatsoever in Cochin ;

That any parcel or packet containing copies of the aforesaid newspapers "Malayali" and "Bharata Patrika" or individual copy or copies of the same wherever found in Cochin be forfeited to Government and destroyed by them ;

That all Police officers are hereby authorised and empowered to seize any parcels or packets containing or suspected to contain copies of the aforesaid newspapers or individual copy or copies of the same wherever found outside dwelling houses ;

That any Magistrate may authorise any Police officer not below the rank of Head constable to enter and search any dwelling house, where, parcels or packets containing copies of the aforesaid newspapers "Malayali" and "Bharata Patrika" or individual copy or copies of the same are, or suspected to be, stored, hidden or kept and to seize any or all such if found on search ;

That any person found bringing into Cochin or having possession of or custody in Cochin of parcels or packets containing copies of the aforesaid newspapers "Malayali" and "Bharata Patrika" or individual copy or copies of the same and thereby violating these Our Commands and any person assisting or abetting in such violation shall on conviction for the offence of such violation be liable to imprisonment of either kind for a period not exceeding one year and shall also be liable to fine not exceeding Rs. 1,000 ;

That any officer in charge of a Police Station is authorised to prosecute any person who violates these Our Commands and that any Police officer may arrest any person found in possession of parcels or packets

containing or suspected to contain copies of the aforesaid newspapers "Malayali" and "Bharata Patrika" or individual copy or copies of the same;

That any violation of these Our Commands be deemed to be a cognizable non-bailable offence triable by any Magistrate, and that the procedure laid down in the Cochin Code of Criminal Procedure for the trial of warrant cases be adopted in trying such offences.

PROCLAMATION.

(VII of 1112).

BY HIS HIGHNESS SIR SREE RAMA VARMA, G. C. I. E.,
MAHARAJA OF COCHIN.

Issued under date the 31st day of Mithunam 1112 corresponding to the 15th day of July 1937.

WHEREAS the provisions of Act I of 1872 of British India entitled the "The Indian Evidence Act, 1872" with all the amendments thereof up to the 2nd February 1905 were brought into force, *mutatis mutandis*, throughout Our State, by Proclamation dated 2nd February 1905 corresponding to the 21st day of Makaram 1080; WHEREAS the aforesaid Indian Evidence Act, 1 of 1872, has since been further amended by the Indian Evidence (Amendment) Act, XXXI of 1926; and WHEREAS it is deemed expedient to bring into force *mutatis mutandis*, throughout Our State, the amendments introduced into the Indian Evidence Act, 1872, by the aforesaid Amendment Act, XXXI of 1926;

We are pleased to declare that from and after the 1st day of Karkadagam 1112 corresponding to the 16th day of July 1937 the aforesaid amendments introduced by the Indian Evidence (Amendment) Act, XXXI of 1926, shall, *mutatis mutandis*, come into force in Our State as amendments to the Indian Evidence Act, 1 of 1872, already brought into force throughout Our State as aforesaid.

THE COCHIN CARRIAGE OF GOODS BY SEA ACT,
(LIX OF 1112).

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title, extent and commencement.
2. Application of Rules.
3. Absolute warranty of seaworthiness not to be implied in contracts to which Rules apply.
4. Statement as to application of Rules to be included in bills of lading.
5. Modification of Article VI of Rules in relation to goods carried in sailing ships.
6. Modification of Rules 4 and 5 of Article III in relation to bulk cargoes.
7. Saving and operation.

SCHEDULE.

RULES RELATING TO BILLS OF LADING.

Article I.—Definitions.

Article II.—Risks.

Article III.—Responsibilities and Liabilities.

Article IV.—Rights and immunities.

Article V.—Surrender of Rights and Immunities,
and increase of responsibilities, and liabilities.

Article VI.—Special conditions.

Article VII.—Limitations on the Application of the
Rules.

Article VIII.—Limitation of Liability.

THE COCHIN CARRIAGE OF GOODS BY SEA ACT

(LIX OF 1112).

AN ACT TO DEFINE THE LAW WITH RESPECT
TO CARRIAGE OF GOODS BY SEA.*Passed by His Highness the Maharaja of Cochin on the
31st day of Mithunam 1112, corresponding to the
15th day of July 1937.*

Preamble.

Whereas it is expedient to define and regulate the law relating to the carriage of goods by sea; It is enacted as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called "The Cochin Carriage of Goods by Sea Act, LIX of 1112."

(2) It extends to the whole of Cochin.

(3) It shall come into force on such date as the Government may, by notification in the Cochin Government Gazette, declare.

Application
of Rules.

2. Subject to the provisions of this Act, the rules set out in the Schedule (hereinafter referred to as "the Rules") shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Cochin State to any other port whether in or outside Cochin State.

Absolute
warranty of
seaworthi-
ness not to
be implied
in contracts
to which
Rules apply.

3. There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

Statement as
to applica-
tion of Rules
to be
included in
bills of
lading.

4. Every bill of lading, or similar document of title, issued in Cochin State which contains or is evidence of any contract to which the Rules apply, shall contain an express statement that it is to have effect subject to the provisions of the said Rules as applied by this Act.

1. Brought into force from 1—1—1113 by notification
No. 150, Law & Justice Dept. Dated 16—12—12.

5. Article VI of the Rules shall, in relation to the carriage of goods by sea in sailing ships carrying goods from any port in Cochin State to any other port whether in or outside Cochin State, have effect as though the said Article referred to goods of any class instead of to particular goods and as though the proviso to the second paragraph of the said Article were omitted.

Modification of Article VI of Rules in relation to goods carried in sailing ships.

6. Where under the custom of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in the Rules, the bill of lading shall not be deemed to be *prima facie* evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

Modification of Rules 4 and 5 of Article III in relation to bulk cargoes.

7. (1) Nothing in this Act shall affect the operation of any other enactment for the time being in force limiting the liability of the owners of seagoing vessels.

Saving and operation.

(2) The Rules shall not by virtue of this Act apply to any contract for the carriage of goods by sea before such day, as Government may, by notification in the Cochin Government Gazette, appoint, nor to any bill of lading or similar document of title issued, whether before or after such day as aforesaid, in pursuance of any such contract as aforesaid.

SCHEDULE.

RULES RELATING TO BILLS OF LADING.

ARTICLE I.

DEFINITIONS.

In these Rules the following expressions have the meanings hereby assigned to them respectively, that is to say—

1. Rules in the Schedule have been notified to apply to Contracts for the Carriage of Goods by Sea on and after 1-4-1113 by notification No. 151, Law and Justice Dept. dated 16-12-12.

(a) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper :

(b) "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or of any similar document as aforesaid, issued under or pursuant to a charter-party from the moment at which such bill of lading or similar document of title regulates the relations between carrier and a holder of the same :

(c) "Goods" includes goods, wares, merchandises, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried :

(d) "Ship" means any vessel used for the carriage of goods by sea :

(e) "Carriage of goods" covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

ARTICLE II.

RISKS.

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

ARTICLE III.

RESPONSIBILITIES AND LIABILITIES.

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to—

(a) Make the ship seaworthy :

(b) Properly man, equip, and supply the ship :

(c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

3. After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—

(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of voyage :

(b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper:

(c) The apparent order and condition of the goods :

Provided that no carrier, master or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c).

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by

him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier, such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or

names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this article be deemed to constitute a "shipped" bill of lading.

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these rules, shall be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

ARTICLE IV.

RIGHTS AND IMMUNITIES.

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III.

Whenever loss or damage had resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

(a) act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship ;

(b) fire, unless caused by the actual fault or privity of the carrier ;

(c) perils, dangers and accidents of the sea or other navigable waters ;

(d) act of God ;

(e) act of war ;

(f) act of public enemies ;

(g) arrest or restraint of princes, rulers, or people, or seizure under legal process ;

(h) quarantine restriction ;

(i) act or omission of the shipper or owner of the goods, his agent, or representative ;

(j) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general ;

(k) riots and civil commotions ;

(l) saving or attempting to save life or property at sea ;

(m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods ;

(n) insufficiency of packing ;

(o) insufficiency or inadequacy of marks ;

(p) latent defects not discoverable by due diligence ;

(q) any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation, shall not be deemed to be an infringement or breach of these rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding 100 l. per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

ARTICLE V.

SURRENDER OF RIGHTS AND IMMUNITIES, AND INCREASE OF RESPONSIBILITIES, AND LIABILITIES.

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the Rules contained in any of these Articles, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of these Rules shall not be applicable to charter-parties, but if bills of lading are issued in the case of a ship under a charter-party they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

ARTICLE VI.

SPECIAL CONDITIONS.

Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier, and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect:

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed, are such as reasonably to justify a special agreement.

ARTICLE VII.

LIMITATIONS ON THE APPLICATION OF THE RULES.

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

ARTICLE VIII.

LIMITATION OF LIABILITY.

The provisions of these Rules shall not affect the rights and obligations of the carrier under any Statute for the time being in force relating to the limitation of the liability of owners of seagoing vessels.

THE COCHIN WEIGHTS AND MEASURES ACT.

(LXIII OF 1112).

CONTENTS.

PREAMBLE.

I.—PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Repeal.

II.—STANDARDS.

SECTIONS.

3. Standard of weights and measures.
4. Units of weight and measures.
5. Special weights and measures.

III.—USE OF NEW WEIGHTS AND MEASURES.

6. Contracts by weights and measures.

IV.—WARDENS.

7. Appointment of wardens.
8. Power to make rules.
9. Warden may refuse to verify or correct things unfit.
10. Exercise of any of warden's powers.

V.—PENALTIES.

11. Counterfeiting warden's marks.
12. Using unauthorised weights and measures.

THE COCHIN WEIGHTS AND MEASURES ACT,
(LXIII OF 1112).

*Passed by His Highness the Maharaja of Cochin on the
9th day of Karkadagam 1112, corresponding to the
24th day of July 1937.*

Preamble.

Whereas it is expedient to consolidate and amend the law relating to weights and measures in Cochin State; It is hereby enacted as follows:—

I.—PRELIMINARY.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called "The Cochin Weights and Measures Act, LXIII of 1112."

(2) It extends to the whole of Cochin State.

(3) It shall come into force on such date as the Government may declare by notification in the Cochin Government Gazette.

Repeal.

2. Clause (3) of section 22 of Act III of 1010 is hereby repealed.

1. To come into force from 1-3-1113 by notification No. 17 dated 31st Chingam 1113.

II.—STANDARDS.

3. The primary standard of weight shall be called a "Rathal" and shall be a weight of metal certified to be equivalent to $42\frac{1}{2}$ British Indian Rupees. Standard of weights and measures.

The primary standard for measures of length shall be called a "Yard" and shall be a rod of metal certified to be equal in length to the standard yard of British India.

The primary standard for measures of capacity shall be called an "Edangali" and shall be a measure of metal certified to be capable of holding 44 ounces of water.

4. The units of weight and of measures of length and capacity shall be for weights, the said Rathal; for measures of length, the said Yard; and for measures of capacity, the said Edangali. Units of weight and measures.

Weights and measures forming integral multiples or integral sub-multiples of the units of weights and measures shall be authorised sets of weights and measures under the provisions of this Act.

5. The Government may, from time to time by notification in the Cochin Government Gazette, declare the magnitude and denominations of the weights and measures other than the said units to be authorised under this Act, though they might not form integral multiples or integral sub-multiples of the units aforesaid. Special weights and measures.

III.—USE OF NEW WEIGHTS AND MEASURES.

6. No weight, measure, weighing machine or balance, not authorised and certified under the provisions of this Act or the notifications or rules issued thereunder, shall be used in any dealing or contract that is had or made and has its operation within Cochin State. Contracts by weights and measures.

IV.—WARDENS.

7. The Government shall appoint wardens for the custody of the primary standards and sets of authorised weights and measures hereinbefore mentioned. Appointment of wardens.

The Government may, at any time, suspend or remove any such warden and appoint another.

Power to
make rules.

8. The Government may, from time to time, make rules consistent with this Act for regulating the following matters :—

- (a) the powers and duties of wardens ;
- (b) the guidance of wardens in all matters connected with the performance of their duties ;
- (c) the provisions, replacement, custody and use of the standards ;
- (d) the methods of verifying standards and weights, weighing machines and balances and measures of length and of capacity authorised under this Act and of certifying such verification :

Provided that such verification shall not be required to be made oftner than once in two years ;

- (e) the errors which may be tolerated in weights, weighing machines and balances and measures of length and capacity authorised under this Act ;

- (f) the shapes, proportions and dimensions to be given to weights, weighing machines and balances and measures of length and capacity authorised under this Act and the materials of which they may be made ;

- (g) marking weights and measures authorised under this Act with their several denominations ;

- (h) the fees to be paid for verifying, correcting and certifying the verification of weights, weighing machines and balances and measures of length and capacity authorised under this Act.

Such rules shall be published in the Cochin Government Gazette and shall thereafter have the force of law.

Warden may
refuse to
verify or
correct
things unfit.

9. The warden may deface or render incapable of use, or refuse to verify, correct or mark anything brought to him for verification or correction, which appears to him unfit for verification or correction.

10. Any of the powers and duties conferred and imposed by this Act on a warden may be exercised and performed by any other officer whom the Government may, from time to time, appoint in this behalf.

Exercise of any of warden's powers.

V.—PENALTIES.

11. Whoever knowingly counterfeits any mark used by a warden under section 7 shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Counterfeiting warden's marks.

12. Whoever, in contravention of any rule or notification issued under this Act, uses any weight, measure, weighing machine or balance, not duly authorised or certified under the provisions of this Act or the rules or the notifications issued thereunder, shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to Rs. 100, or with both.

Using unauthorised weights and measures.

THE COCHIN TRADE DISPUTES ACT, (LXVI OF 1112).

CONTENTS.

SECTIONS.

1. Short title, extent and commencement.
2. Interpretations.

Reference of Disputes to Courts and Boards.

3. Reference of disputes to Courts or Boards.

Courts of Inquiry.

4. Constitution of Courts.
5. Duties of Courts.

Boards of Conciliation.

6. Constitution of Boards.
7. Duties of Boards.

General.

SECTIONS.

8. Finality of orders constituting a Court or Board.
9. Procedure and powers.
10. Filling of vacancies.
11. Form of report.
12. Publication of results of inquiry.
13. Certain matters to be kept confidential.
14. Representation of parties.

Special provision regarding Public Utility Services.

15. Sudden strikes and lock-outs in utility services.
Special provision for Illegal Strikes and Lock-outs'
16. Illegal strikes and lock-outs.
17. Penalty.
18. Protection of persons with-holding from illegal strike or lock-out.

Rules.

19. Power to make rules.

THE COCHIN TRADE DISPUTES ACT,
(LXVI of 1112).

*Passed by His Highness the Maharaja of Cochin on the
9th day of Kurkadagam 1112, corresponding to
the 24th day of July 1937.*

Preamble.

Whereas it is expedient to make provision for the investigation and settlement of trade disputes, and for certain other purposes hereinafter appearing ; It is hereby enacted as follows :—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called “ The Cochin Trade Disputes Act, LXVI of 1112.”

(2) It extends to the whole of Cochin State.

(3) It shall come into force on such date as Government may, by notification in the Cochin Government Gazette, appoint.

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

Interpretations.

(a) "Board" means a Board of Conciliation constituted under this Act ;

(b) "Court" means a Court of Inquiry constituted under this Act ;

(c) "employer", in the case of any industry, business or undertaking carried on by any department of the Government, means the authority prescribed in this behalf or, where no authority is prescribed, the head of the department ;

(d) a person shall be deemed to be "independent" for the purpose of his appointment as the chairman or other member of a Court or a Board if he is unconnected with the dispute with reference to which the Court or the Board is appointed and with any trade or industry directly affected by the dispute ;

(e) "lock-out" means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him, where such closing, suspension or refusal occurs in consequence of a dispute and is intended for the purpose of compelling those persons, or of aiding another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment ;

(f) "prescribed" means prescribed by rules made under this Act ;

(g) "public utility service" means—

(i) any railway service which Government may, by notification in the Cochin Government Gazette, declare to be a public utility service for the purposes of this Act ; or

(ii) any postal, telegraph or telephone service ; or

(iii) any industry, business or undertaking which supplies light or water to the public ; or

(iv) any system of public conservancy or sanitation ;

(h) "railway company" means a railway company as defined in section 2 of the Cochin Railways Act, 1111 ;

(i) "strike" means a cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment ;

(j) "trade dispute" means any dispute or difference between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of any person ; and

(k) "workman" means any person employed in any trade or industry to do any skilled or unskilled manual or clerical work for hire or reward.

Reference of Disputes to Courts and Boards.

Reference of
disputes to
Courts or
Boards.

3. If any trade dispute exists or is apprehended between an employer and any of his workmen, Government may, by order in writing,—

(a) refer any matters appearing to be connected with or relevant to the dispute to a Court of Inquiry to be appointed by Government ; or

(b) refer the dispute to a Board of Conciliation to be appointed by Government for promoting a settlement thereof :

Provided that, where both parties to the dispute apply, whether separately or conjointly for a reference to

a Court, or where both parties apply, whether separately or conjointly, for a reference to a Board, and the authority having the power to appoint is satisfied that the persons applying represent the majority of each party, a Court or a Board, as the case may be, shall be appointed accordingly.

Courts of Inquiry.

4. (1) A Court shall consist of an independent chairman and such other independent persons as the appointing authority thinks fit, or may, if such authority thinks fit, consist of one independent person. Constitution of Courts.

(2) A Court, having the prescribed quorum, may act notwithstanding any vacancy in the number of its members other than the chairman.

5. (1) A Court shall, either in public or in private, at its discretion, inquire into the matters referred to it and report thereon to the authority by which the Court was appointed. Duties of Courts.

(2) A Court may, if it thinks fit, make interim reports.

Boards of Conciliation.

6. (1) A Board shall consist of a chairman and two or four other members, as the appointing authority thinks fit, or may, if such authority thinks fit, consist of one independent person. Constitution of Boards.

(2) Where the Board consists of more than one person, the chairman shall be an independent person and the other members shall be either independent persons or persons appointed in equal numbers to represent the parties to the dispute; all persons appointed to represent any party shall be appointed on the recommendation of that party:

Provided that, if any party fails to make the necessary recommendation within the prescribed time, the

appointing authority shall select and appoint such persons as it thinks fit to represent that party.

(3) A Board, having the prescribed quorum, may act notwithstanding any vacancy in the number of its members other than the chairman :

Provided that, where a Board includes an equal number of persons representing the parties to the dispute and the services of any such person cease to be available before the Board has completed its work, the authority appointing the Board shall appoint, in the manner specified in sub-section (2), another person to take his place, and the proceedings shall be continued before the Board so re-constituted.

Duties of
Boards.

7. (1) Where a dispute has been referred to a Board under this Act, it shall be the duty of the Board to endeavour to bring about a settlement of the same, and for this purpose the Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits thereof and the right settlement thereof, and in so doing may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute, and may adjourn the proceedings for any period sufficient in its opinion to allow the parties to agree upon terms of settlement.

(2) If a settlement of a dispute is arrived at by the parties thereto after it has been referred to a Board and during the course of the investigation thereof, a memorandum of the settlement shall be drawn up by the Board and signed by the parties, and the Board shall send a report of the settlement, together with the memorandum, to the authority by which the Board was appointed.

(3) If no such settlement is arrived at during the course of the investigation, the Board shall, as soon as possible after the close thereof, send a full report

regarding the dispute to the authority by which the Board was appointed, setting forth the proceedings and steps taken by the Board for the purpose of ascertaining the facts and circumstances relating to the dispute and of bringing about a settlement thereof, together with a full statement of such facts and circumstances and its finding thereon and the recommendation of the Board for the determination of the dispute.

(4) The recommendation of the Board shall deal with each item of the dispute, and shall state in plain language what in the opinion of the Board ought and ought not to be done by the respective parties concerned.

General.

8. No order of Government appointing any person as a member of a Court or a Board shall be called in question in any manner.

Finality of orders constituting a Court or Board.

9. (1) Courts and Boards shall, subject to the provisions of this Act, follow such procedure as may be prescribed.

Procedure and powers.

(2) Courts and Boards shall have the same powers as are vested in Courts under the Code of Civil Procedure, 1111 when trying a suit in respect of the following matters :—

(a) enforcing the attendance of any person and examining him on oath ;

(b) compelling the production of documents and material objects ; and

(c) issuing commissions for the examination of witnesses ; and shall have such further powers as may be prescribed and every inquiry or investigation by a Court or Board shall be deemed to be a judicial proceeding within the meaning of sections 179 and 214 of the Cochin Penal Code.

Filling of
vacancies.

10. (1) If the services of the chairman or of any other independent member of a Court or Board cease to be available at any time for the purposes of the Court or Board, the appointing authority shall in the case of a chairman, and may in the case of any other member, appoint another independent person to fill the vacancy and the proceedings shall be continued before the Court or Board so re-constituted.

(2) Where the Court or Board consists of one person only and his services cease to be available as aforesaid, the appointing authority shall appoint another independent person in his place, and the proceedings shall be continued before the person so appointed.

Form of
report.

11. The report of a Court or Board shall be in writing and shall be signed by all the members of the Court or Board :

Provided that nothing in this section shall be deemed to prevent any member of a Court or Board from recording a minute of dissent from a report or from any recommendation made therein.

Publication
of results of
inquiry.

12. (1) The final and any interim report of a Court or Board, together with any minute of dissent recorded therewith, shall, as soon as possible after its receipt by the authority by which the Court or Board was appointed, be published by that authority in such manner as it thinks fit.

(2) The said authority may publish or cause to be published from time to time, in such manner as such authority thinks fit, any information obtained, or conclusions arrived at, by the Court or Board as the result or in the course of its inquiry or investigation.

Certain
matters to
be kept con-
fidential.

13. (1) Notwithstanding anything contained in section 12, there shall not be included in any report or publication made or authorised by a Court or Board or the authority appointing a Court or Board any information obtained by the Court or Board in the course of its

inquiry or investigation as to any Trade Union or as to any individual business (whether carried on by a person, firm or company) which is not available otherwise than through evidence given before the Court or Board, if the Trade Union, person, firm or company in question has preferred a request to the Court or Board that such information shall be treated as confidential; nor shall any individual member of the Court or Board or any person concerned in the proceedings before it disclose any such information without the consent in writing of the Secretary of the Trade Union or the person, firm or company in question, as the case may be.

(2) If any member of a Court or Board or any person present at or concerned in the proceedings before a Court or Board wilfully discloses any information in contravention of the provisions of sub-section (1), he shall, on complaint made by or under the authority of the Trade Union or individual business affected, be punishable with fine which may extend to one thousand rupees:

Provided that nothing in this sub-section shall apply to the disclosure of any such information for the purposes of a prosecution under section 179 of the Cochin Penal Code.

(3) No Criminal Court inferior to that of the District Magistrate or a Magistrate of the first class shall try any offence under this section.

(4) No Criminal Court shall take cognizance of any offence under this section except with the previous sanction of the authority appointing such Court or Board; and no Civil Court shall without the like sanction entertain any suit against a member of a Court or Board, or any person present at or concerned in the proceedings before a Court or Board, for any matter arising out of such proceedings.

14. Subject to such conditions and restrictions as may be prescribed, any party to a dispute under inquiry or investigation by a Court or Board shall be entitled to

Representa-
tion of
parties.

be represented before the Court or Board by a legal practitioner.

Special provision regarding Public Utility Services.

Sudden
strikes and
lock-outs in
utility
services.

15. (1) Any person who, being employed in a public utility service, goes on strike in breach of contract without having given to his employer, within one month before so striking, not less than fourteen days' previous notice in writing of his intention to go on strike or, having given such notice, goes on strike before the expiry thereof, shall be punishable with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

(2) Any employer carrying on any public utility service who locks-out his workmen in breach of contract without having given them, within one month before such lock-out, not less than fourteen days' notice in writing of his intention to lock them out, or, having given such notice, locks them out before the expiry thereof, shall be liable to imprisonment which may extend to one month, or to a fine which may extend to one thousand rupees, or with both.

(3) Where the employer committing an offence under sub-section (2) is a corporation, company or other association of persons, any secretary, director or other officer or person concerned with the management thereof shall be punishable as therein provided unless he proves that the offence was committed without his knowledge or without his consent.

(4) No Court shall take cognisance of any offence under this section or of the abetment of any such offence save on complaint made by, or under authority from, Government.

(5) No Court inferior to that of the District Magistrate or a Magistrate of the first class shall try any offence under this section.

Special provision for Illegal Strikes and Lock-outs.

16. (1) A strike or a lock-out shall be illegal which — Illegal strikes and lock-outs.

(a) has any object other than the furtherance of a trade dispute within the trade or industry in which the strikers or employers locking out are engaged; and

(b) is designed or calculated to inflict severe, general and prolonged hardship upon the community and thereby to compel Government to take or abstain from taking any particular course of action.

(2) It shall be illegal to commence or continue, or to apply any sums in direct furtherance or support of any such illegal strike or lock-out.

(3) For the purposes of this section—

(a) a trade dispute shall not be deemed to be within a trade or industry unless it is a dispute between employers and workmen, or between workmen and workmen, in that trade or industry, which is connected with the employment or non-employment or the terms of the employment, with the conditions of labour, of persons in that trade or industry;

(b) without prejudice to the generality of the expression "trade or industry" workmen shall be deemed to be within the same trade or industry if their wages or conditions of employment are determined in accordance with agreements made with the same employer or group of employers.

(4) A strike or a lock-out shall not be deemed to be calculated to compel Government unless such compulsion might reasonably be expected as a consequence thereof.

17. (1) If any person declares, instigates, incites Penalty. others to take part in, or otherwise acts in furtherance

of, a strike or lock-out which is illegal under the provisions of section 16, he shall be punishable with simple imprisonment which may extend to three months, or with fine which may extend to two hundred rupees, or with both :

Provided that no person shall be deemed to have committed an offence under this section by reason only of his having ceased work or refused to continue to work or to accept employment.

(2) No Court shall take cognizance of any offence under this section save on complaint made by, or under authority from, Government.

(3) No Court inferior to that of the District Magistrate or a Magistrate of the first class shall try any offence under this section.

Protection
of persons
withholding
from illegal
strike or
lock-out.

18. (1) No person refusing to take part, or to continue to take part, in any strike or lock-out which is illegal under the provisions of section 16 shall, by reason of such refusal or by reason of any action taken by him under this section, be subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal representatives would otherwise be entitled, or be liable to be placed in any respect, either directly or indirectly, under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.

(2) Nothing in the rules of a trade union or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right or exemption secured by this section, and in any such proceeding the Civil Court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be

paid out of the funds of the trade union or society such sum by way of compensation or damages as that Court thinks just.

Rules.

19. (1) Government may, in respect of industries, businesses and undertakings carried on by it or under its authority, or by a railway company, make rules for the purpose of giving effect to the provisions of this Act. Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) the powers and procedure of Courts and Boards, including rules as to the summoning of witnesses, the production of documents relevant to the subject-matter of an inquiry or investigation and the number of members necessary to form a quorum ;

(b) the allowances admissible to members of Courts and Boards and to witnesses ;

(c) the ministerial establishment which may be allotted to a Court or Board and the salaries and allowances payable to members of such establishments ;

(d) the conditions and restrictions subject to which persons may be represented by legal practitioners in proceedings under this Act before a Court or Board ;

(e) any other matter which is to be or may be prescribed.

(3) All rules made under this section shall be published in the Cochin Government Gazette and shall, on such publication, have effect as if enacted in this Act.

THE COCHIN DRAMATIC PERFORMANCES ACT,
(LXXI OF 1112).

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title, extent and commencement.
2. "Magistrate" defined.
3. Power to prohibit certain Dramatic performances.
4. Power to serve order of prohibition. Penalty for disobeying order.
5. Power to notify order.
6. Penalty for disobeying prohibition.
7. Power to call for information.
8. Power to grant warrant to Police to enter and arrest and seize.
9. Saving of prosecutions under Penal Code, sections 120 and 270.
10. Power to prohibit dramatic performances in any local area, except under license.
11. Exclusion of performances at religious festivals.

THE COCHIN DRAMATIC PERFORMANCES ACT,
(LXXI OF 1112).

AN ACT FOR THE BETTER CONTROL OF PUBLIC
DRAMATIC PERFORMANCES.

*Passed by His Highness the Maharaja of Cochin on the
22nd day of Karkadagam 1112, corresponding to the
6th day of August 1937.*

Preamble. Whereas it is expedient to empower the Government to prohibit public dramatic performances which are scandalous, defamatory, seditious or obscene; It is hereby enacted as follows:—

Short title. 1. This Act may be called "The Cochin Dramatic Performances Act, LXXI of 1112."

It extends to the whole of Cochin and it shall come into force at once.

Local extent and commencement.

2. In this Act "Magistrate" means, the District Magistrate or any Magistrate specially empowered by the Government in this behalf.

"Magistrate" defined.

3. Whenever the Government is of opinion that any play pantomime, or other drama performed or about to be performed in a public place is—

Power to prohibit certain dramatic performances.

(a) of a scandalous or defamatory nature, or

(b) likely to excite feelings of disaffection to the Government of His Highness the Maharaja of Cochin or to the Government established by law in British India, or

(c) likely to deprave and corrupt persons present at the performance,

the Government may, by order, prohibit the performance.

Explanation.—Any building or enclosure to which the public are admitted to witness a performance on payment of money, shall be deemed a "public place" within the meaning of this section.

4. A copy of any such order may be served on any person about to take part in the performance so prohibited, or on the owner or occupier of any house, room or place in which such performance is intended to take place; and any person on whom such copy is served, and who does, or willingly permits, any act in disobedience to such order, shall be punished on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

Power to serve order of prohibition.

Penalty for disobeying order.

5. Any such order may be notified by proclamation, and a written or printed notice thereof may be stuck up at any place or places adapted for giving information of the order to the persons intending to take part in or to witness the performance so prohibited.

Power to notify order.

Penalty for disobeying prohibition.

6. Whoever, after the notification of any such order—

(a) takes part in the performance prohibited thereby, or in any performance substantially the same as the performance so prohibited, or

(b) in any manner assists in conducting any such performance, or

(c) is in wilful disobedience to such order present as a spectator during the whole or any part of any such performance, or

(d) being the owner or occupier, or having the use of, any house, room or place, opens, keeps or uses the same for any such performance, or permits the same to be opened, kept or used for any such performance,

shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

Power to call for information.

7. For the purpose of ascertaining the character of any intended public dramatic performance, the Government or such officer as it may specially empower in this behalf, may apply to the author, proprietor or printer of the drama about to be performed, or to the owner or occupier of the place in which it is intended to be performed, for such information as the Government or such officer thinks necessary.

Every person so applied to shall be bound to furnish the same to the best of his ability, and whoever contravenes this section shall be deemed to have committed an offence under section 162 of the Cochin Penal Code.

Power to grant warrant to Police to enter and arrest and seize.

8. If any Magistrate has reason to believe that any house, room or place is used, or is about to be used, for any performance prohibited under this Act, he may, by his warrant, authorize any officer of police to enter with such assistance as may be requisite, by night or by day, and by force if necessary, any such house, room or place,

and to take into custody all persons whom he finds therein, and to seize all scenery, dresses and other articles found therein and reasonably suspected to have been used, or to be intended to be used, for the purpose of such performance.

9. No conviction under this Act shall bar a prosecution under section 120 or section 270 of the Cochin Penal Code.

Saving of prosecutions under Penal Code, sections 120 and 270.

10. Whenever it appears to the Government that the provisions of this section are required in any local area, it may declare, by notification in the Cochin Government Gazette, that such provisions are applied to such area from a day to be fixed in the notification.

Power to prohibit dramatic performances in any local area, except under license.

On and after that day, the Government may order that no dramatic performance shall take place in any place of public entertainment within such area, except under a license to be granted by the Government, or such officer as it may specially empower in this behalf.

The Government may also order that no dramatic performance shall take place in any place of public entertainment within such area, unless a copy of the piece, if and so far as it is written, or some sufficient account of its purport, if and so far as it is in pantomime, has been furnished, not less than three days before the performance, to the Government, or to such officer as it may appoint in this behalf.

A copy of any order under this section may be served on any keeper of a place of public entertainment, and if thereafter he does, or willingly permits, any act in disobedience to such order he shall be punishable on conviction before a Magistrate with imprisonment for a term which may extend to three months, or with fine, or with both.

11. Nothing in this Act applies to any religious performances at religious festivals.

Exclusion of performances at religious festivals.

THE COCHIN TRUSTS ACT,
(LXXII OF 1112).

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
Commencement.
Local extent.
Savings.
2. Repeal of enactments.
3. Interpretation-clause.
Expressions defined in the Contract Act.

CHAPTER II.

OF THE CREATION OF TRUSTS.

4. Lawful purpose.
5. Trust of immovable property.
Trust of movable property.
6. Creation of trust.
7. Who may create trusts.
8. Subject of trust.
9. Who may be beneficiary.
Disclaimer by beneficiary.
10. Who may be trustee.
No one bound to accept trust.
Acceptance of trust.
Disclaimer of trust.

CHAPTER III.

OF THE DUTIES AND LIABILITIES OF TRUSTEES.

11. Trustee to execute trust.
12. Trustee to inform himself of state of trust-property.
13. Trustee to protect title to trust-property.
14. Trustee not to set-up title adverse to beneficiary.
15. Care required from trustee.
16. Conversion of perishable property.

SECTIONS.

17. Trustee to be impartial.
18. Trustee to prevent waste.
19. Accounts and information.
20. Investment of trust-money.
21. Power to purchase redeemable stock at a premium.
22. Mortgage of land pledged to Government under Act, IV of 1093. Deposit in Government Savings Bank.
23. Sale by trustee directed to sell within specified time.
24. Liability for breach of trust.
25. No set-off allowed to trustee.
26. Non-liability for predecessor's default.
27. Non-liability for co-trustee's default.
Joining in receipt for conformity.
28. Several liability of co-trustees.
Contribution as between co-trustees.
29. Non-liability of trustee paying without notice of transfer by beneficiary.
30. Liability of trustee where beneficiary's interest is forfeited to Government.
31. Indemnity of trustees.

CHAPTER IV.

OF THE RIGHTS AND POWERS OF TRUSTEES.

32. Right to title deeds.
33. Right to reimbursement of expenses.
Right to be recouped for erroneous over-payment.
34. Right to indemnity from gainer by breach of trust.
35. Right to apply to Court for opinion in management of trust-property.
36. Right to settlement of accounts.
37. General authority of trustee.
38. Power to sell in lots, and either by public auction or private contract.
39. Power to sell under special conditions.
Power to buy in and re-sell.
Time allowed for selling trust-property.

SECTIONS.

40. Power to convey.
41. Power to vary investments.
42. Power to apply property of minors, etc., for their maintenance, etc.
43. Power to give receipts.
44. Power to compound, etc.
45. Power to several trustees of whom one disclaims or dies.
46. Suspension of trustee's powers by decree.

CHAPTER V.

OF THE DISABILITIES OF TRUSTEES.

47. Trustee cannot renounce after acceptance.
48. Trustee cannot delegate.
49. Co-trustees cannot act singly.
50. Control of discretionary power.
51. Trustee may not charge for services.
52. Trustee may not use trust-property for his own profit.
53. Trustee for sale or his agent may not buy.
54. Trustee may not buy beneficiary's interest without permission,
Trustee for purchase.
55. Co-trustees may not lend to one of themselves.

CHAPTER VI.

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

56. Rights to rents and profits.
57. Right to specific execution.
Right to transfer of possession.
58. Right to inspect and take copies of instrument of trust, accounts, etc.
59. Right to transfer beneficial interest.
60. Right to sue for execution of trust.
61. Right to proper trustees.
62. Right to compel to any act of duty.
63. Wrongful purchase by trustee.
64. Following trust-property
into the hands of third persons ;
into that into which it has been converted.

SECTIONS.

65. Saving of rights of certain transferees.
66. Acquisition by trustee of trust-property wrongfully converted.
67. Right in case of blended property.
68. Wrongful employment by partner-trustee of trust-property for partnership purposes.
69. Liability of beneficiary joining in breach of trust.
70. Rights and liabilities of beneficiary's transferee.

CHAPTER VII.

OF VACATING THE OFFICE OF TRUSTEE.

71. Office how vacated.
72. Discharge of trustee.
73. Petition to be discharged from trust.
74. Appointment of new trustees on death, etc.
75. Appointment by Court.
Rules for selecting new trustees.
76. Vesting of trust-property in new trustees.
Powers of new trustees.
77. Survival of trust.

CHAPTER VIII.

OF THE EXTINCTION OF TRUSTS.

78. Trust how extinguished.
79. Revocation of trust.
80. Revocation not to defeat what trustees have duly done.

CHAPTER IX.

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS.

81. Where obligation in nature of trust is created.
82. Where it does not appear that transferor intended to dispose of beneficial interest.
83. Transfer to one for consideration paid by another.
84. Trust incapable of execution or executed without exhausting trust-property.
85. Transfer for illegal purpose.

SECTIONS.

86. Bequest for illegal purpose.
Bequest of which revocation is prevented by coercion.
87. Transfer pursuant to rescindable contract.
88. Debtor becoming creditor's representative.
89. Advantage gained by fiduciary.
90. Advantage gained by exercise of undue influence.
91. Advantage gained by qualified owner.
92. Property acquired with notice of existing contract.
93. Purchase by person contracting to buy property to be held on trust.
94. Advantage secretly gained by one of several compounding creditors.
95. Constructive trusts in cases not expressly provided for.
96. Obligor's duties, liabilities and disabilities.
97. Saving of rights of *bona fide* purchasers.

THE COCHIN TRUSTS ACT,
(LXXII OF 1112.)

AN ACT TO DEFINE AND AMEND THE LAW RELATING
TO PRIVATE TRUSTS AND TRUSTEES.

*Passed by His Highness the Maharaja of Cochin on the
28th day of Kurkadagam 1112, corresponding to
the 12th day of August 1937.*

Preamble.

Whereas it is expedient to define and amend the law relating to private trusts and trustees; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title,
commence-
ment.

1. This Act may be called the Cochin Trusts Act, LXXII of 1112, and it shall come into force at once.

Local
extent.

It extends to the whole of Cochin.

Savings.

But nothing herein contained affects the rules of Muhammadan law as to *waqf*, or the mutual relations of

the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments; and nothing in the second Chapter of this Act applies to trusts created before this Act comes into force.

2. The first illustration in section 12 of the Cochin Specific Relief Act, IV of 1097, is hereby repealed. Repeal of enactments.

3. A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner : Interpretation clause—
"trust:"

the person who reposes or declares the confidence is called the "author of the trust" : the person who accepts the confidence is called the "trustee" : the person for whose benefit the confidence is accepted is called the "beneficiary" : the subject-matter of the trust is called "trust-property" or "trust-money" : the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the "instrument of trust" : a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust" : "author of the trust:"
"trustee:"
"beneficiary:"
"trust-property:"
"beneficial interest."
"instrument of trust:"
"breach of trust:"

and in this Act unless there be something repugnant, in the subject or context "registered" means registered under the law for the registration of documents for the time being in force : a person is said to have "notice" of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in section 183 of the Cochin Contract Act, XXIII of 1112, and all expressions used herein and defined in the Cochin Contract Act shall be deemed to have the meanings respectively attributed to them by that Act. "registered."
"notice."
Expressions defined in Act, XXIII of 1112.

CHAPTER II.

OF THE CREATION OF TRUSTS.

Lawful
purpose.

4. A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (a) forbidden by law, or (b) is of such a nature that, if permitted, it would defeat the provisions of any law, or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

Explanation.—In this section the expression “law” includes where the trust property is immovable and situate in a foreign country, the law of such country.

Illustrations.

(a) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.

(b) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A’s children. The trust is void.

(c) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death to B. A is declared an insolvent. The trust for A is invalid as against his creditors.

Trust of im-
movable
property.

5. No trust in relation to immovable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

Trust of
movable
property.

No trust in relation to movable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

6. Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust-property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee.

Creation of trust.

Illustrations.

(a) A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of" C. This creates a trust so far as regards A and C.

(b) A bequeaths certain property to B, "hoping he will continue it in the family." This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(c) A bequeaths certain property to B, requesting him to distribute it amongst such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(d) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust-property is not indicated with sufficient certainty.

(e) A bequeaths a shop and stock-in-trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.

7. A trust may be created—

Who may create trusts.

(a) by every person competent to contract, and,

(b) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor ;

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

8. The Subject-matter of a trust must be property transferable to the beneficiary.

Subject of trust.

It must not be a merely beneficial interest under a subsisting trust.

Who may be beneficiary.

9. Every person capable of holding property may be a beneficiary.

Disclaimer by beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

Who may be trustee.

10. Every person capable of holding property may be a trustee; but, where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

No one bound to accept trust.

No one is bound to accept a trust.

Acceptance of trust

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

Disclaimer of trust.

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust property from vesting in him.

A disclaimer by one of two or more co-trustees vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

Illustrations.

(a) A bequeaths certain property to B and C, his executors, as trustees for D. B and C prove A's will. This is in itself an acceptance of the trust, and B and C hold the property in trust for D.

(b) A transfers certain property to B in trust to sell it and to pay out of the proceeds A's debts. B accepts the trust and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

(c) A bequeaths a lakh of rupees to B upon certain trusts and appoints him his executor. B severs the lakh

from the general assets and appropriates it to the specific purpose. This is an acceptance of the trust.

CHAPTER III.

OF THE DUTIES AND LIABILITIES OF TRUSTEES.

11. The trustee is bound to fulfill the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract. Trustee to execute trust.

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction.

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

Explanation.—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or when such instrument is a will, at the date of his death, and (b) in the case of debts not bearing interest, to make such payment without interest.

Illustrations.

(a) A, a trustee, is simply authorised to sell certain land by public auction. He cannot sell the land by private contract.

(b) A, a trustee of certain land for X, Y and Z, is authorised to sell the land to B for a specified sum. X, Y and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.

(c) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust-property to B's husband, C, on the security of his bond. C becomes insolvent and B requests A to make the loan. A may refuse to make it.

Trustee to inform himself of state of trust-property.

12. A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property; to obtain, where necessary, a transfer of the trust-property to himself; and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.

Illustrations.

(a) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(b) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

Trustee to protect title to trust-property.

13. A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

Illustration.

The trust-property is immovable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Cochin Registration Act, V of 1084, the trustee's duty is to cause the instrument to be registered.

Trustee not to set up title adverse to beneficiary.

14. The trustee must not for himself or another set up or aid any title to the trust-property adverse to the interest of the beneficiary.

Care required from trustee.

15. A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.

Illustrations.

(a) A, living in Calcutta, is a trustee for B, living in Bombay. A remits trust-funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay: The bills are dishonoured. A is not bound to make good the loss.

(b) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is drawn out B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

(c) A, a trustee of two debts for B, releases one and compounds the other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

(d) A, a trustee directed to sell the trust-property by auction, sells the same, but does not advertise the sale and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

(e) A, a trustee for B, in execution of his trust, sells the trust-property, but from want of due diligence on his part fails to receive part of the purchase-money. A is bound to make good the loss thereby caused to B.

(f) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(g) A bequeaths certain moneys to B and C as trustees, and authorizes them to continue trust-moneys upon the personal security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.

(h) A, a trustee for B, allows the trust to be executed solely by his co-trustee, C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

Conversion
of perishable
property

16. Where the trust is created for the benefit of several persons in succession, and the trust-property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.

Illustrations.

(a) A bequeaths to B all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed in specie. B should sell the houses, and invest the proceeds in accordance with section 20.

(b) A bequeaths to B his three leasehold houses in Calcutta and all the furniture there in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and B should not sell them.

Trustee to
be impartial.

17. Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise reasonably and in good faith of such discretion.

Illustration.

A, a trustee for B, C and D, is empowered to choose between several specified modes of investing the trust-property. A in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of B, C and D.

Trustee to
prevent
waste.

18. Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property, if he commits, or threatens to commit any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

19. A trustee is bound (a) to keep clear and accurate accounts of the trust-property, and (b) at all reasonable times, at the request of the beneficiary to furnish him with full and accurate information as to the amount and state of the trust-property.

Accounts and information.

20. Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others:—

Investment of trust-money.

(a) in promissory notes, debentures, stock or other securities of the Government of Cochin or of any Governor's Province in British India or of the Government of India, or of the United Kingdom of Great Britain and Ireland :

Provided that securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government, shall be deemed, for the purposes of this clause, to be securities of such Government ;

(b) in bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India.

Provided that, no money shall be invested in any such annuity being a terminable annuity unless a sinking fund has established in connection with such annuity ; but nothing in this proviso shall apply to investments made before the date aforesaid ;

(c) in India three and a half percent. stock, India three percent. stock, India two and a half percent. stock or any other capital stock which may at any time hereafter be issued by the Secretary of State for India in Council under the authority of an Act of Parliament and charged on the revenues of India ;

(d) in stock or debentures of, or shares in, Railway or other Companies the interest whereon shall

have been guaranteed by the Secretary of State for India in Council or by the Government of India;

(e) in debentures or other securities for money issued under the authority of any law in Cochin by or on behalf of any municipal body, port trust or city improvement trust or under the authority of any Act of a Legislature established in British India by or on behalf of any municipal body, port trust or city improvement trust in any Presidency-town or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi;

(f) on a first mortgage of immovable property situate in Cochin: Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money: or

(g) on any other security expressly authorised by the instrument of trust, or by any rule which the Chief Court may from time to time prescribe in this behalf:

Provided that where there is a person competent to contract and entitled in possession to receive the income of the trust property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (e) (f) and (g) shall be made without his consent in writing.

21. (1) A trustee may invest in any of the securities mentioned or referred to in section 20, notwithstanding that the same may be redeemable and that the price exceeds the redemption value:

Provided that a trustee may not purchase at a price exceeding its redemption value any security mentioned or referred to in clauses (d) and (e) of section 20 which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such security as is mentioned or referred to in the said clauses which is liable to be redeemed at par or at some other fixed rate at a price exceeding fifteen per centum above par or such other fixed rate.

Power to purchase redeemable stock at a premium.

(2) A trustee may retain until redemption any redeemable stock, fund or security which may have been purchased in accordance with this section.

22. Nothing in section 20 shall apply to investments made before this Act comes into force, or shall be deemed to preclude an investment on a mortgage of immovable property already pledged as security for an advance under the Cochin Agricultural Improvement Loans Act, 1093, or, in case the trust-money does not exceed three thousand rupees, a deposit thereof in a Savings Bank of the Government of Cochin or the Government of India.

Mortgage of land pledged to Government under Act, IV of 1093. Deposit in Savings Bank.

23. Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorised by a principal Civil Court of original jurisdiction.

Sale by trustee directed to sell within specified time.

Illustration.

A bequeaths property to B, directing him with all convenient speed and within five years to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

24. Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee.

Liability for breach of trust.

A trustee committing a breach of trust is not liable to pay interest except in the following cases :—

- (a) where he has actually received interest ;
- (b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary ;
- (c) where the trustee ought to have received interest, but has not done so ;
- (d) where he may be fairly presumed to have received interest.

He is liable, in case (a), to account for the interest actually received, and, in cases (b), (c) and (d), to account for simple interest at the rate of six per cent per annum, unless the Court otherwise directs.

(e) Where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate.

(f) Where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate or for the nett profits made by such employment.

Illustrations.

(a) A trustee improperly leaves trust-property outstanding, and it is consequently lost: he is liable to make good the property lost, but he is not liable to pay interest thereon.

(b) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated and its market price falls. B is answerable to C for the loss.

(c) A trustee is guilty of unreasonable delay in investing trust-money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(d) The duty of the trustee is to invest trust-money in any of the securities mentioned in section 20, clause (a), (b), (d) or (e). Instead of so doing, he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.

(e) The instrument of trust directs the trustee to invest trust-money either in any such securities or on mortgage of immovable property. The trustee does neither. He is liable for the principal money and interest.

(f) The instrument of trust directs the trustee to invest trust-money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

(g) Trust-property is invested in one of the securities mentioned in section 20, clause (a), (b), (d) or (e). The trustee sells such security for some purpose not authorised by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(h) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

25. A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property cannot set-off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

No set-off allowed to trustee.

Non-liability for predecessor's default. 26. Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

Non-liability for co-trustee's default. 27. Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee :

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

- (a) where he has delivered trust-property to his co-trustee without seeing to its proper application :
- (b) where he allows his co-trustee to receive trust-property and fails to make due enquiry as to the co-trustee's dealings therewith or allows him to retain it longer than the circumstances of the case reasonably require :
- (c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

Joining in receipt for conformity.

A co-trustee who joins in signing a receipt for trust-property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

Illustration.

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase-money is received by B and retained in his hands. C pays no attention to the matter for two years, and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase-money is lost. C may be compelled to make good the amount.

Several liability of co-trustees.

28. Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the

other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

But as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss; and if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

Contribution
as between
co-trustees.

Nothing in this section shall be deemed to authorise a trustee who has been guilty of fraud to institute a suit to compel contribution.

29. When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

Non-liability
of trustee
paying
without
notice of
transfer by
beneficiary.

30. When the beneficiary's interest is forfeited or awarded by legal adjudication to Government, the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf.

Liability of
trustee of
where
beneficiary's
interest is
forfeited
to Govern-
ment.

31. Subject to the provisions of the instrument of trust and of sections 24 and 27, trustees shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses.

Indemnity
of trustees.

CHAPTER IV.

OF THE RIGHTS AND POWERS OF TRUSTEES.

32. A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust-property.

Right to
title-deed.

Right to
reimburse-
ment of
expenses.

33. Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realization, preservation or benefit of the trust-property, or the protection or support of the beneficiary.

If he pays such expenses out of his own pocket, he has a first charge upon the trust-property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust property without previous payment of such expenses and interest.

If the trust-property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Right to be
recouped for
erroneous
over-
payment.

Where a trustee has by mistake made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

Right to
indemnity
from gainer
by breach of
trust.

34. A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is a beneficiary the trustee has a charge on his interest for such amount.

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

Right to
apply to
Court for
opinion in
management
of trust
property.

35. Any trustee, may without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or

administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

36. When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust-property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect. Right to settlement of accounts.

37. In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realization, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract. General authority of trustee.

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

38. Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs. Power to sell in lots and either by public auction or private contract.

Power to sell
under
special con-
ditions.
Power to buy
in and re-sell.

39. The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and re-sell the property so bought in or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Time
allowed for
selling trust-
property.

Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

Illustrations.

(a) A bequeaths property to B, directing him to sell it with all convenient speed and pay the proceeds to C. This does not render an immediate sale imperative.

(b) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorise B, as between him and C, to postpone the sale to an indefinite period.

Power to
convey.

40. For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

Power to
vary invest-
ments.

41. A trustee may, at his discretion, call in any trust-property invested in any security and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature :

Provided that, where there is a person competent to contract and entitled at the time to receive the income of the trust-property for his life or for any greater estate, no such change of investment shall be made without his consent in writing.

42. Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen :

Power to apply property of minors, etc., for their maintenance etc.

Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses.

Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors.

43. Any trustees or trustee may give a receipt in writing for any money, securities or other movable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust or power; and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the same

Power to give receipts.

therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

Power to
compound,
etc.

44. Two or more trustees acting together may, if and as they think fit,—

- (a) accept any composition or any security for any debt or for any property claimed ;
- (b) allow any time for payment of any debt ;
- (c) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust ; and
- (d) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorised to execute the trusts and powers thereof.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

Power to
several
trustees of
whom one
disclaims or
dies.

45. When an authority to deal with the trust-property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be

exercised by a number in excess of the number of the remaining trustees.

46. Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

Suspension of trustee's powers by decree.

CHAPTER V.

OF THE DISABILITIES OF TRUSTEES.

47. A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of original jurisdiction, or (b) if the beneficiary is competent to contract, with his consent; or (c) by virtue of a special power in the instrument of trust.

Trustee cannot renounce after acceptance.

48. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation.

Trustee cannot delegate.

Explanation.—The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

Illustrations.

(a) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust-property to D and E upon the trusts of A's will.

(b) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.

(c) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents.

Co-trustees cannot act singly.

49. When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

Control of discretionary power.

50. Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.

Trustee may not charge for services.

51. In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Nothing in this section applies to any Official Trustee, or person holding a certificate of administration.

Trustee may not use Trust-property for his own profit.

52. A trustee may not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust.

Trustee for sale or his agent may not buy.

53. No trustee whose duty it is to sell trust-property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.

Trustee may not buy beneficiary's interest without permission.

54. No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

Trustee for purchase.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.

55. A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it on a mortgage by, or on the personal security of himself or one of his co-trustees.

Co-trustees may not lend to one of themselves.

CHAPTER VI.

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

56. The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

Rights to rents and profits.

57. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest ;

Right to specific execution.

and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

Right to transfer of possession.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

Illustrations.

(a) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him. A on attaining majority may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.

(b) A bequeaths Rs. 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority and is otherwise competent to contract. B may claim the Rs. 10,000.

(c) A transfers certain property to B and directs him to sell or invest it for the benefit of C who is competent to contract. C may elect to take the property in its original character.

Right to inspect and take copies of instrument of trust accounts, etc.

58. The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust-property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

Right to transfer beneficial interest,

59. The beneficiary, if competent to contract, may transfer his interest but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest:

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorize her to transfer such interest during her marriage.

Right to sue for execution of trust.

60. When no trustees are appointed or all the trustees die, disclaim, or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust, shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

Right to proper trustees.

61. The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Explanation I.—The following are not proper persons within the meaning of this section.—

A person domiciled abroad: an alien enemy : a person having an interest inconsistent with that of the beneficiary: a person in insolvent circumstances ; and unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

Explanation II.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

Illustrations.

(a) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust-property.

(b) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime; then A dies. C is entitled to have the property conveyed to a trustee for him.

(c) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(d) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(e) A, a trustee for B, refuses to act, or goes to reside permanently out of Cochin State or is declared an insolvent, or compounds with his creditors or suffers a co-trustee to commit a breach of trust. B may institute a suit to have A removed and a new trustee appointed in his room.

62. The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

Right to compel to any act of duty.

Illustrations.

(a) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(b) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally. A is

about to make an improvident sale of the land. B may sue on behalf of himself and C for injunction to restrain A from making the sale.

Wrongful
purchase by
trustee.

63. Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (a) account for the net profits of the property, (b) be charged with an occupation-rent, if he has been in actual possession of the property, and (c) allow the beneficiary to deduct a proportionate part of the purchase money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Nothing in this section —

- (a) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or retransferred, have contracted in good faith with the trustee or purchaser; or
- (b) entitles the beneficiary to have the property declared subject to the trustee or retransferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

Following
trust-property—into the
hands of
third persons; into
that into
which it has
been
converted.

64. Where trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration that the property is comprised in the trust.

Where the trustee has disposed of trust-property and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property.

Illustrations.

(a) A, a trustee for B of Rs. 10,000 wrongfully invests the Rs. 10,000 in the purchase of certain land. B is entitled to the land.

(b) A, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust money so misemployed.

65. Nothing in section 64 entitles the beneficiary to any right in respect of property in the hands of—

Saving of rights of certain transferees.

(a) a transferee in good faith for consideration without having notice of the trust either, when the purchase-money was paid, or when the conveyance was executed, or

(b) a transferee for consideration from such a transferee.

A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Nothing in section 64 applies to money, currency notes and negotiable instruments in the hands of a *bona fide* holder to whom they have passed in circulation, or shall be deemed to affect the Cochin Sale of Goods Act, 1111, sections 27—30, or the liability of a person to whom a debt or charge is transferred.

66. Where a trustee wrongfully sells or otherwise transfers trust-property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice

Acquisition by trustee of trust-property wrongfully converted.

on the part of intervening transferees in good faith for consideration.

Right in case of blended property.

67. Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

Wrongful employment by partner trustee of trust-property for partnership purposes.

68. If a partner, being a trustee, wrongfully employs trust-property in the business, or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

The partners having such notice are jointly and severally liable for the breach of trust.

Illustrations.

(a) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital, B is also answerable to Z for the improper employment of A's assets.

(b) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership-business. B gives an indemnity to X and Y against the claim of C. Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

Liability of beneficiary joining in breach of trust.

69. Where one of several beneficiaries—

- (a) joins in the committing breach of trust, or
- (b) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or
- (c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or

- (d) has deceived the trustee and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

70. Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

Rights and liabilities of beneficiary's transferee.

CHAPTER VII.

OF VACATING THE OFFICE OF TRUSTEE.

71. The office of a trustee is vacated by his death or by his discharge from his office.

Office how vacated.

72. The trustee may be discharged from his office only as follows :—

Discharge of trustee.

- (a) by the extinction of the trust ;
- (b) by the completion of his duties under the trust ;
- (c) by such means as may be prescribed by the instrument of trust ;
- (d) by appointment under this Act of a new trustee in his place ;
- (e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or
- (f) by the Court to which a petition for his discharge is presented under this Act.

Petition to
be dis-
charged
from trust.

73. Notwithstanding the provisions of section 11, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office; and if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property. But, where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place.

Appoint-
ment of new
trustees on
death, etc.

74. Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from Cochin State, or leaves Cochin State for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust or accepts an inconsistent trust, a new trustee may be appointed in his place by—

- (a) the person nominated for that purpose by the instrument of trust (if any), or
- (b) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee the number of trustees may be increased.

The Official Trustee may, with his consent and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed, and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

75. Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 74, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

Appoint-
ment-by
Court.

In appointing new trustees, the Court shall have regard (a) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust; (b) to the wishes of the person, if any, empowered to appoint new trustees; (c) to the question whether the appointment will promote or impede the execution of the trust, and (d) where there are more beneficiaries than one, to the interests of all such beneficiaries.

Rules for
selecting
new
trustees.

76. Whenever any new trustee is appointed under section 74 or section 75, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

Vesting of
trust pro-
perty in new
trustees.

Every new trustee so appointed, and every trustee appointed by a Court, either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

Powers of
new trustees.

Survival of trust.

77. On the death or discharge of one of several co-trustees, the trust survives and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise.

CHAPTER VIII.

OF THE EXTINCTION OF TRUSTS.

Trust how extinguished.

78. A trust is extinguished—

- (a) when its purpose is completely fulfilled ; or
- (b) when its purpose becomes unlawful ; or
- (c) when the fulfillment of its purpose becomes impossible by destruction of the trust-property or otherwise ; or
- (d) when the trust, being revocable, is expressly revoked.

Revocation of trust.

79. A trust created by will may be revoked at the pleasure of the testator.

A trust otherwise created can be revoked only—

- (a) where all the beneficiaries are competent to contract—by their consent;
- (b) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust; or
- (c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors— at the pleasure of the author of the trust.

Illustration.

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

80. No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

Revocation not to defeat what trustees have duly done.

CHAPTER IX.

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUST.

81. An obligation in the nature of a trust is created in the following cases.

Where obligation in nature of trust is created.

82. Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

Where it does not appear that transferor intended to dispose of beneficial interest.

Illustrations.

(a) A conveys land to B without consideration and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

(b) A conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z. B holds Z for the benefit of A.

(c) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A, during his life.

(d) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.

83. Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to

Transfer to one for consideration paid by another.

pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Nothing in this section shall be deemed to affect section 58 of the Cochin Code of Civil Procedure, Act XXIX of 1111.

Trust
incapable of
execution or
executed
without
exhausting
trust-
property.

84. Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

Illustrations.

(a) A conveys certain land to B—

“upon trust,” and no trust is declared ; or

“upon trust to be thereafter declared ;” and no such declaration is ever made ; or

upon trusts that are too vague to be executed ; or

upon trusts that become incapable of taking effect, or

“in trust for C,” and C renounces his interest under the trust.

In each of these cases B holds the land for the benefit of A.

(b) A transfers Rs. 10,000 in the four percents. to B, in trust to pay the interest annually accruing due to C for her life. A dies. Then C dies. B holds the fund for the benefit of A's legal representative.

(c) A conveys land to B upon trust to sell it and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol. B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative.

(d) A bequeaths Rs. 10,000 to B to be laid out in buying land to be conveyed for purposes which either wholly

or partially fail to take effect. B holds for the benefit of A's legal representative the undisposed of interest in the money or land if purchased.

85. Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

Transfer for illegal purpose:

86. Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Bequest for illegal purpose.

Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

Bequest of which revocation is prevented by coercion.

87. Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid.

Transfer pursuant to rescindable contract.

88. Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the person interested therein.

Debtor becoming creditor's representative.

89. Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to

Advantage gained by fiduciary.

those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

Illustrations.

(a) A, an executor, buys at an undervalue from B, a legatee, his claim under the will. B is ignorant of the value of the bequest. A must hold for the benefit of B the difference between the price and value.

(b) A, a trustee, uses the trust-property for the purpose of his own business. A holds for the benefit of his beneficiary the profits arising from such user.

(c) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money. A holds such money for the benefit of his beneficiary.

(d) A, a partner, buys land in his own name with funds belonging to the partnership. A holds such land for the benefit of the partnership.

(e) A, a partner, employed on behalf of himself his co-partners in negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees. A holds the lakh for the benefit of the partnership.

(f) A and B are partners. A dies. B, instead of winding up the affairs of the partnership, retains all the assets in the business. B must account to A's legal representative for the profits arising from A's share of the capital.

(g) A, an agent, employed to obtain a lease for B, obtains the lease for himself. A holds the lease for the benefit of B.

(h) A, a guardian, buys up for himself incumbrances on his ward B's estate at an undervalue. A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

Advantage
gained by
exercise of
undue
influence.

90. Where by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

91. Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted in gaining such advantage.

Advantage
gained by
qualified
owner.

Illustrations.

(a) A, the tenant for life of leasehold property, renews the lease in his own name and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.

(b) A village belongs to a Hindu family. A, one of its members, pays nazrana to Government and thereby procures his name to be entered as the inamdar of the village. A holds the village for the benefit of himself and the other members.

(c) A mortgages land to B, who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to B. Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

92. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

Property
acquired
with notice
of existing
contract.

93. Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

Purchase by
person con-
tracting to
buy pro-
perty to be
held on
trust.

Advantage secretly gained by one of several compounding creditors.

94. Where creditors compound the debts due to them and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

Constructive trusts in cases not expressly provided for,

95. In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be) to the extent necessary to satisfy their just demands.

Illustrations.

(a) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(b) A, by mistake assumes the character of a trustee for B, and under colour of the trust receives certain money. B may compel him to account for such moneys.

(c) A makes a gift of a lakh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs. 10,000. The gift is void as to Rs. 10,000, and B holds that sum for the benefit of A.

Obligor's duties, liabilities and disabilities.

96. The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that (a) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and (b) where he holds the property by virtue of a contract with a person for whose benefit he holds it, or with any one

through whom such person claims; he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

97. Nothing contained in this Chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force. Saving of rights of bona fide purchasers.

THE COCHIN COPYRIGHT ACT, (LXXIII OF 1112).

CONTENTS.

PREAMBLE;

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Repeal.
3. Interpretation.

CHAPTER II.

1. RIGHTS.

4. Copyright.
5. Infringement of Copyright.
6. Term of Copyright.
7. Compulsory licenses.
8. Owership of Copyright.

2. CIVIL REMEDIES.

9. Civil remedies for infringement of Copyright.
10. Rights of owner against persons possessing or dealing with infringing copies, etc.
11. Exemption of innocent infringer from liability to pay damages, etc.
12. Limitation of actions.

3. IMPORTATION OF COPIES.

13. Importation of copies.

4. DELIVERY OF BOOKS.

14. Delivery of copies to the Huzur Library.

5. SPECIAL PROVISIONS AS TO CERTAIN BOOKS.

15. Works of joint authors.

16. Posthumous works.

17. Provisions as to Government publications.

18. Modification of Copyrights as regards translation of works first published in Cochin State.

19. Provisions as to Mechanical instruments.

20. Provision as to political speeches.

21. Provision as to photographs.

22. Provisions as to designs registrable under the Patents and Designs Act.

23. Works of foreign authors first published in Cochin State.

24. Existing works.

CHAPTER III.

PENALTIES.

25. Offences in respect of infringing copies.

26. Possession of plates for purpose of making infringing copies.

27. Punishment on second conviction.

28. Power of Court to dispose of infringing copies or plates for purpose of making infringing copies.

29. Cognizance of offences.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

30. Abrogation of common law rights.

31. Courts having civil jurisdiction regarding infringement of Copyright.

32. Effect of non-registration under Act VII of 1088.

INTERNATIONAL COPYRIGHT.

33. Power to extend Act to Foreign Works.

SCHEDULE—REPEAL OF ENACTMENTS.

THE COCHIN COPYRIGHT ACT,
(LXXIII OF 1112.)

AN ACT TO DEFINE AND AMEND THE LAW
RELATING TO COPYRIGHT.

*Passed by His Highness the Maharaja of Cochin on the
28th day of Kurkadagam 1112, corresponding to
the 12th day of August 1937.*

Whereas it is expedient to define and amend the law relating to the copyright in literary and other works published in Cochin State; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called "The Cochin Copyright Act, LXXIII of 1112"; Short title, extent and commencement.

(2) It extends to the whole of Cochin State; and

(3) It shall come into force at once.

2. The enactment mentioned in the Schedule to this Act is hereby repealed to the extent specified in the fourth column of that schedule. Repeal.

3. (1) In this Act unless the context otherwise requires,— Interpretation.

"Literary work" includes maps, charts, plans, tables, and compilations;

"Dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character;

“Artistic work” includes works of painting, drawing, sculpture and artistic craftsmanship, and engravings and photographs ;

“Work of sculpture” includes casts and models ;

“Engravings” include etchings, lithographs, woodcuts, prints, and other similar works, not being photographs ;

“Photograph” includes photo-lithograph and any work produced by any process analogous to photography ;

“Cinematograph” includes any work produced by any process analogous to cinematography ;

“Collective work” means—

(a) an encyclopaedia, dictionary, year book, or similar work ;

(b) a newspaper, review, magazine, or similar periodical ; and

(c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated ;

“Infringing,” when applied to a copy of a work in which copyright subsists, means any copy, including any colourable imitation, made or imported in contravention of the provisions of this Act ;

“Performance” means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument ;

“Delivery” in relation to a lecture, includes delivery by means of any mechanical instrument ;

“Plate” includes any stereotype or other plate, stone, block, mould, matrix transfer, or negative used or intended to be used for

printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls or other contrivances for the acoustic representation of the work are or are intended to be made;

“Lecture” includes address, speech and sermon;

“Musical work” includes any combination of melody and harmony or either of them which has been reduced to writing.

(2) For the purposes of this Act (other than those relating to infringements of copyright), a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public, or delivered in public without the consent or acquiescence of the author, his executors, administrators or assigns.

(3) For the purposes of this Act, a work shall be deemed to be first published within any part of Cochin State, notwithstanding that it has been published simultaneously in some other place, unless the publication in such part of Cochin State is colourable only and is not intended to satisfy the reasonable requirements of the public, and a work shall be deemed to be published simultaneously in two places if the time between the publication in one such place and the publication in the other place does not exceed fourteen days, or such longer period as may, for the time being be fixed by Government.

(4) Where, in the case of an unpublished work, the making of a work has extended over a considerable period, the conditions of this Act conferring copyright shall be deemed to have been complied with, if the author was, during any substantial part of that period, a subject of or a resident in Cochin State.

(5) For the purposes of the provisions of this Act as to residence, an author of a work shall be deemed to be a resident within any part of Cochin State if he is domiciled in such part.

CHAPTER II.

COPYRIGHT.

1 *Rights.*

Copyright.

4. (1) Subject to the provisions of this Act, copyright shall subsist throughout Cochin State for the term hereinafter mentioned in every original literary, dramatic, musical and artistic work, if—

- (a) in the case of a published work, the work was first published in Cochin State ; and
- (b) in the case of an unpublished work, the author was at the date of the making of the work a Cochin subject or resident within Cochin State ;

but in no other works, except so far as the protection conferred by this Act is extended by notifications issued by Government to foreign countries.

(2) For the purposes of this Act, "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public ; if the work is unpublished, to publish the work or any substantial part thereof ; and shall include the sole right—

- (a) to produce, reproduce, perform, or publish any translation of the work ,
- (b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work ;
- (c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise ;
- (d) in the case of a literary, dramatic or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered ;

and to authorise any such acts as aforesaid.

(3) For the purposes of this Act, publication, in relation to any work, means the issue of copies of the work to the public, and does not include the performance in public of a dramatic or musical work, the delivery in public of a lecture, the exhibition in public of an artistic work, but, for the purposes of this provision, the issue of photographs and engravings of works of sculpture shall not be deemed to be publication of such works.

5. (1) Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright: Provided that the following acts shall not constitute an infringement of copyright:—

Infringement
of copyright.

- (i) Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary:
- (ii) Where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch, plan, model, or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of that work:
- (iii) The making or publishing of paintings, drawings, engravings, or photographs of a work of sculpture or artistic craftsmanship, if permanently situate in a public place or building:
- (iv) The publication in a collection, mainly composed of non-copyright matter, *bonafide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists: Provided that not more than two of such passages from works

by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged :

(v) The publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecturer; but nothing in this paragraph shall affect the provisions in paragraph (i) as to newspaper summaries :

(vi) The reading or recitation in public by one person of any reasonable extract from any published work.

(2) Copyright in a work shall also be deemed to be infringed by any person who—

- (a) sells or lets for hire, or by way of trade exposes or offers for sale or hire ; or
- (b) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright ; or
- (c) by way of trade exhibits in public ; or
- (d) imports for sale or hire into any part of Cochin State,

any work which to his knowledge infringes copyright or would infringe copyright if it had been made within such part of Cochin State in or into which the sale or hiring, exposure, offering for sale or hire, distribution, exhibition, or importation took place.

(3) Copyright in a work shall also be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be

used for the performance in public of the work without the consent of the owner of the copyright, unless he was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of copyright.

6. The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after his death :

Term of
copyright.

Provided that at any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the passing of this Act thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent, on the price at which he publishes the work; and, for the purposes of this proviso, Government may make rules prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, including (if it thinks fit) rules requiring payment in advance or otherwise securing the payment of royalties.

7. If, at any time after the death of the author of a literary, dramatic or musical work which has been published or performed in public, a complaint is made to Government that the owner of the copyright in the work has refused to republish or to allow the republication of the work or has refused to allow the performance in public of the work and that by reason of such refusal the work is withheld from the public, the owner of the copyright may be ordered to grant a licence

Compulsory
licences.

to reproduce the work or perform the work in public, as the case may be, on such terms and subject to such conditions as Government may think fit.

Ownership
of copyright,
etc.

8. (1) Subject to the provisions of this Act the author of a work shall be the first owner of the copyright therein :

Provided that—

- (a) where, in the case of an engraving, photograph, or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright ;
- (b) where the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine, or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical.

(2) The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitations to any part of Cochin State and either for the whole term of the copyright or for any part thereof, and may grant any interest in the right by licence, but no such assignment or grant shall

be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorised agent :

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

(3) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee, as respects the rights so assigned, and the assignor, as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and the provisions of this Act shall have effect accordingly.

2. *Civil Remedies.*

9 (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction or interdict, damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right.

Civil
remedies for
infringement
of copyright.

(2) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the Court.

(3) In any action for infringement of copyright in any work, the work shall be presumed to be a work in which copyright subsists and the plaintiff shall be presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright, or, as the case may be, the title of the plaintiff, and where any such question is in issue, then—

- (a) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work ;
- (b) if, no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein.

Rights of owner against persons possessing or dealing with infringing copies, etc.

10. All infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

Exemption of innocent infringer from liability to pay damages, etc.

11. Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled to any remedy other than an injunction or interdict in respect of the infringement if the defendant

proves that at the date of the infringement he was not aware, and had not reasonable ground for suspecting, that copyright subsisted in the work.

(2) Such of the other provisions of this Act as provide that an infringing copy of a work shall be deemed to be the property of the owner of the copyright, or as impose summary penalties, shall not apply in any case to which this section applies.

12. An action in respect of infringement of copy-
right shall not be commenced after the expiration of
three years next after the infringement. Limitation
of actions.

3. *Importation of Copies.*

13. (1) Copies made out of Cochin State of any
work in which copyright subsists which if made in Cochin
State would infringe copyright, and as to which the owner
of the copyright gives notice in writing by himself or his
agent to the Chief Customs officer, as defined in the
Cochin Sea Customs Act, XII of 1109, that he is desirous
that such copies should not be imported into Cochin State,
shall not be so imported, and shall, subject to the provi-
sions of this section, be deemed to be prohibited imports
within the meaning of section 17 of the Cochin Sea
Customs Act, XII of 1109. Importation
of copies.

(2) Before detaining any such copies, or taking
any further proceedings with a view to the confiscation
thereof, such Chief Customs Officer, or any other officer
appointed by the Chief Customs authority in this behalf,
may require the rules under this section, whether as to
information, security, conditions or other matters, to be
complied with, and may satisfy himself, in accordance
with these rules, that the copies are such as are prohibited
by this section to be imported.

(3) Government may, by notification in the
Cochin Government Gazette make rules, either general
or special, respecting the detention and confiscation of
copies the importation of which is prohibited by this

section, and the conditions, if any, to be fulfilled before such detention and confiscation; and may, by such rules, determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) Such rules may apply to copies of all works the importation of copies of which is prohibited by this section, or different rules may be made respecting different classes of such works.

(5) The rules may provide for the informant reimbursing the Government all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

4. *Delivery of Books.*

Delivery of
copy to
Huzur
Library.

14. (1) The publisher of every book published in Cochin State shall, within one month after the publication, deliver, at his own expense, a copy of the book to the Huzur Library and the Secretary to Government shall give a written receipt for it.

(2) The copy so delivered shall be a copy of the whole book with all maps and illustrations belonging thereto, finished and coloured in the same manner as the best copies of the book are published, and shall be bound, sewed, or stitched together, and on the best paper on which the book is printed.

(3) If a publisher fails to comply with this section, he shall be liable to a fine not exceeding fifty rupees and the value of the book.

(4) For the purposes of this section, the expression "book" includes every part or division of a book, pamphlet, sheet of letter-press, sheet of music, map, plan, chart or table separately published, but shall not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the

letter-press or in the maps, prints, or other engravings belonging thereto.

5. *Special Provisions as to certain Works.*

15. (1) In the case of a work of joint authorship, copyright shall subsist during the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who dies last, whichever period is the longer, and references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter, and in the provisions of this Act with respect to the grant of compulsory licenses a reference to the date of the death of the author who dies last shall be substituted for the reference to the date of the death of the author.

Works
of joint
authors.

(2) Where, in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Act, the work shall be treated for the purposes of this Act as if the other author or authors had been the sole author or authors thereof:

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions as aforesaid.

(3) For the purposes of this Act, "a work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.

(4) Where a married woman and her husband are joint authors of a work the interest of such married woman therein shall be her separate property.

Posthumous
works.

16. (1) In the case of a literary dramatic or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship at or immediately before the date of the death of the author who dies last, but which has not been published, nor, in the case of a dramatic or musical work, been performed in public, nor, in the case of a lecture, been delivered in public, before that date, copyright shall subsist till publication, or performance or delivery in public, whichever may first happen, and for a term of fifty years thereafter, and the proviso to section six of this Act shall, in the case of such a work, apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid.

(2) The ownership of an author's manuscript after his death, where such ownership has been acquired under a testamentary disposition made by the author and the manuscript is of a work which has not been published nor performed in public nor delivered in public, shall be *prima facie* proof of the copyright being with the owner of the manuscript.

Provisions
as to Go-
vernment
publications.

17. Without prejudice to any rights or privileges of Government, where any work has, whether before or after the commencement of this Act, been prepared or published by or under the direction or control of Government or any department of Government, the copyright in the work shall, subject to any agreement with the author, belong to Government, and in such case shall continue for a period of fifty years from the date of the first publication of the work.

Modification
of copyright
as regards
translation
of work first
published in
Cochin State.

18. (1) In the case of works first published in Cochin State, copyright shall be subject to this limitation that the sole right to produce, reproduce, perform or publish a translation of the work shall subsist only for a period of ten years from the date of the first publication of the work :

Provided that if within the said period the author, or any person to whom he has granted permission so to do, publishes a translation of any such work in any language, copyright in such work as regards the sole right to produce, reproduce, perform or publish a translation in that language shall not be subject to the limitation prescribed in this sub-section.

(2) For the purposes of sub-section (1) the expression "author" includes the legal representative of a deceased author.

19. (1) Copyright shall subsist in records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works, but the term of copyright shall be fifty years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within Cochin State if it has established a place of business within any part thereof.

Provisions
as to me-
chanical
instruments.

(2) It shall not be deemed to be an infringement of copyright in any musical work for any person to make within Cochin State, records, perforated rolls or other contrivances by means of which the work may be mechanically performed, if such person proves—

- (a) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work; and
- (b) that he has given the prescribed notice of his intention to make the contrivances, and has paid in the prescribed manner to, or for the benefit of, the owner of the copyright in the

work royalties in respect of all such contrivances sold by him, calculated at the rate hereinafter mentioned ;

Provided that—

- (i) nothing in this provision shall authorise any alterations in, or omissions from, the work reproduced, unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by, or with the consent or acquiescence of, the owner of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question ; and
- (ii) for the purposes of this provision, a musical work shall be deemed to include any words so closely associated therewith as to form part of the same work, but shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced.

(3) The rate at which such royalties as aforesaid are to be calculated shall—

- (a) in the case of contrivances sold within two years after the commencement of this Act by the person making the same, be two and one-half per cent ; and
- (b) in the case of contrivances sold as aforesaid after the expiration of that period, be five per cent

on the ordinary retail selling price of the contrivance calculated in the prescribed manner, so however that the royalty payable in respect of a contrivance shall, in no case, be less than half an anna for each separate musical work in which copyright subsists reproduced thereon, and, where the royalty calculated as aforesaid includes a

fraction of quarter of an anna, such fraction shall be reckoned as quarter of an anna:

Provided that, if, at any time after the expiration of seven years from the commencement of this Act, it appears to Government that such rate as aforesaid is no longer equitable, Government may, after holding a public inquiry, make an order either decreasing or increasing that rate to such extent as under the circumstances may seem just:

Provided also that where an order revising the rate has been so made, no further revision shall be made before the expiration of fourteen years from the date of the last revision.

(4) If any such contrivance is made reproducing two or more different works in which copyright subsists and the owners of the copyright therein are different persons, the sums payable by way of royalties under this section shall be apportioned amongst the several owners of the copyright in such proportions as, failing agreement, may be determined by arbitration, in accordance with the law for the time being in force in Cochin State.

(5) When any such contrivances by means of which a musical work may be mechanically performed have been made, then, for the purposes of this section, the owner of the copyright in the work shall, in relation to any person who makes the prescribed inquiries, be deemed to have given his consent to the making of such contrivances if he fails to reply to such inquiries within the prescribed time.

(6) For the purposes of this section, Government may make rules prescribing anything which under this section, is to be prescribed, and prescribing the mode in which notices are to be given and the particulars to be given in such notices, and the mode, time and frequency of the payment of royalties, and any such rules may, if Government think fit, include rules requiring payment in advance or otherwise securing the payment of royalties.

(7) In the case of musical works published before the commencement of this Act the foregoing provisions shall have effect, subject to the following modifications and additions :—

- (a) The conditions as to the previous making by, or with the consent or acquiescence of, the owner of the copyright in the work, and the restrictions as to alterations in or omissions from the work shall not apply :
- (b) The rate of two and one-half per cent shall be substituted for the rate of five per cent as the rate at which royalties are to be calculated, but no royalties shall be payable in respect of contrivances sold before this Act comes into force if contrivances reproducing the same work had been lawfully made, or placed on sale, within Cochin State before this Act comes into force :
- (c) Notwithstanding any assignment made before the passing of this Act of the copyright in a musical work, any rights conferred by this Act in respect of the making, or authorising the making of contrivances by means of which the work may be mechanically performed shall belong to the author or his legal representatives and not to the assignees, and the royalties aforesaid shall be payable to, and for the benefit of, the author of the work or his legal representatives :
- (d) The saving contained in this Act of the rights and interests arising from, or in connection with, action taken before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances :

whether made before or after the passing of this Act except on the terms and subject to the conditions laid down in this section :

- (e) Where the work is a work on which copyright is conferred by a notification of Government relating to a foreign country, the copyright so conferred shall not, except to such extent as may be provided by the notification, include any rights with respect to the making of records, perforated rolls or other contrivances by means of which the work may be mechanically performed.

(8) Notwithstanding anything in this Act where a record, perforated roll, or other contrivance by means of which sounds may be mechanically reproduced has been made before the commencement of this Act, copyright shall as from the commencement of this Act, subsist therein in like manner and for the like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived :

Provided that—

- (i) the person who, at the commencement of this Act, is the owner of such original plate shall be the first owner of such copyright ; and
- (ii) nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first-mentioned contrivance.

20. Notwithstanding anything in this Act it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper.

Provision as to political speeches.

Provision as
to photo-
graphs.

21. The term for which copyright shall subsist in photographs shall be fifty years from the making of the original negative from which the photograph was directly or indirectly derived, and the person who was owner of such negative at the time when such negative was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within Cochin State if it has established a place of business within any part thereof.

Provisions as
to designs
registrable
under the
Cochin
Patents and
Designs Act,
XI of 1112.

22. (1) This Act shall not apply to designs capable of being registered under the Cochin Patents and Designs Act, XI of 1112, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process.

(2) General rules under section 82 of the Cochin Patents and Designs Act, XI of 1112, may be made for determining the conditions under which a design shall be deemed to be used for such purposes as aforesaid.

Works of
foreign au-
thors first
published in
Cochin State.

23. If it appears to Government that a foreign country does not give, or has not undertaken to give, adequate protection to the works of Cochin authors, it shall be lawful for Government by notification in the Cochin Government Gazette to direct that such of the provisions of this Act as confer copyright on works first published within Cochin State, shall not apply to works published after the date specified in the notification, the authors whereof are subjects or citizens of such foreign country, and are not resident in Cochin State, and thereupon those provisions shall not apply to such works.

Existing
works.

24. (1) Where any person is immediately before the commencement of this Act entitled to any such right in any work under Act VII of 1088, or to any interest in such right, he shall, as from that date, be entitled to the copyright as defined in this Act or to the same interest

in such right and to no other right or interest, and such right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made and the work had been one entitled to copyright thereunder :

Provided that—

- (a) if the author of any work in which any such right under Act VII of 1088 subsists at the commencement of this Act has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired the right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine; but the person who immediately before the date at which the right would so have expired was the owner of the right or interest shall be entitled at his option either—
 - (i) on giving such notice as hereinafter mentioned, to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration in accordance with the law for the time being in force in Cochin State; or
 - (ii) without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such royalties to the author as, failing agreement, may be determined by arbitration in accordance with the

law for the time being in force in Cochin State, or, where the work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without any such payment ;

The notice above referred to must be given not more than one year nor less than six months before the date at which the right would have so expired, and must be sent by registered post or Anchal to the author, or, if he cannot with reasonable diligence be found, advertised in the Cochin Government Gazette and in two newspapers published in Cochin State ;

- (b) where any person has, before the date on which this Act comes into force, taken any action whereby he has incurred any expenditure or liability in connection with the reproduction or performance of any work in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act have been lawful, nothing in this section shall diminish or prejudice any rights or interest arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration in accordance with the law for the time being in force in Cochin State.

(2) For the purposes of this section, the expression "author" includes the legal representatives of a deceased author.

(3) Subject to the provisions of section twenty, sub-sections (7) and (8), copyright shall not subsist in any work made before the commencement of this Act otherwise than under, and in accordance with, the provisions of this section.

CHAPTER III.

PENALTIES.

25. If any person knowingly—

- (a) makes for sale or hire any infringing copy of a work in which copyright subsists ; or
- (b) sells or lets for hire, or by way of trade exposes or offers for sale or hire, any infringing copy of any such work ; or
- (c) distributes infringing copies of any such work, either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright ; or
- (d) by way of trade exhibits in public any infringing copy of any such work ; or
- (e) imports for sale or hire into Cochin State any infringing copy of any such work ;

Offences in respect of infringing copies.

he shall be punishable with fine which may extend to twenty rupees for every copy dealt with in contravention of this section, but not exceeding five hundred rupees in respect of the same transaction.

26. If any person knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be punishable with fine which may extend to five hundred rupees.

Possession of plates for purpose of making infringing copies.

27. If any person, after having been previously convicted of an offence punishable under section 26 or section 27 is subsequently convicted of an offence

Punishment on second conviction.

punishable under either of these sections, he shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Power of Court to dispose of infringing copies or plates for purpose of making infringing copies.

28. (1) The Court before which any offence under this Chapter is tried may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright, or otherwise dealt with as the Court may think fit.

(2) Any person affected by an order under sub-section (1) may, within thirty days of the date of such order, appeal to the Court to which appeals from the Court making the order ordinarily lie; and such appellate Court may direct that execution of the order be stayed pending consideration of the appeal.

Cognizance of offences.

29. No Court inferior to that of a Magistrate of the first class shall try any offence against this Act.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

Abrogation of common law rights.

30. No person shall be entitled to copyright or any similar right in any literary, dramatic, musical or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

Courts having civil jurisdiction regarding infringement of copyright.

31. Every suit or other civil proceeding regarding infringement of copyright shall be instituted and tried in the Court of the District Judge.

Effect of non-registration under Act VII of 1088.

32. No suit or other civil proceeding instituted after the date on which this Act comes into force, regarding infringement of copyright in any book the author whereof

was at the time of making the book resident in Cochin State, or of any book first published in Cochin State shall be dismissed by reason only that the registration of such book had not been effected in accordance with the provisions of Act VII of 1088.

International Copyright.

33. (1) Government may, by notification, direct that this Act (except such parts, if any, thereof as may be specified in such notification) shall apply—

Power to extend Act to foreign works.

- (a) to works first published in a foreign country to which the notification relates, in like manner as if they were first published within Cochin State;
- (b) to literary, dramatic, musical and artistic works, or any class thereof, the authors whereof were, at the time of the making of the works, subjects or citizens of a foreign country to which the notification relates, in like manner as if the authors were Cochin subjects;
- (c) in respect of residence in a foreign country to which the notification relates, in like manner as if such residence were residence in Cochin State; and thereupon, subject to the provisions of this section and of the notification, this Act shall apply accordingly :

Provided that—

- (i) before making the notification under this section in respect of any foreign country, Government shall be satisfied that that foreign country has made, or has undertaken to make such provisions, if any, as it appears to Government expedient to require for the protection of works entitled to copyright under the provisions of Chapter II of this Act;
- (ii) the notification may provide that the term of copyright within Cochin State shall not exceed

that conferred by the law of the country to which the notification relates ;

- (iii) the provisions of this Act as to the delivery of copies of books shall not apply to works first published in such country, except so far as is provided by the notification ;
- (iv) the notification may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed by the notification ;
- (v) in applying the provisions of this Act as to ownership of copyright, the notification may make such modifications as appear necessary having regard to the law of the foreign country ;

(2) A notification under this section may extend to all the several countries named or described therein.

(3) Government may, by notification alter, revoke or vary any notification under this section, but such notification shall not affect prejudicially any rights or interests acquired or accrued at the date when the notification comes into operation, and shall provide for the protection of such rights and interests.

(4) Every notification made under this section shall be published in the Cochin Government Gazette and shall have effect as if enacted in this Act.

SCHEDULE.

REPEAL OF ENACTMENT.

(See section 2.)

Year	No.	Short title	Extent of repeal
1088	VII	The Cochin Copyright Act	The whole

THE COCHIN FACTORIES ACT,
(II OF 1113.)

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.
3. References to time of day.
4. Seasonal factories.
5. Power to declare places to be factories.
6. Power to declare departments to be separate factories.
7. Power to exempt on a change in the factory.
8. Power to exempt during public emergency.
9. Notice to Inspector before commencement of work.

CHAPTER II.

THE INSPECTING STAFF.

10. Inspectors.
11. Powers of Inspector.
12. Certifying surgeons.

CHAPTER III.

HEALTH AND SAFETY.

13. Cleanliness.
14. Ventilation.
15. Artificial humidification.
16. Cooling.
17. Overcrowding.
18. Lighting.
19. Water.
20. Latrines and urinals.
21. Doors to open outwards.
22. Precautions against fire.
23. Means of escape.
24. Fencing.
25. Power to require specifications of defective parts or tests of stability.

SECTIONS.

26. Safety of buildings and machinery.
27. Restrictions on work near machinery in motion.
28. Power to exclude children.
29. Prohibition of employment of women and children near cotton openers.
30. Notice of certain accidents.
31. Appeals.
32. Power of Diwan to make rules to supplement this Chapter.
33. Additional power to make health and safety rules relating to—shelters during rest,—rooms for children,—certificates of stability,—hazardous operations.

CHAPTER IV.

RESTRICTIONS ON WORKING HOURS OF ADULTS.

34. Weekly hours.
35. Weekly holiday.
36. Daily hours.
37. Intervals for rest.
38. Spreadover.
39. Notice of periods for work for adults and preparation thereof.
40. Copy of Notice of periods for work to be sent to Inspector.
41. Register of Adult Workers.
42. Hours of work to correspond with Notice under section 39 and Register under section 41.
43. Power to make rules exempting from restrictions.
44. Power to make orders exempting from restrictions.
45. Further restrictions on the employment of women.
46. Special provision for night shifts.
47. Extra pay for overtime.
48. Restriction on double employment.
49. Control of overlapping shifts.

CHAPTER V.

SPECIAL PROVISIONS FOR ADOLESCENTS
AND CHILDREN.

50. Prohibition of employment of young children.

SECTIONS

51. Non-adult workers to carry tokens giving reference to certificates of fitness.
52. Certificates of fitness.
53. Effect of certificate granted to adolescent.
54. Restrictions on the working hours of a child.
55. Notice of periods for work for children.
56. Register of Child Workers.
57. Hours of work to correspond with Notice and Register.
58. Power to require medical examination.
59. Power to make rules.

CHAPTER VI.

PENALTIES AND PROCEDURE.

60. Penalty for contraventions of Act and Rules.
61. Enhanced penalty in certain cases after previous conviction.
62. Penalty for failure to give notice of commencement of work or of change of manager.
63. Penalty for obstructing Inspector.
64. Penalty for failure to give notice of accidents.
65. Penalty for failure to make returns.
66. Penalty for smoking or using naked light in vicinity of inflammable material.
67. Penalty for using false certificates.
68. Penalty on guardian for permitting double employment of a child.
69. Penalty for failure to display certain notices.
70. Determination of "occupier" for purposes of this Chapter.
71. Exemption of occupier or manager from liability in certain cases.
72. Presumption as to employment.
73. Evidence as to age.
74. Cognizance of offences.
75. Limitation of prosecutions.

CHAPTER VII.

SUPPLEMENTAL.

SECTIONS

76. Display of factory notices.
77. Power to make rules.
78. Publication of rules.
79. Application to Sirkar Factories.
80. Protection to persons acting under this Act.
81. Repeal and savings.

 THE COCHIN FACTORIES ACT.

(II OF 1113).

AN ACT TO CONSOLIDATE AND AMEND THE LAW
REGULATING LABOUR IN FACTORIES.

*Passed by His Highness the Maharaja of Cochin on the
2nd day of Kanni 1113, corresponding to the 18th
day of September 1937.*

Whereas it is expedient to consolidate and amend
the law regulating labour in factories ; It is hereby enacted
as follows :—

CHAPTER I.

PRELIMINARY.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Cochin Factories
Act, II of 1113.

(2) It extends to the whole of Cochin.

(3) It shall come into force on the 1st day of
Dhanu 1113.

Definitions.

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

(a) “adolescent” means a person who has com-
pleted his fifteenth but has not completed his
seventeenth year ;

- (b) "adult" means a person who has completed his seventeenth year ;
- (c) "child" means a person who has not completed his fifteenth year ;
- (d) "day" means a period of twenty-four hours beginning at midnight ;
- (e) "week" means a period of seven days beginning at midnight on Saturday night ;
- (f) "power" means electrical energy, and any other form of energy which is mechanically transmitted and is not generated by human or animal agency ;
- (g) "manufacturing process" means any process—
 - (i) for making, altering, repairing, ornamenting, finishing or packing, or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal, or
 - (ii) for pumping oil, water or sewage, or
 - (iii) for generating, transforming or transmitting power;
- (h) "worker" means a person employed, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work whatsoever incidental to or connected with the manufacturing process or connected with the subject of the manufacturing process, but does not include any person solely employed in a clerical capacity in any room or place where no manufacturing process is being carried on ;
- (i) "factory" means any premises including the precincts thereof whereon twenty or more workers are working, or were working on

any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on ;

- (j) "machinery" includes all plant whereby power is generated, transformed, transmitted or applied ;
- (k) "occupier" of a factory means the person who has ultimate control over the affairs of the factory :

Provided that where the affairs of a factory are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory ;

- (l) where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a "relay", and the period or periods, for which it works is called a "shift" ; and
- (m) "prescribed" means prescribed by rules made by the Government under this Act.

References
to time of
day.

3. References to time of day in this Act are references to Indian Standard Time, which is five and a half hours ahead of Greenwich Mean Time.

Seasonal
factories.

4. (1) For the purposes of this Act, a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, the decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including *gur*) or tea, or any manufacturing process which is incidental to or connected with any of the aforesaid processes, is a seasonal factory :

Provided that the Government may, by notification in the Cochin Government Gazette, declare any such factory in which manufacturing processes are ordinarily

carried on for more than one hundred and eighty working days in the year, not to be a seasonal factory for the purposes of this Act.

(2) The Government may, by notification in the Cochin Government Gazette, declare any specified factory in which manufacturing processes are ordinarily carried on for not more than one hundred and eighty working days in the year and cannot be carried on except during particular seasons or at times dependent on the irregular action of natural forces, to be a seasonal factory for the purposes of this Act.

5. (1) Notwithstanding, anything contained in clause (i) of section 2, the Government may, by notification in the Cochin Government Gazette, declare any place wherein a manufacturing process is carried on, whether with or without the aid of power, and wherein, on any one day of the twelve months preceding the notification, ten or more workers were employed, to be a factory for all or any of the purposes of this Act.

Power to declare places to be factories.

(2) A notification under sub-section (1) may be made in respect of any specified place or class of places.

(3) A notification under sub-section (1) shall cease to have effect in respect of any place after the lapse of twelve months during which not more than nine workers were employed therein on any day.

6. The Government may, by order in writing, direct that the different departments or branches of a specified factory shall be treated as separate factories for all or any of the purposes of this Act.

Power to declare departments to be separate factories

7. Where the Government are satisfied that, following upon a change of occupier of a factory or in the manufacturing processes carried on therein, the number of workers for the time being working in the factory is less than twenty and is not likely to be twenty or more on any day during the ensuing twelve months, they may,

Power to exempt on a change in the factory.

by order in writing, exempt such factory from the operation of this Act :

Provided that any exemption so granted shall cease to have effect on and after any day on which twenty or more workers work in the factory.

Power to exempt during public emergency.

8. In any case of public emergency the Government may, by notification in the Cochin Government Gazette, exempt any factory from any or all of the provisions of this Act for such period as they may think fit.

Notice to Inspector before commencement of work.

9. (1) Before work is begun in any factory after the commencement of this Act, or before work is begun in any seasonal factory each season, the occupier shall send to the Inspector a written notice containing.—

- (a) the name of the factory and its situation,
- (b) the address to which communications relating to the factory should be sent,
- (c) the nature of the manufacturing processes to be carried on in the factory,
- (d) the nature and the amount of the power to be used, and
- (e) the name of the person who shall be the manager of the factory for the purposes of this Act.

(2) Whenever another person is appointed as manager, the occupier shall send to the Inspector a written notice of the change, within seven days from the date on which the new manager assumes charge.

(3) During any period for which no person has been designated as manager of a factory under this section, or during which the person designated does not manage the factory, any person found acting as manager, or, if no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act.

CHAPTER II.

The Inspecting Staff.

10. (1) The Government may, by notification in the Cochin Government Gazette, appoint such persons as they think fit to be Inspectors for the purposes of this Act. Inspectors.

(2) The Government may, by notification as aforesaid, appoint any person to be a Chief Inspector, who shall, in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the State.

(3) No person shall be appointed to be an Inspector under sub-section (1) or a Chief Inspector under sub-section (2) or, having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested in a factory or in any process or business carried on therein or in any patent or machinery connected therewith.

(4) The District Magistrate shall, in virtue of his Office, be an Inspector under this Act.

(5) The Government may also, by notification as aforesaid, appoint such public officers as they think fit to be additional Inspectors for all or any of the purposes of this Act within such local limits as they may assign to them respectively.

(6) In any area, where there are more Inspectors than one, the Government may, by notification as aforesaid, declare the powers which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.

(7) Every Chief Inspector and Inspector shall be deemed to be a public servant within the meaning of the Cochin Penal Code and shall be officially subordinate to such authority as the Government may specify in this behalf.

Powers of
Inspector.

11. Subject to any rules made by the Government in this behalf, an Inspector may, within the local limits for which he is appointed,—

- (a) enter, with such assistants (if any), being persons in the employment of Government or of any municipal or other public authority, as he thinks fit, any place which is, or which he has reason to believe to be, used as a factory or capable of being declared to be a factory under the provisions of section 5 ;
- (b) make such examination of the premises and plant and of any prescribed registers, and take on the spot or otherwise such evidence of any persons as he may deem necessary for carrying out the purposes of this Act ; and
- (c) exercise such other powers as may be necessary for carrying out the purposes of this Act:

Provided that no one shall be required under this section to answer any question or give any evidence tending to criminate himself.

Certifying
surgeons.

12. (1) The Government may appoint such registered medical practitioners as they think fit to be certifying surgeons for the purposes of this Act within such local limits as they may assign to them respectively.

(2) A certifying surgeon may authorise any registered medical practitioner to exercise any of his powers under this Act:

Provided that a certificate of fitness for employment granted by such authorised practitioner shall be valid for a period of three months only, unless it is confirmed by the certifying surgeon himself after examination of the person concerned.

Explanation.— In this section a “ registered medical practitioner ” means any person registered under the British Medical Act, 1858, or any subsequent enactment

amending it, or under any Act of any legislature in British India providing for the maintenance of a register of medical practitioners, and includes, in any area where no such register is maintained, any person declared by the Government, by notification in the Cochin Government Gazette, to be a registered medical practitioner for the purposes of this section.

CHAPTER III.

HEALTH AND SAFETY.

13. Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance and shall be cleansed at such times and by such methods as may be prescribed, and these methods may include lime-washing or colour-washing, painting, varnishing disinfecting and deodorising. Cleanliness.

14. (1) Every factory shall be ventilated in accordance with such standards and by such methods as may be prescribed. Ventilation

(2) Where gas, dust or other impurity is generated in the course of work, adequate measures shall be taken to prevent injury to the health of workers.

(3) If it appears to the Inspector that in any factory gas, dust or other impurity generated in the course of work is being inhaled by the workers to an injurious extent, and that such generation or inhalation could be prevented by the use of mechanical or other devices, he may serve on the manager of the factory an order in writing, directing that mechanical or other devices for preventing such generation or inhalation shall be provided before a specified date, and shall thereafter be maintained in good order and used throughout working hours.

(4) The Government may make rules for any class of factories requiring mechanical or other devices to be provided and maintained for preventing the generation or inhalation of gas, dust or other impurities, which may

be injurious to the workers and specifying the nature of such devices.

Artificial
humidifi-
cation.

15. (1) The Government may make rules—

(a) prescribing standards for the cooling properties of the air in factories in which the humidity of the air is artificially increased;

(b) regulating the methods used for artificially increasing the humidity of the air ; and

(c) directing prescribed tests for determining the humidity and cooling properties of the air to be carried out and recorded.

(2) In any factory in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply or other source of drinking water, or shall be effectively purified before it is so used.

(3) If it appears to the Inspector that the water used in a factory for increasing humidity which is required to be effectively purified under sub-section (2) is not effectively purified he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

Cooling.

16. If it appears to the Chief Inspector or to an Inspector specially authorised in this behalf by the Government that the cooling properties of the air in any factory are at times insufficient to secure workers against injury to health or against serious discomfort, and that they can be to a great extent increased by measures which will not involve an amount of expense which is unreasonable in the circumstances, the Chief Inspector may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

Overcrowd-
ing.

17. In order that no room in a factory shall be crowded during working hours to a dangerous extent or

to an extent which may be injurious to the health of the workers, the proportion which the number of cubic feet of space in a room and the number of superficial feet of its floor area bears to the number of workers working at any time therein shall not be less than such standards as may be prescribed either generally or for the particular class of work carried on in the room.

18. (1) A factory shall be sufficiently lighted during all working hours. Lighting.

(2) If it appears to the Inspector that any factory is not sufficiently lighted, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(3) The Government may make rules requiring that all factories of specified classes shall be lighted in accordance with prescribed standards.

19. (1) In every factory a sufficient supply of water fit for drinking shall be provided for the workers at suitable places. Water.

(2) The supply required by sub-section (1) shall comply with such standards and conditions as may be prescribed.

(3) In every factory in which any process involving contact by the workers with injurious or obnoxious substances is carried on, a sufficient supply of water suitable for washing shall be provided for the use of workers, at suitable places and with facilities for its use, according to such standards as may be prescribed.

20. For every factory sufficient latrines and urinals, according to the prescribed standards, shall be provided, for male workers and for female workers separately, of suitable patterns and at convenient places as prescribed, and shall be kept in a clean and sanitary condition during all working hours. Latrines and urinals.

Doors to
open
outwards.

21. In every factory the doors of each room in which more than twenty persons are employed shall, except in the case of sliding doors, be constructed so as to open outwards, or, where the door is between two rooms, in the direction of the nearest exit from the building, and no such door shall be locked or obstructed while any work is being carried on in the room.

Precautions
against fire.

22. In every factory such precautions against fire shall be taken as may be prescribed.

Means of
escape.

23. (1) Every factory shall be provided with such means of escape in case of fire as can reasonably be required in the circumstances of each factory.

(2) If it appears to the Inspector that any factory is not so provided, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(3) The means of escape shall not be obstructed while any work is being carried on in the factory.

Fencing.

24. (1) In every factory the following shall be kept adequately fenced, namely :—

(a) every exposed moving part of a prime mover and every fly-wheel directly connected to a prime mover,

(b) every hoist or lift, hoist-well, or lift-well, and every trap-door or similar opening near which any person may have to work or pass, and

(c) every part of the machinery which the Government may prescribe.

(2) If it appears to the Inspector that any other part of the machinery in a factory is dangerous if not adequately fenced, he may serve on the manager of the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

(3) All fencing required by or under this section or under sub-section (1) of section 26 shall be maintained in an efficient state at all times when the workers have access to the parts required to be fenced except where they are under repair or are under examination in connection with repair or are necessarily exposed for the purpose of cleaning or lubricating or altering the gearing or arrangements of the machinery.

(4) Such further provisions as may be prescribed shall be made for the protection from danger of persons employed in attending to the machinery in a factory.

25. If it appears to the Inspector that any building or part of a building, or any part of the ways, machinery or plant in a factory is in such a condition that it may be dangerous to human life or safety, he may serve on the manager of the factory an order in writing requiring him before a specified date—

Power to require specifications of defective parts or tests of stability.

(a) to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building, ways, machinery or plant can be used with safety, or

(b) to carry out such tests as may be necessary to determine the strength or quality of any specified parts and to inform the Inspector of the results thereof.

26. (1) If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the manager of the factory an order in writing, specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

Safety of buildings and machinery.

(2) If it appears to the Inspector that the use of any building or part of a building or of any part of the ways, machinery or plant in a factory involves imminent

danger to human life or safety, he may serve on the manager of the factory an order in writing prohibiting its use until it has been properly repaired or altered.

Restrictions
on work
near
machinery in
motion.

27. (1) No woman or child shall be allowed to clean or oil any part of the machinery of a factory while that part is in motion under power, or to work between moving parts or between fixed or moving parts of any machinery which is in motion under power.

(2) The Government may, by notification in the Cochin Government Gazette, prohibit, in any specified factory or class of factories, the cleaning or oiling by any person of specified parts of machinery when these parts are in motion under power.

Power to
exclude
children.

28. (1) The Government may make rules prohibiting the admission to any specified class of factories or to specified parts thereof, of children who cannot be lawfully employed therein.

(2) If it appears to the Inspector that the presence in any factory or part of a factory of children who cannot be lawfully employed therein may be dangerous to them or injurious to their health, he may serve on the manager of the factory an order in writing, directing him to prevent the admission of such children to the factory or any part of it.

Prohibition
of employ-
ment of
women and
children
near cotton-
openers.

29. No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work :

Provided that, if the feed-end of a cotton-opener is in a room separated from the delivery end by a partition extending to the roof, or to such height as the Inspector may in any particular case specify in writing, women and children may be employed on the side of the partition where the feed-end is situated.

Notice of
certain
accidents.

30. Where in any factory any accident occurs which causes death, or which causes any bodily injury whereby any person injured is prevented from resuming his work

in the factory during the forty-eight hours after the accident occurred, or which is of any nature which may be prescribed in this behalf, the manager of the factory shall send notice thereof to such authorities, and in such form and within such time, as may be prescribed.

31. (1) The manager of a factory on whom an order in writing by an Inspector has been served under the provisions of this Chapter, or the occupier of the factory, may within thirty days of the service of the order, appeal against it to the Government or to such authority as the Government may appoint in this behalf ; and the Government or appointed authority may, subject to rules made in this behalf by the Government, confirm, modify or reverse the order. Appeals.

(2) The appellate authority may, and if so required in the petition or appeal, shall, hear the appeal with the aid of assessors, one of whom shall be appointed by the appellate authority and the other by such body representing the industry concerned or otherwise as the Government may prescribe in this behalf :

Provided that if no assessor is appointed by such body, or if the assessor so appointed fails to attend at the time and place fixed for hearing the appeal, the appellate authority may, unless satisfied that the failure to attend is due to sufficient cause, proceed to hear the appeal without the aid of such assessor, or, if it thinks fit, without the aid of any assessor.

(3) In the case of an appeal against an order under section 16 the appellate authority shall, and in any other case, except an appeal against an order under sub-section (2) of section 26 or sub-section (2) of section 28, the appellate authority may, suspend the order appealed against pending the decision of the appeal, subject however to such conditions as to partial compliance or the adoption of temporary measures as it may choose to impose in any case.

Power of Government to make rules to supplement this Chapter.

32. The Government may make rules.—

(a) providing for any matter which, according to any of the provisions of this Chapter, is or may be prescribed ;

(b) requiring the managers of factories to maintain stores of first-aid appliances and provide for their proper custody ;

(c) providing against danger arising from the use of mechanical transport in factories other than railways subject to the Cochin Railways Act, XI of 1111 ;

(d) prescribing the manner of the service of orders under this Chapter on managers of factories ;

(e) regulating the procedure to be followed in presenting and hearing appeals under section 31, and the appointment and remuneration of assessors ;

(f) regulating the exercise by Inspectors of their powers under this Chapter ; and

(g) providing for any other matter which may be expedient in order to give effect to the provisions of this Chapter.

Additional power to make health and safety rules relating to—shelters during rest,—rooms for children.

33. (1) The Government may make rules requiring that in any specified factory, wherein more than one hundred and fifty workers are ordinarily employed, an adequate shelter shall be provided for the use of workers during periods of rest, and such rules may prescribe the standards of such shelters.

(2) The Government may also make rules—

(a) requiring that in any specified factory, wherein more than fifty women workers are ordinarily employed, a suitable room shall be reserved for the use of children under the age of six years belonging to such women, and

(b) prescribing the standards for such rooms and the nature of the supervision to be exercised over the children therein.

(3) The Government may also make rules, for any class of factories and for the whole or any part of the State, requiring that work or a manufacturing process carried on with the aid of power shall not be begun in any building or part of a building erected or taken into use as a factory after the commencement of this Act, until a certificate of stability in the prescribed form, signed by a person possessing the prescribed qualifications, has been sent to the Inspector.

Certificates
of stability.

(4) Where the Government are satisfied that any operation in a factory exposes any persons employed upon it to a serious risk of bodily injury, poisoning or disease, they may make rules applicable to any factory or class of factories in which the operation is carried on—

Hazardous
operations.

- (a) specifying the operation and declaring it to be hazardous,
- (b) prohibiting or restricting the employment of women, adolescents or children upon the operation,
- (c) providing for the medical examination of persons employed or seeking to be employed upon the operation and prohibiting the employment of persons not certified as fit for such employment, and
- (d) providing for the protection of all persons employed upon the operation or in the vicinity of the places where it is carried on.

CHAPTER IV.

RESTRICTIONS ON WORKING HOURS OF ADULTS.

34. No adult worker shall be allowed to work in a factory for more than fifty-four hours in any week, or, where the factory is a seasonal one, for more than sixty hours in any week:

Weekly
hours.

Provided that an adult worker in a non-seasonal factory engaged in work which for technical reasons must

be continuous throughout the day may work for fifty-six hours in any week.

Weekly
holiday.

35. (1) No adult worker shall be allowed to work in a factory on a Sunday unless—

- (a) he has had or will have a holiday for a whole day on one of the three days immediately before or after that Sunday, and
- (b) the manager of the factory has, before that Sunday or the substituted day, whichever is earlier,—
 - (i) delivered a notice to the office of the Inspector of his intention to require the worker to work on the Sunday and of the day which is to be substituted, and
 - (ii) displayed a notice to that effect in the factory:

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

(2) Notices given under sub-section (1) may be cancelled by a notice delivered to the office of the Inspector and a notice displayed in the factory not later than the day before the Sunday or the holiday to be cancelled whichever is earlier.

(3) Where, in accordance with the provisions of sub-section (1), any worker works on a Sunday and has had a holiday on one of the three days immediately before it, that Sunday shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

Daily hours.

36. No adult worker shall be allowed to work in a factory for more than ten hours in any day :

Provided that a male adult worker in a seasonal factory may work for eleven hours in any day.

Intervals for
rest.

37. The periods of work of adult workers in a factory during each day shall be fixed either—

(a) so that no period shall exceed six hours, and so that no worker shall work for more than six hours before he has had an interval for rest of at least one hour ; or

(b) so that no period shall exceed five hours and so that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour, or for more than eight and a half hours before he has had at least two such intervals.

38. The periods of work of an adult worker in a factory shall be so arranged that, along with his intervals for rest under section 37, they shall not spread over more than thirteen hours in any day, save with the permission of the Government and subject to such conditions as the Government may impose, either generally or in the case of any particular factory. Spread over.

39. (1) There shall be displayed and correctly maintained in every factory in accordance with the provisions of sub-section (2) of section 76 a Notice of Periods for Work for Adults showing clearly the periods within which adult workers may be required to work. Notice of
Periods
for Works
for Adults
and pre-
paration
thereof.

(2) The periods shown in the Notice required by sub-section (1) shall be fixed before-hand in accordance with the following provisions of this section and shall be such that workers working for those periods would not be working in contravention of any of the provisions of sections 34, 35, 36, 37 and 38.

(3) Where all the adult workers in a factory are required to work within the same periods, the manager of the factory shall fix those periods for such workers generally.

(4) Where all the adult workers in a factory are not required to work within the same periods, the manager of the factory shall classify them into groups according to the nature of their work.

(5) For each group which is not required to work on a system of shifts, the manager of the factory shall fix the periods within which the group may be required to work.

(6) Where any group is required to work on a system of shifts and the relays are not to be subject to predetermined periodical changes of shift, the manager of the factory shall fix the periods within which each relay of the group may be required to work.

(7) Where any group is to work on a system of shifts and the relays are to be subject to predetermined periodical changes of shifts, the manager of the factory shall draw up a scheme of shifts whereunder the periods within which any relay of the group may be required to work and the relay which will be working at any time of the day shall be known for any day.

(8) The Government may make rules prescribing forms for the Notice of Periods for Work for Adults and the manner in which it shall be maintained.

Copy of
Notice of
Periods for
Work to be
sent to
Inspector.

40. (1) A copy of the Notice referred to in subsection (1) of section 39 shall be sent in duplicate to the Inspector within fourteen days after the commencement of this Act, or, if the factory begins work after the commencement of this Act, before the day on which it begins work.

(2) Any proposed change in the system of work in a factory which will necessitate a change in the Notice shall be notified to the Inspector in duplicate before the change is made, and except with the previous sanction of the Inspector, no such change shall be made until one week has elapsed since the last change.

Register of
Adult
Workers.

41. (1) The manager of every factory shall maintain a Register of Adult Workers showing—

- (a) the name of each adult worker in the factory;
- (b) the nature of his work,
- (c) the group, if any, in which he is included,

- (d) where his group works on shifts, the relay to which he is allotted, and
- (e) such other particulars as may be prescribed :

Provided that, if the Inspector is of opinion that any muster roll or register maintained as part of the routine of a factory gives in respect of any or all of the workers in the factory the particulars required under this section, he may, by order in writing, direct that such muster roll or register shall to the corresponding extent, be maintained in place of and be treated as the Register of Adult Workers in that factory :

Provided further that, where the Government is satisfied that the conditions of work in any factory or class of factories are such that there is no appreciable risk of contravention of the provisions of this Chapter in the case of that factory or factories of that class, as the case may be, the Government may, by written order, exempt, on such conditions as they may impose, that factory or all factories of that class, as the case may be, from the provisions of this section.

(2) The Government may make rules prescribing the form of the Register of Adult Workers, the manner in which it shall be maintained and the period for which it shall be preserved.

42. No adult worker shall be allowed to work otherwise than in accordance with the Notice of Periods for Work for Adults displayed under sub-section (1) of section 39 and the entries made before-hand against his name in the Register of Adult Workers maintained under section 41.

Hours of work to correspond with Notice under section 39 and Register under section 41.

43. (1) The Government may make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory, and the provisions of this Chapter other than the provisions of clause (b) of sub-section (1) of section 45 and the provisos to that sub-section shall not apply to any person so defined.

Power to make rules exempting from restrictions.

(2) The Government may make rules for adult workers providing for the exemption, to such extent and subject to such conditions as may be prescribed in such rules,—

- (a) of workers engaged on urgent repairs—
from the provisions of sections 34, 35, 36, 37 and 38 ;
- (b) of workers engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory—from the provisions of sections 34, 36, 37 and 38 ;
- (c) of workers engaged in work which is necessarily so intermittent that the intervals during which they do not work while on duty ordinarily amount to more than the intervals for rest required under section 37—from the provisions of sections 34, 36, 37 and 38 ;
- (d) of workers engaged in any work which for technical reasons must be carried on continuously throughout the day—from the provisions of sections 34, 35, 36, 37 and 38 ;
- (e) of workers engaged in making or supplying articles of prime necessity which must be made or supplied every day—from the provisions of section 35 ;
- (f) of workers engaged in a manufacturing process which cannot be carried on except during fixed seasons—from the provisions of section 35 ;
- (g) of workers engaged in a manufacturing process which cannot be carried on except at times dependent on the irregular action of natural forces—from the provision of section 35 and section 37 ; and

(h) of workers engaged in engine rooms or boiler-houses—from the provisions of section 35.

(3) Rules made under sub-section (2) providing for any exemption may also provide for any consequential exemption from the provisions of sections 39 and 40 which the Government may deem to be expedient, subject to such conditions as they may impose.

(4) In making rules under this section the Government shall prescribe the maximum limits for the weekly hours of work for all classes of workers, and any exemption given, other than an exemption under clause (a) of sub-section (2), shall be subject to such limits.

(5) Rules made under this section shall remain in force for not more than three years.

44. (1) Where the Government are satisfied that owing to the nature of the work carried on or to other circumstances, it is unreasonable to require that the periods of work of any adult workers in any factory or class of factories should be fixed beforehand, they may, by written order, relax or modify the provisions of sections 39 and 40 in respect of such workers to such extent and in such manner as they may think fit, and subject to such conditions as they may deem expedient to ensure control over periods of work.

Power to
make orders
exempting
from res-
trictions.

(2) The Government, or subject to the control of the Government, the Chief Inspector, may, by written order, exempt on such conditions as they or he may deem expedient, any or all of the adult workers in any factory or group or class of factories, from any or all of the provisions of sections 34, 35, 36, 37, 38, 39 and 40, on the ground that the exemption is required to enable the factory or factories to deal with an exceptional press of work.

(3) Any exemption given under sub-section (2) in respect of weekly hours of work shall be subject to

the maximum limits prescribed under sub-section (4) of section 43.

(4) An order under sub-section (2) shall remain in force for such period as it may specify, but in no case for more than two months from the date on which notice thereof is given to the manager of the factory.

Further
restrictions
on the
employment
of women.

45. (1) The provisions of this Chapter shall, in their application to women workers in factories, be supplemented by the following further restrictions, namely :—

(a) no exemption from the provisions of section 36 may be granted in respect of any woman; and

(b) no woman shall be allowed to work in a factory except between 6 A. M. and 7 P. M. :

Provided that the Government may, by notification in the Cochin Government Gazette, in respect of any class or classes of factories and for the whole year or any part of it, vary the limits laid down in clause (b) to any span of thirteen hours between 5 A. M. and 7-30 P. M.

Provided further that, in respect of any seasonal factory or class of seasonal factories in a specified area, the Government may make rules imposing a further restriction by defining the period or periods of the day within which women may be allowed to work, such that the period or periods so defined shall lie within the span fixed by clause (b) or under the above proviso and shall not be less than ten hours in the aggregate.

(2) The Government may make rules providing for the exemption from the above restrictions, to such extent and subject to such conditions as they may prescribe, of women working in fish-curing or fish-canning factories where the employment of women beyond the said hours is necessary to prevent damage to or deterioration in any raw material.

(3) Rules made under sub-section (2) shall remain in force for not more than three years.

46. Where a worker works on a shift which extends over midnight, the ensuing day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted towards the previous day:

Special provision for night-shifts.

Provided that the Government may, by order in writing, direct that in the case of any specified factory or any specified class of workers therein the ensuing day shall be deemed to be the period of twenty-four hours beginning when such shift begins and that the hours worked before midnight shall be counted towards the ensuing day.

47. (1) Where a worker in any factory works for more than sixty hours in any week,

Extra pay for over-time.

or where a worker in a factory other than a seasonal factory works for more than ten hours in any day,

he shall be entitled in respect of the overtime worked to pay at the rate of one-and-a half times his ordinary rate of pay.

(2) Where a worker in a factory other than a seasonal factory works for more hours in any week than are permitted under section 34, he shall be entitled, in respect of the overtime worked excluding any overtime in respect of which he is entitled to extra pay under subsection (1) to pay at the rate of one-and-a quarter times his ordinary rate of pay.

(3) Where any workers are paid on a piece rate basis, the Government in consultation with the industry concerned may, for the purposes of this section, fix time rates as nearly as possible equivalent to the average rate of earnings of those workers, and the rates so fixed shall be deemed to be the ordinary rates of pay of those workers for the purposes of this section.

(4) The Government may prescribe the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.

Restriction
on double
employment.

48. No adult worker shall be allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.

Control of
overlapping
shifts.

49. The Government may make rules providing that in any specified class or classes of factories work shall not be carried on by a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time, save with the permission of the Government and subject to such conditions as they may impose, either generally or in the case of any particular factory.

CHAPTER V.

SPECIAL PROVISIONS FOR ADOLESCENTS AND CHILDREN.

Prohibition
of employ-
ment of
young
children.

50. No child who has not completed his twelfth year shall be allowed to work in any factory.

Non-adult
workers to
carry tokens
giving re-
ference to
certificates
of fitness.

51. No child and no adolescent shall be allowed to work in any factory unless—

- (a) a certificate of fitness granted to him under section 52 is in the custody of the manager of the factory, and
- (b) he carries while he is at work a token giving a reference to such certificate.

Certificates
of fitness.

52. (1) A certifying surgeon shall, on the application of any young person who wishes to work in a factory, or of the parent or guardian of such person, or of the manager of the factory in which such person wishes to work, examine such person and ascertain his fitness for such work.

(2) The certifying surgeon, after examination, may grant to such person, in the prescribed form,—

- (a) a certificate of fitness to work in a factory as a child, if he is satisfied that such person has completed his twelfth year, that he has attained the prescribed physical standards

- (if any), and that he is fit for such work ; or
- (b) a certificate of fitness to work in a factory as an adult, if he is satisfied that such person has completed his fifteenth year and is fit for a full day's work in a factory.

(3) A certifying surgeon may revoke any certificate granted under sub-section (2) if, in his opinion, the holder of it is no longer fit to work in the capacity stated therein in a factory.

(4) Where a certifying surgeon or a practitioner authorised under sub-section (2) of section 12, refuses to grant a certificate or a certificate of the kind requested, or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate, state his reasons in writing for so doing.

53. (1) An adolescent who has been granted a certificate of fitness to work in a factory as an adult, under clause (b) of sub-section (2) of section 52, and who, while at work in a factory carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes of Chapter IV.

Effect of certificate granted to adolescent.

(2) An adolescent who has not been granted a certificate of fitness to work in a factory as an adult, under sub-section (2) of section 52, shall, notwithstanding his age, be deemed to be a child for the purposes of this Act.

54. (1) No child shall be allowed to work in a factory for more than five hours in any day.

Restrictions on the working hours of a child.

(2) The hours of work of a child shall be so arranged that they shall not spread over more than seven-and-a-half hours in any day.

(3) No child shall be allowed to work in a factory except between 6 A. M. and 7 P. M. :

Provided that the Government may, by notification in the Cochin Government Gazette, in respect

of any class or classes of factories and for the whole year or any part of it, vary these limits to any span of thirteen hours between 5 A. M. and 7-30 P. M.

(4) The provisions of section 35 shall apply also to child workers, but no exemption from the provisions of that section may be granted in respect of any child.

(5) No child shall be allowed to work in any factory on any day on which he has already been working in another factory.

Notice of
Periods for
Work for
Children.

55. (1) There shall be displayed and correctly maintained in every factory, in accordance with the provisions of sub-section (2) of section 76, a Notice of Periods for Work for Children, showing clearly the periods within which children may be required to work.

(2) The periods shown in the Notice required by sub-section (1) shall be fixed before-hand in accordance with the method laid down for adults in section 39 and shall be such that children working for those periods would not be working in contravention of section 54.

(3) The provisions of section 40 shall apply also to the Notice of Periods for Work for Children.

(4) The Government may make rules prescribing forms for the Notice of Periods for Work for Children and the manner in which it shall be maintained.

Register
of Child
Workers.

56. (1) The manager of every factory in which children are employed shall maintain a Register of Child Workers showing—

- (a) the name of each child worker in the factory,
- (b) the nature of his work,
- (c) the group, if any, in which he is included,
- (d) where his group works on shifts, the relay to which he is allotted,

- (e) the number of his certificate of fitness granted under section 52, and
- (f) such other particulars as may be prescribed.

(2) The Government may make rules prescribing the form of the Register of Child Workers, the manner in which it shall be maintained, and the period for which it shall be preserved.

57. No child shall be allowed to work otherwise than in accordance with the Notice of Periods for Work for Children displayed under sub-section (1) of section 55 and the entries made beforehand against his name in the Register of Child Workers maintained under sub-section (1) of section 56.

Hours of work to correspond with Notice and Register.

58. Where an Inspector is of opinion—

- (a) that any person working in a factory without a certificate of fitness is a child or an adolescent, or
- (b) that a child or adolescent working in a factory with a certificate is no longer fit to work in the capacity stated therein,

Power to require medical examination.

he may serve on the manager of the factory a notice requiring that such person, or that such child or adolescent, as the case may be, shall be examined by a certifying surgeon or by a practitioner authorised under sub-section (2) of section 12, and such person, child or adolescent shall not, if the Inspector so directs, be allowed to work in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be.

59. The Government may make rules—

- (a) prescribing the forms of certificates of fitness to be granted under section 52, providing for the grant of duplicates in the event of loss of the original certificates, and fixing the fees which may be charged for such certificates and such duplicates ;

Power to make rules.

- (b) prescribing the physical standards to be attained by children and adolescents ;
- (c) regulating the procedure of certifying surgeons under this Chapter, and specifying other duties which they may be required to perform in connection with the employment of children and adolescents in factories ; and
- (d) providing for any other matter which may be expedient in order to give effect to the provisions of this Chapter.

CHAPTER VI.

PENALTIES AND PROCEDURE.

Penalty for
contraven-
tions of Act
and rules.

60. If in any factory—
- (a) there is any contravention—
 - (i) of any of the provisions of sections 13 to 29 inclusive, or
 - (ii) of any order made under any of the said sections, or
 - (iii) of any of the said sections read with rules made in pursuance thereof under clause (a) of section 32, or
 - (iv) of any rule made under any of the said sections or under clause (b), clause (c), or clause (g) of section 32 or section 33, or
 - (v) of any condition imposed under sub-section (3) of section 31, or
 - (b) any person is allowed to work in contravention—
 - (i) of any of the provisions of sections 34 to 38 inclusive, 42, 45 and 48, or
 - (ii) of any rule made under any of the said sections or under section 49, or

- (iii) of any condition attached to any exemption granted under section 43 or section 44 or section 45 or to any permission granted under section 38 or section 49, or
- (c) there is any contravention of any of the provisions of sections 39 to 41 inclusive, or of any rule made under section 39, section 41 or section 47, or of any condition attached to any exemption granted under section 41 or to any modification or relaxation made under section 44, or
- (d) any person is not paid any extra pay to which he is entitled under the provisions of section 47, or
- (e) any adolescent or child is allowed to work in contravention of any of the provisions of sections 50, 51, 54, 55, 57 and 58, or
- (f) there is any contravention of section 55 or section 56 or of any rules made under either of these sections or under clause (d) of section 59, the manager and occupier of the factory shall each be punishable with fine which may extend to five hundred rupees :

Provided that if both the manager and the occupier are convicted, the aggregate of the fines inflicted in respect of the same contravention shall not exceed this amount.

61. If any person who has been convicted of any offence punishable under clauses (b) to (f), inclusive, of section 60 is again guilty of an offence involving a contravention of the same provision, he shall be punishable on the second conviction with fine which may extend to seven hundred and fifty rupees and shall not be less than one hundred rupees, and if he is again so guilty, shall be punishable on the third or any subsequent conviction with fine which may extend to one thousand rupees and shall not be less than two hundred and fifty rupees :

Enhanced penalty in certain cases after previous conviction.

Provided that for the purposes of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which he is being punished :

Provided further that the Court, if it is satisfied that there are exceptional circumstances warranting such a course, may, after recording its reasons in writing, impose a smaller fine than is required by this section.

Penalty for failure to give notice of commencement of work or of change of manager.

62. An occupier of a factory who fails to give any notice required by sub-section (1) or sub-section (2) of section 9 shall be punishable with fine which may extend to five hundred rupees.

Penalty for obstructing Inspector.

63. Whoever wilfully obstructs an Inspector in the exercise of any power under section 11, or fails to produce on demand by an Inspector any registers or other documents in his custody kept in pursuance of this Act or of any of the rules made thereunder, or conceals or prevents any worker in a factory from appearing before or being examined by an Inspector, shall be punishable with fine which may extend to five hundred rupees.

Penalty for failure to give notice of accidents.

64. A manager of a factory who fails to give notice of an accident as required under section 30 shall be punishable with fine which may extend to five hundred rupees.

Penalty for failure to make returns.

65. If in respect of any factory any return is not furnished as required under section 77, the manager and the occupier of the factory shall each be liable to fine which may extend to five hundred rupees :

Provided that if both the manager and the occupier are convicted the aggregate of the fines inflicted shall not exceed this amount.

Penalty for smoking or using naked light in vicinity of inflammable material.

66. Whoever smokes, or uses a naked light or causes or permits any such light to be used in the vicinity of any inflammable material in a factory shall be punishable with fine which may extend to five hundred rupees.

Exception.—This provision does not extend to the use, in accordance with such precautions as may be prescribed, of a naked light in the course of a manufacturing process.

67. Whoever knowingly uses or attempts to use, as a certificate granted to himself under section 52, a certificate granted to another person under that section, or who, having procured such a certificate, knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with fine which may extend to twenty rupees.

Penalty for using false certificates.

68. If a child works in a factory on any day on which he has already been working in another factory the parent or guardian of the child or the person having custody of or control over him, or obtaining any direct benefit from his wages, shall be punishable with fine which may extend to twenty rupees, unless it appears to the Court that the child so worked without the consent, connivance or wilful default of such parent, guardian or person.

Penalty on guardian for permitting double employment of a child.

69. A manager of a factory who fails to display the notice required under sub-section (1) of section 76 or by any rule made under this Act, or to display or maintain any such notice as required by sub-section (2) of that section, shall be punishable with fine which may extend to five hundred rupees.

Penalty for failure to display certain notices.

70. (1) Where the occupier of a factory is a firm or other association of individuals, any one of the individual partners or members thereof may be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable:

Determination of occupier for purposes of this Chapter.

Provided that the firm or association may give notice to the Inspector that it has nominated one of its number who is resident in Cochin State to be the occupier of the factory for the purposes of this Chapter, and such

individual shall, so long as he is so resident, be deemed to be the occupier for the purposes of this Chapter until further notice cancelling his nomination is received by the Inspector or until he ceases to be a partner or member of the firm or association.

(2) Where the occupier of a factory is a company, any one of the directors thereof, or, in the case of a private company, any one of the share-holders thereof, may be prosecuted and punished under this Chapter for any offence for which the occupier of the factory is punishable :

Provided that the company may give notice to the Inspector that it has nominated a director, or, in the case of a private company, a share-holder, who is resident in either case in Cochin State, to be the occupier of the factory for the purposes of this Chapter, and such director or share-holder shall so long as he is so resident be deemed to be the occupier of the factory for the purposes of this Chapter until further notice cancelling his nomination is received by the Inspector or until he ceases to be a director or share-holder.

Exemption
of occupier
or manager
from
liability in
certain
cases.

71. (1) Where the occupier or manager of a factory is charged with an offence against this Act, he shall be entitled upon complaint duly made by him to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier or manager of the factory proves to the satisfaction of the Court.—

(a) that he has used due diligence to enforce the execution of this Act, and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance,

that other person shall be convicted of the offence and shall be liable to the like fine as if he were the

occupier or manager, and the occupier or manager shall be discharged from any liability under this Act.

(2) When it is made to appear to the satisfaction of the Inspector at any time prior to the institution of the proceedings.—

- (a) that the occupier or manager of the factory has used all due diligence to enforce the execution of this Act, and
- (b) by what person the offence has been committed and
- (c) that it has been committed without the knowledge, consent or connivance of the occupier or manager, and in contravention of his orders,

the Inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the occupier or manager of the factory, and such person shall be liable to the like fine as if he were the occupier or manager.

72. If a child over the age of six years is found inside any part of a factory in which children are working, he shall, until the contrary is proved, be deemed to be working in the factory. Presumption as to employment.

73. (1) When an act or omission would, if a person were under or over a certain age, be an offence punishable under this Act and such person is in the opinion of the Court apparently under or over such age, the burden shall be on the accused to prove that such person is not under or over such age. Evidence as to age.

(2) A declaration in writing by a certifying surgeon relating to a worker that he has personally examined him and believes him to be under or over the age set forth in such declaration shall, for the purposes of

this Act, be admissible as evidence of the age of that worker.

Cognizance
of offences.

74. (1) No prosecution under this Act, except a prosecution under section 66, shall be instituted except by or with the previous sanction of the Inspector.

(2) No Court inferior to that of a Magistrate of the first class shall try any offence against this Act or any rule or order made thereunder, other than an offence under section 66 or section 67.

Limitation
of prosecu-
tions.

75. No Court shall take cognizance of any offence under this Act or any rule or order thereunder, other than an offence under section 62 or section 64, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed :

Provided that when the offence consists of disobeying a written order made by an Inspector, complaint thereof may be made within twelve months of the date on which the offence is alleged to have been committed.

CHAPTER VII.

SUPPLEMENTAL.

Display of
factory
notices.

76. (1) In addition to the notices required to be displayed in any factory by this Act or the rules made thereunder, there shall be displayed in every factory a notice containing such abstracts of this Act and of the rules made thereunder, in English and in the Vernacular of the majority of the workers as the Government may prescribe.

(2) All notices required to be displayed in a factory shall be displayed at some conspicuous place at or near the main entrance to the factory, and shall be maintained in a clean and legible condition.

77. The Government may make rules requiring occupiers or managers of factories to submit such returns, occasional or periodical, as may in their opinion be required for the purposes of this Act.

Power to make rules.

78. (1) All rules made under this Act shall be subject to the condition of previous publication, and the date to be specified under section 21 of the General Clauses Act, III of 1079, shall not be less than three months from the date on which the draft of the proposed rules was published.

Publication of rules.

(2) All such rules shall be published in the Cochin Government Gazette and shall, unless some later date is appointed, come into force on the date of such publication:

79. This Act shall apply to factories belonging to the Sirkar.

Application to Sirkar factories.

80. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Protection to persons acting under this Act.

81. The Act VII of 1083 is hereby repealed :

Repeal and savings.

Provided that all notifications issued, appointments made, certificates given and other acts done under the said Act shall, so far as may be, be deemed to be respectively issued, made, given and done under this Act,

and that any enactment or document referring to the enactment hereby repealed shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

**PROCLAMATION,
(I of 1113.)**

**BY HIS HIGHNESS SIR SREE RAMA VARMA, G. C. I. E.,
MAHARAJA OF COCHIN.**

Issued under date the 9th day of Kanni 1113 corresponding to the 25th day of September 1937.

WHEREAS the Bill to amend and consolidate the law relating to Municipalities in Cochin now pending with the Legislative Council is expected to be placed on the Statute Book at an early date and Whereas Our Government consider it advisable that the new Municipal Councils should be constituted and begin to function under the provisions of the new Act immediately after the same is placed on the Statute Book We are hereby pleased to command, notwithstanding anything contained in the Cochin Municipal Act, XI of 1096, or in the Notifications issued thereunder, and in continuation of the extension of the term already granted by Us by means of Our Proclamation issued under date the 10th day of Karkadagam 1111 corresponding to the 25th day of July 1936, that the term of office of the Councillors and the Chairmen of the present Councils of Trichur, Ernakulam, Mattancheri and Chittur-Tattamangalam Municipalities shall stand extended until the day Our Government notifies in Our Government Gazette as the day on which the term of office of the aforesaid Councillors and Chairmen shall terminate.

THE PAYMENT OF WAGES ACT,
(IV OF 1113.)
CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title, extent, commencement and application.
 2. Definitions.
 3. Responsibility for payment of wages.
 4. Fixation of wage-periods.
 5. Time of payment of wages.
 6. Wages to be paid in current coin or currency notes.
 7. Deductions which may be made from wages.
 8. Fines.
 9. Deductions for absence from duty.
 10. Deductions for damage or loss.
 11. Deductions for services rendered.
 12. Deductions for recovery of advances.
 13. Deductions for payments to co-operative societies and insurance schemes.
 14. Inspectors.
 15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.
 16. Single application in respect of claims from unpaid group.
 17. Appeal.
 18. Powers of authorities appointed under section 15.
 19. Power to recover from employer in certain cases.
 20. Penalty for offences under the Act.
 21. Procedure in trial of offences.
 22. Bar of suits.
 23. Contracting out.
 24. Display by notice of abstracts of the Act.
 25. Rule-making power.
-

THE PAYMENT OF WAGES ACT,

(IV OF 1113.)

AN ACT TO REGULATE THE PAYMENT OF WAGES TO CERTAIN CLASSES OF PERSONS EMPLOYED IN INDUSTRY.

Passed by His Highness the Maharaja of Cochin on the 25th day of Kanni 1113, corresponding to the 11th day of October, 1937.

Whereas it is expedient to regulate the payment of wages to certain classes of persons employed in industry ; it is hereby enacted as follows :—

Short title, extent, commencement and application.

1. (1) This Act may be called the Cochin Payment of Wages Act, IV of 1113.

(2) It extends to the whole of Cochin State.

(3) It shall come into force on such date as Government may, by notification in the Cochin Government Gazette, appoint.

(4) It applies in the first instance to the payment of wages to persons employed in any factory and to persons employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration.

(5) Government may, after giving three months' notice of its intention of so doing, by notification in the Cochin Government Gazette, extend the provisions of the Act or any of them to the payment of wages to any class of persons employed in any industrial establishment or in any class or group of industrial establishments.

(6) Nothing in this Act shall apply to wages payable in respect of a wage-period which, over such wage-period, average two hundred rupees a month or more.

Definitions.

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

(i) “factory” means a factory as defined in clause (i) of section 2 of the Cochin Factories Act, 1113;

(ii) “industrial establishment” means any—

(a) tramway or motor omnibus service;

(b) dock, wharf or jetty;

(c) inland steam-vessel;

(d) mine, quarry or oil-field;

(e) plantation;

(f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;

(iii) “plantation” means any estate which is maintained for the purpose of growing cinchona, rubber, coffee or tea, and on which twenty-five or more persons are employed for that purpose;

(iv) “prescribed” means prescribed by rules made under this Act;

(v) “railway administration” has the meaning assigned to it in clause (6) of section 3 of the Cochin Railways Act, XI of 1111; and

(vi) “wages” means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include—

(a) the value of any house-accommodation, supply of light, water, medical attendance or other

amenity, or of any service excluded by general or special order of Government;

(b) any contribution paid by the employer to any pension fund or provident fund;

(c) any travelling allowance or the value of any travelling concession;

(d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(e) any gratuity payable on discharge.

Responsibility for payment of wages.

3. Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act:

Provided that, in the case of persons employed (otherwise than by a contractor)—

(a) in factories, if a person has been named as the manager of factory under clause (e) of sub-section (1) of section 9 of the Cochin Factories Act, 1113,

(b) in industrial establishments, if there is a person responsible to the employer for the supervision and control of the industrial establishment,

(c) upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned, the person so named, the person so responsible to the employer, or the person so nominated, as the case may be, shall be responsible for such payment.

Fixation of wage-periods.

4. (1) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such wages shall be payable.

(2) No wage-period shall exceed one month.

Time of payment of wages.

5. (1) The wages of every person employed upon or in—

(a) any railway, factory or industrial establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day,

(b) any other railway, factory or industrial establishment, shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable.

(2) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated.

(3) Government may by general or special order exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) from the operation of this section in respect of the wages of any such persons or class of such persons.

(4) All payments of wages shall be made on a working day.

6. All wages shall be paid in current coin or currency notes or in both.

Wages to be paid in current coin or currency notes.

7. (1) Notwithstanding the provisions of subsection 2 of section 16 of the Cochin Railways Act, XI of IIII, the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act.

Deductions which may be made from wages.

Explanation:—Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

(2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely :

(a) fines ;
 (b) deductions for absence from duty ;
 (c) deductions for damage to or loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default ;

(d) deductions for house-accommodation supplied by the employer ;

(e) deductions for such amenities and services supplied by the employer as the Government may, by general or special order, authorise ;

Explanation.—The word 'services' in this sub-clause does not include the supply of tools and raw materials required for the purposes of employment.

(f) deductions for recovery of advances or for adjustment of overpayments of wages ;

(g) deductions of income-tax payable by the employed person ;

(h) deductions required to be made by order of a Court or other authority competent to make such order ;

(i) deductions for subscriptions to, and for repayment of advances from any provident fund to which the Cochin Provident Funds Act, XXIII of 1111, applies or any recognised provident fund as defined in section 56 A of the Cochin Income-tax Act, VIII of 1108, or any provident fund approved in this behalf by Government, during the continuance of such approval ; and

(j) deductions for payments to co-operative societies approved by Government or to a scheme of insurance maintained by the Indian Post Office.

Fines.

8. (1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer with the previous approval of

Government or of the prescribed authority, may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.

(3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to half-an-anna in the rupee of the wages payable to him in respect of that wage-period.

(5) No fine shall be imposed on any employed person who is under the age of fifteen years.

(6) No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of sixty days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

Explanation.—When the persons employed upon or in any railway, factory or industrial establishment are

part only of a staff employed under the same management, all such realisations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

Deductions
for absence
from duty.

9. (1) Deductions may be made under clause (b) of sub-section (2) of section 7 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made a larger proportion than the period for which he was absent bears to the total period, within such wage-period, during which by the terms of his employment, he was required to work :

Provided that, subject to any rules made in this behalf by Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

Explanation.—For the purposes of this section, an employed person shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

Deductions
for damage
or loss.

10. (1) A deduction under clause (c) of sub-section (2) of section 7 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person and shall not be made until the

employed person has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

(2) All such deductions and all realisations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

11. A deduction under clause (d) or clause (e) of sub-section (2) of section 7 shall not be made from the wages of an employed person, unless the house-accommodation, amenity or service has been accepted by him, as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house-accommodation, amenity or service supplied and in the case of a deduction under the said clause (e), shall be subject to such conditions as Government may impose.

Deductions for services rendered.

12. Deductions under clause (f) of sub-section (2) of section 7 shall be subject to the following conditions, namely :—

Deductions for recovery of advances.

(a) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for travelling expenses;

(b) recovery of advances of wages not already earned shall be subject to any rules made by Government regulating the extent to which such advances may be given and the instalments by which they may be recovered.

13. Deductions under clause (j) of sub-section (2) of section 7 shall be subject to such conditions as Government may impose.

Deductions for payments to co-operative societies and insurance schemes.

14. (1) An Inspector of Factories appointed under sub-section (1) of section 10 of the Cochin Factories Act,

Inspectors.

1113, shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.

(2) Government may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.

(3) Government may by notification in the Cochin Government Gazette, appoint such other persons as it thinks fit to be Inspectors for the purposes of this Act, and may define the local limits within which and the class of factories and industrial establishments in respect of which they shall exercise their functions.

(4) An Inspector may, at all reasonable hours, enter on any premises, and make such examination of any register or document relating to the calculation or payment of wages and take on the spot or otherwise such evidence of any person, and exercise such other powers of inspection, as he may deem necessary for carrying out the purposes of this Act.

(5) Every Inspector shall be deemed to be a public servant within the meaning of the Cochin Penal Code.

15. (1) Government may, by notification in the Cochin Government Gazette, appoint any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area.

Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in

writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3) :

Provided that every such application shall be presented within six months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be :

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be, necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter :

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to—

(a) a bonafide error or bonafide dispute as to the amount payable to the employed person, or

(b) the occurrence of an emergency, or the existence of exceptional circumstances such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(c) the failure of the employed person to apply for or accept payment.

(4) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, the authority may direct that a penalty not exceeding fifty rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application.

(5) Any amount directed to be paid under this section may be recovered—

(a) if the authority is a Magistrate by the authority as if it were a fine imposed by him as Magistrate, and

(b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

Single application in respect of claims from unpaid group.

16. (1) Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if their wages for the same wage-period or periods have remained unpaid after the day fixed by section 5.

(2) A single application may be presented under section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group, and in such case the maximum compensation that may be awarded under sub-section (3) of section 15 shall be ten rupees per head.

(3) The authority may deal with any number of separate pending applications, presented under section 15 in respect of persons belonging to the same unpaid group, as a single application presented under sub-section (2) of this section and the provisions of that sub-section shall apply accordingly.

17. (1) An appeal against a direction made under sub-section (3) or sub-section (4) of section 15 may be preferred, within thirty days of the date on which the direction was made before the District Court— Appeal.

(a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees, or

(b) by an employed person, if the total amount of wages claimed to have been withheld from him or from the unpaid group to which he belonged exceeds fifty rupees, or

(c) by any person directed to pay a penalty under sub-section (4) of section 15.

(2) Save as provided in sub-section (1), any direction made under sub-section (3) or sub-section (4) of section 15 shall be final.

18. Every authority appointed under sub-section (1) of section 15 shall have all the powers of a Civil Court under the Cochin Code of Civil Procedure, XXIX of 1111, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of section 172 and of Chapter 35 of the Code of Criminal Procedure, II of 1086.

Powers of authorities appointed under section 15.

19. When the authority referred to in section 15 or the Court referred to in section 17 is unable to recover from any person (other than an employer) responsible under section 3 for the payment of wages any amount directed by such authority under section 15 or section 17 to be paid by such person, the authority shall recover the amount from the employer of the employed person concerned.

Power to recover from employer in certain cases.

Penalty for offences under the Act.

20. (1) Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the following sections, namely, section 5 and sections 7 to 13, both inclusive, shall be punishable with fine which may extend to five hundred rupees.

(2) Whoever contravenes the provisions of section 4, section 6 or section 24 shall be punishable with fine which may extend to two hundred rupees.

Procedure in trial of offences.

21. (1) No Court shall take cognizance of a complaint against any person for an offence under sub-section (1) of section 20, unless an application in respect of the facts constituting the offence has been presented under section 15 and has been granted wholly or in part and the authority empowered under the latter section or the appellate Court granting such application has sanctioned the making of the complaint.

(2) Before sanctioning the making of a complaint against any person for an offence under sub-section (1) of section 20, the authority empowered under section 15 or the appellate Court, as the case may be, shall give such person an opportunity of showing cause against the granting of such sanction, and the sanction shall not be granted if such person satisfies the authority or Court that his default was due to—

(a) a *bonafide* error or *bonafide* dispute as to the amount payable to the employed person, or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(c) the failure of the employed person to apply for or accept payment.

(3) No Court shall take cognizance of a contravention of section 4 or of section 6 or of a contravention of any rule made under section 26 except on a complaint made by or with the sanction of an Inspector under this Act.

(4) In imposing any fine for an offence under sub-section (1) of section 20 the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 15.

22. No court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed— Bar of suits.

(a) forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17; or

(b) has formed the subject of a direction under section 15 in favour of the plaintiff; or

(c) has been adjudged, in any proceeding under section 15 not to be owed to the plaintiff; or

(d) could have been recovered by an application under section 15.

23. Any contract or agreement, whether made before or after the commencement of this Act whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right. Contracting out.

24. The person responsible for the payment of wages to persons employed in a factory shall cause to be displayed in such factory a notice containing such abstracts of this Act and of the rules made thereunder in English and in the language of the majority of the persons employed in the factory, as may be prescribed. Display by notice of abstracts of the Act.

Rule making
power.

25. (1) Government may make rules to regulate the procedure to be followed by the authorities and Courts referred to in Sections 15 and 17.

(2) Government may, by notification in the Cochin Government Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(3) In particular and without prejudice to the generality of the foregoing power, rules made under sub-section (2) may—

(a) require the maintenance of such records, registers, returns and notices as are necessary for the enforcement of the Act and prescribe the form thereof ;

(b) require the display in a conspicuous place on premises where employment is carried on of notices specifying rates of wages payable to persons employed on such premises ;

(c) provide for the regular inspection of the weights, measures and weighing machines used by employers in checking or ascertaining the wages of persons employed by them ;

(d) prescribe the manner of giving notice of the days on which wages will be paid ;

(e) prescribe the authority competent to approve under sub-section (1) of Section 8 acts and omissions in respect of which fines may be imposed ;

(f) prescribe the procedure for the imposition of fines under Section 8 and for the making of the deductions referred to in Section 10 ;

(g) prescribe the conditions subject to which deductions may be made under the proviso to sub-section (2) of Section 9 ;

(h) prescribe the authority competent to

approve the purposes on which the proceeds of fines shall be expended ;

(i) prescribe the extent to which advances may be made and the instalments by which they may be recovered with reference to clause (b) of Section 12 ;

(j) regulate the scale of costs which may be allowed in proceedings under this Act ;

(k) prescribe the amount of Court-fees payable in respect of any proceedings under this Act ;

(l) prescribe the abstracts to be contained in the notices required by Section 24.

(4) In making any rule under this section Government may provide that a contravention of the rule shall be punishable with fine which may extend to two hundred rupees.

(5) All rules made under this section shall be subject to the condition of previous publication, and the date to be specified under Cl. (3) of Section 21 of the Cochin General Clauses Act, III of 1079, shall not be less than three months from the date on which the draft of the proposed rules was published.

THE COCHIN BOILERS ACT.

(V OF 1113.)

CONTENTS.

PREAMBLE.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.

CHAPTER I.

LIMITATION OF APPLICATION.

3. Limitation of application to boilers.
4. Power to limit extent.

CHAPTER II.
OF INSPECTORS.

SECTIONS.

5. Appointment of Inspectors.

CHAPTER III.

OF REGISTRATION AND INSPECTION OF BOILERS.

6. Prohibition of use of unregistered or 'uncertificated boilers.
7. Registration.
8. Renewal of certificate.
9. Provisional orders.
10. Use of boiler pending grant of certificate.
11. Withdrawal or revocation of certificate or provisional order.

CHAPTER IV.

STRUCTURAL ALTERATIONS, ETC., TO BOILERS.

12. Alterations and renewals to boilers.
13. Alterations and renewals to steam pipes.

CHAPTER V.

DUTIES OF OWNERS OF BOILERS.

14. Duty of owner at examination.
15. Production of certificates, etc.
16. Transfer of certificates.

CHAPTER VI.

POWERS OF ENTRY.

17. Powers of entry.

CHAPTER VII.

ACCIDENTS.

18. Report of accidents.

CHAPTER VIII.

OF APPEALS.

SECTIONS.

19. Appeals to the Chief Engineer.
20. Appeals to Appellate authority.
21. Finality of orders.

CHAPTER IX.

PENALTIES.

22. Minor penalties.
23. Penalties for illegal use of boilers.
24. Other penalties.
25. Penalty for tampering with register-mark.
26. Limitation and previous sanction for prosecution.
27. Trial of offences.

CHAPTER X.

POWER TO MAKE RULES.

28. Power to make rules.
29. Penalty for breach of rules.
30. Publication of rules.

CHAPTER XI.

MISCELLANEOUS

31. Recovery of fees, etc.
32. Applicability to the Government.
33. Power to suspend in case of emergency.
34. Repeal and savings.

THE COCHIN BOILERS ACT,

(V OF 1113.)

AN ACT TO CONSOLIDATE AND AMEND THE LAW
RELATING TO STEAM BOILERS.

*Passed by His Highness the Maharaja of Cochin on the
25th day of Kanni 1113, corresponding to
the 11th day of October, 1937.*

Whereas it is expedient to consolidate and amend Preamble.
the law relating to steam boilers, it is hereby enacted
as follows:—

PRELIMINARY.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Cochin Boilers Act, V of 1113.

(2) It extends to the whole of Cochin State.

(3) It shall come into force from such date as the Government may, by notification in the Cochin Government Gazette, declare.

Definitions.

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

(a) "Accident" means an explosion of a boiler or steam-pipe or any damage to a boiler or steam-pipe which is calculated to weaken the strength thereof so as to render it liable to explode ;

(b) "Boiler" means any closed vessel exceeding five gallons in capacity which is used expressly for generating steam under pressure and includes any mounting or other fitting attached to such vessel which is wholly or partly under pressure when steam is shut off ;

(c) "Inspector" means a person appointed to be an Inspector under this Act ;

(d) "Owner" includes any person using a boiler as agent of the owner thereof and any person using a boiler which he has hired or obtained on loan from the owner thereof ;

(e) "Prescribed" means prescribed by rules made under this Act ;

(f) "Steam-pipe" means any main pipe exceeding three inches in internal diameter through which steam passes directly from a boiler to a prime-mover or other first user, and includes any connected fitting of a steam-pipe ; and

(g) "Structural alteration, addition or renewal" shall not be deemed to include any renewal or replacement of a petty nature when the part or fitting used for

replacement is not inferior in strength, efficiency or otherwise to the replaced part or fitting.

CHAPTER I.

LIMITATION OF APPLICATION.

3. (1) Nothing in this Act shall apply in the case of any boiler or steam-pipe—

Limitation of application to boilers.

(a) in any steam-ship as defined in section 3 of the Indian Steam-ships Act, 1884, or in any steam-vessel as defined in section 2 of the Inland Steam-vessels Act, 1917, or

(b) belonging to or under the control of His Majesty's Navy or the Royal Indian Marine Service.

(2) The Diwan may, with the sanction of His Highness the Maharaja, by notification in the Cochin Government Gazette, declare that the provisions of the Act shall not apply in the case of boilers or steam-pipes, or of any specified class of boilers or steam-pipes, belonging to or under the control of any tramway or railway under State management or administered by any Company.

4. The Diwan may, with the sanction of His Highness the Maharaja, by notification in the Cochin Government Gazette, exclude any specified area from the operation of all or any specified provisions of this Act.

Power to limit extent.

CHAPTER II.

OF INSPECTORS.

5. (1) The Diwan, with the sanction of His Highness the Maharaja, may appoint one or more persons as he thinks fit to be Inspectors for the purposes of this Act and may define the local limits within which an Inspector shall exercise the powers and perform the duties conferred and imposed on an Inspector by or under this Act.

Appointment of Inspectors.

(2) Every Inspector shall be deemed to be a public servant within the meaning of the Cochin Penal Code, Act I of 1059.

CHAPTER III.

OF REGISTRATION AND INSPECTION OF BOILERS.

Prohibition
of use of un-
registered
or uncerti-
ficated
boiler,

6. Save as otherwise expressly provided in this Act no owner of a boiler shall use the boiler or permit it to be used—

- (a) unless it has been registered in accordance with the provisions of this Act;
- (b) in the case of any boiler which has been shifted from one place to another, until the fact has been reported in the prescribed manner;
- (c) unless a certificate or provisional order authorising the use of the boiler is for the time being in force under this Act;
- (d) at a pressure higher than the maximum pressure recorded in such certificate or provisional order;
- (e) if the Diwan has made rules requiring that boilers shall be in charge of persons holding certificates of competency, unless the boiler is in charge of a person holding the certificate required by such rules :

Provided that any boiler registered or any boiler certified under the Acts hereby repealed shall be deemed to have been registered or certified as the case may be, under this Act.

Registra-
tion.

7. (1) The owner of any boiler which is not registered under the provisions of this Act may apply in writing to the Inspector to have the boiler registered. Every such application shall be accompanied by the prescribed fee and shall be in the prescribed form.

(2) On receipt of an application under subsection (1) the Inspector shall fix a date, within 30 days or such shorter period as may be prescribed, from the date of the receipt, for the examination of the boiler, and shall give the owner thereof not less than 10 days' notice of the date so fixed.

(3) On the said date the Inspector shall proceed to measure and examine the boiler and to determine in the prescribed manner, the maximum pressure, if any, at which such boiler may be used, and may

(a) either forthwith or after satisfying himself that any structural alteration, addition or renewal which he may deem necessary has been made in or to the boiler or any steampipe attached thereto, register the boiler and assign a register number thereto, corresponding to the number of the entry concerning it in his register of boilers, hereinafter called the register number of the boiler, or

(b) refuse to register the boiler:

Provided that, where the Inspector refuses to register a boiler, he shall forthwith communicate his refusal to the owner of the boiler together with the reasons therefor.

(4) The Inspector shall, on registering the boiler issue to the owner a certificate in the prescribed form authorising the use of the boiler for a period not exceeding twelve months at a pressure not exceeding such maximum pressure as he thinks fit and as is in accordance with the rules made under this Act, provided that the Inspector shall, if he is unable to issue a certificate within forty-eight hours after the examination, grant to the owner a provisional order in writing specifying the pressure at which such boiler may, in his opinion, pending the issue of a certificate, be worked.

(5) When the boiler has been registered, the owner shall within the prescribed period cause the register

number to be permanently marked thereon in the prescribed manner.

Renewal of
certificate.

8. (1) A certificate authorising the use of a boiler shall cease to be in force,

(a) on the expiry of the period for which it was granted ; or

(b) when any accident occurs to the boiler ; or

(c) when the boiler is moved, the boiler not being a vertical boiler the heating surface of which is less than two hundred square feet, or a portable or vehicular boiler ; or

(d) when any structural alteration, addition or renewal is made in or to the boiler ; or

(e) if the Inspector in any particular case so directs, when any structural alteration, addition or renewal is made in or to any steam-pipe attached to the boiler, or

(f) on the communication to the owner of the boiler of an order of the Inspector prohibiting its use on the ground that it or any steam-pipe attached thereto is in a dangerous condition.

(2) Where an order is made under clause (f) of sub-section (1) the grounds on which the order is made shall be communicated to the owner with the order.

(3) When a certificate ceases to be in force the owner of the boiler may apply to the Inspector for a renewal thereof for such period not exceeding twelve months as he may specify in the application.

(4) An application under sub-section (3) shall be accompanied by the prescribed fee, and, on receipt thereof, the Inspector shall fix a date, within thirty days, or such shorter period as may be prescribed, from the date of the receipt for the examination of the boiler, and shall give the owner thereof not less than ten days' notice of the date so fixed :

Provided that, when the certificate has ceased to be in force owing to the making of any structural alteration, addition or renewal, the Inspector may dispense with the payment of any fee.

(5) On the said date the Inspector shall examine the boiler in the prescribed manner, and, if he is satisfied that the boiler and the steam-pipe or steam-pipes attached thereto are in good condition shall issue a renewed certificate authorising the use of the boiler for such period not exceeding twelve months and at a pressure not exceeding such maximum pressure as he thinks fit and as is in accordance with the rules made under this Act; provided that the Inspector shall, if he is unable to issue a certificate within 48 hours after the examination, grant to the owner a provisional order in writing specifying the pressure at which such boiler may, in his opinion, pending the issue or refusal of a certificate, be worked; and provided further that, if the Inspector,

- (a) proposes to issue any certificate,
 - (i) having validity for a less period than the period entered in the application, or
 - (ii) increasing or reducing the maximum pressure at which the boiler may be used, or
- (b) proposes to order any structural alteration, addition or renewal to be made in or to the boiler or any steam-pipe attached thereto, or of opinion that the boiler is not fit for use, he may renew the certificate on such terms and on such conditions, if any, as he thinks fit or may refuse to renew it, and shall, if he refuses to renew it, forthwith communicate his decision to the owner of the boiler together with the reasons therefor.

(6) Nothing in this section shall be deemed to prevent an owner of a boiler from applying for a renewed

certificate therefor at any time during the currency of a certificate.

(7) If no such Inspector is appointed or if the place of the Inspector falls vacant, and no other person is appointed as Inspector, the owner shall, before using or continuing to use the boiler, apply in the prescribed form with the prescribed fee to the Chief Engineer, informing him of his intention to register, use or continue to use the same. The Chief Engineer shall cause an examination of the boiler to be made as aforesaid by a competent person with the least possible delay and in any case within thirty days after the receipt of such notice and shall inform the owner of the date on which the examination will take place.

Provisional orders.

9. A provisional order granted under section 7 or 8 shall be in accordance with the rules made under this Act and shall cease to be in force:—

(a) on the expiry of six months from the date on which it is granted; or

(b) on the issue of the formal certificate; or

(c) in any of the cases referred to in clauses (b), (c), (d), (e) and (f) of sub-section (1) of section 8,

and on so ceasing to be in force, shall be surrendered to the Inspector.

Use of boiler pending grant of certificate.

10. (1) Notwithstanding anything hereinbefore contained when the period of a certificate relating to a boiler has expired, the owner shall, provided that he has applied before the expiry of that period for a renewal of the certificate, be entitled to use the boiler at the maximum pressure entered in the former certificate, pending the issue of orders on the application.

(2) Nothing in sub-section (1) shall be deemed to authorise the use of a boiler in any of the cases, referred to in clauses (b), (c), (d), (e) and (f) of sub-section (1) of section 8 occurring after the expiry of the period of the certificate.

11. The Chief Engineer may at any time withdraw or revoke any certificate or provisional order on the report of an Inspector or otherwise—

Withdrawal
or revoca-
tion of
certificate or
provisional
order.

(a) if there is reason to believe that the certificate or provisional order has been fraudulently obtained or has been granted erroneously or without sufficient examination ; or

(b) if the boiler, in respect of which it has been granted, has sustained injury or has ceased to be in good condition ; or

(c) where the Diwan has made rules requiring that boilers shall be in charge of persons holding certificates of competency, if the boiler is in charge of a person not holding the certificate required by such rules ; or

(d) where no such rules have been made, if the boiler is in charge of a person who is not, having regard to the condition of the boiler, in the opinion of the Chief Engineer, competent to have charge thereof :

Provided that,

(1) when the Chief Engineer withdraws or revokes any certificate or provisional order, he shall communicate to the owner of the boiler in writing the reasons therefor along with the order, and

(2) when the Chief Engineer withdraws or revokes a certificate or provisional order on the ground specified in clause (d), the order shall not take effect until the expiry of thirty days from the receipt of such communication.

CHAPTER IV.

STRUCTURAL ALTERATIONS, ETC., TO BOILERS.

12. No structural alteration, addition or renewal shall be made in or to any boiler registered under this Act unless, such alteration, addition or renewal has been sanctioned in writing by the Inspector.

Alterations
and renewals
to boilers.

Alterations
and renewals
to steam-
pipes.

13. Before the owner of any boiler registered under this Act makes any structural alteration, addition or renewal in or to any steam-pipe attached to the boiler, he shall transmit to the Inspector a report in writing of his intention, and shall send therewith such particulars of the proposed alteration, addition or renewal, as may be prescribed.

CHAPTER V.

DUTIES OF OWNERS OF BOILERS.

Duty of
owner at
examination.

14. (1) On any date fixed under this Act for the examination of a boiler, the owner shall be bound—

(a) to afford to the Inspector all reasonable facilities for the examination and all such information as may reasonably be required of him ;

(b) to have the boiler properly prepared and made ready for examination in the prescribed manner; and

(c) in the case of an application for the registration of a boiler, to provide the Inspector with such drawings, specifications, certificates and other particulars as may be prescribed.

(2) If the owner fails, without reasonable cause, to comply with the provisions of sub-section (1) the Inspector shall refuse to make the examination, and shall, unless sufficient cause to the contrary is shown, require the owner to file a fresh application with the necessary fee under section 7 or section 8, as the case may be, and may forbid him to use the boiler notwithstanding anything contained in sub-section (1) of section 10.

Production
of certifi-
cates, etc.

15. The owner of any boiler who holds a certificate or provisional order relating thereto shall, at all reasonable times during the period for which the certificate or order is in force, be bound to produce the same when called upon to do so by the Chief Engineer, District Magistrate, Commissioner of Police or a Magistrate of the First Class having jurisdiction in the area in which the boiler is for

the time being, or by the Inspector or by any Inspector appointed under the Cochin Factories Act, II of 1113 or by any person specially authorised in writing by the Chief Engineer, the District Magistrate, the Commissioner of Police or the Inspector.

16. If any person becomes the owner of a boiler during the period for which a certificate or provisional order relating thereto is in force, the preceding owner shall be bound to make over to him the certificate or provisional order.

Transfer of certificates.

CHAPTER VI.

POWERS OF ENTRY.

17. The Inspector may, for the purposes of inspecting or examining a boiler or any steam-pipe attached thereto or of seeing that any provision of this Act or of any rule made hereunder has been or is being observed, at all reasonable times, enter any place or building within the limits of the area for which he has been appointed, in which he has reason to believe that a boiler is in use.

Powers of entry.

CHAPTER VII.

ACCIDENTS.

18. (1) If any accident occurs to a boiler or steam-pipe, the owner, or person in charge thereof, shall, within 24 hours of the accident, report the same in the prescribed form to the Inspector. Every such report shall contain a true description of the nature of the accident and of the injury, if any, caused thereby to the boiler or the steam-pipe or to any person, and shall be in sufficient detail to enable the Inspector to judge of the gravity of the accident.

Report of accidents.

(2) Every person shall be bound to answer truly to the best of his knowledge and ability every question put to him in writing by the Inspector as to the cause, nature or extent of the accident.

CHAPTER VIII.

OF APPEALS.

Appeals to
the Chief
Engineer.

19. Any person considering himself aggrieved by (a) an order made or purporting to be made by the Inspector in the exercise of any power conferred by or under this Act, or

(b) a refusal of the Inspector to make any order or to issue any certificate which he is required or enabled by or under this Act to make or issue,

may, within thirty days from the date on which such order or refusal is communicated to him, appeal against the order or refusal to the Chief Engineer.

Appeals to
appellate
authority.

20. Any person considering himself aggrieved by an order of the Chief Engineer—

(a) refusing to register a boiler or to grant or renew a certificate in respect of a boiler ; or

(b) refusing to grant a certificate having validity for the full period applied for ; or

(c) refusing to grant a certificate authorising the use of a boiler at the maximum pressure desired ; or

(d) withdrawing or revoking a certificate or provisional order ; or

(e) reducing the amount of pressure specified in any certificate or the period for which such certificate has been granted ; or

(f) ordering any structural alteration, addition or renewal to be made in or to a boiler or steam-pipe or refusing sanction to the making of any structural alteration, addition or renewal in or to a boiler,

may, within thirty days of the communication to him of such order, lodge with the Chief Engineer an appeal to an appellate authority to be constituted by the Diwan under this Act.

21. An order of an appellate authority under section 20 and save as otherwise provided in sections 19 and 20, an order of the Chief Engineer or of an Inspector shall be final and shall not be called in question in any Court.

Finality of Orders.

CHAPTER IX.

PENALTIES.

22. Any owner of a boiler who refuses or without reasonable excuse neglects,

Minor penalties,

(1) to surrender a provisional order as required by section 9 ;

(2) to produce a certificate or provisional order when duly called upon to do so under section 15; or

(3) to make over to the new owner of a boiler a certificate or provisional order as required by section 16,

shall be punishable with fine which may extend to one hundred rupees.

23. Any owner of a boiler who, in any case in which a certificate or provisional order is required for the use of the boiler under this Act,

Penalties for illegal use of boilers.

(a) uses the boiler either without any such certificate or order being in force, or

(b) at a higher pressure than that allowed thereby,

shall be punishable with fine which may extend to five hundred rupees and, in the case of a continuing offence, with an additional fine which may extend to one hundred rupees for each day after the first day in regard to which he is convicted of having persisted in the offence.

24. Any person who (a) being the owner of a boiler, fails to cause the register number allotted to the

Other Penalties.

boiler under this Act to be marked on the boiler as required by sub-section (5), of section 7, or

(b) makes any structural alteration or renewal in or to a boiler without first obtaining the sanction of the Inspector when so required by section 12, or to a steam-pipe without first informing the Inspector, when so required by section 13, or

(c) fails to report an accident to a boiler or steam-pipe when so required by section 18, or

(d) tampers with a safety valve of a boiler so as to render it inoperative at the maximum pressure at which the use of the boiler is authorised under this Act, or

(e) uses or permits to be used a boiler of which he is the owner and which has been shifted from one place to another, without such shifting having been reported as required by section 6,

shall be punishable with fine which may extend to five hundred rupees.

Penalty for tampering with register-mrak.

25. (1) Whoever removes, alters, defaces, renders invisible or otherwise tampers with the register number marked on a boiler in accordance with the provisions of this Act or the Acts repealed hereby, shall be punishable with fine which may extend to five hundred rupees.

(2) Whoever fraudulently marks upon a boiler a register number which has not been allotted to it under this Act or the Acts repealed hereby, shall be punishable with imprisonment which may extend to two years or with fine or with both.

Limitation and previous sanction for prosecution.

26. No prosecution for an offence made punishable by or under this Act shall be instituted except within six months from the date of the commission of the offence and no such prosecution shall be instituted without the previous sanction of the Government.

27. No offence made punishable by or under this Act shall be tried by a Court inferior to that of a Magistrate of the First Class. Trial of offences.

CHAPTER X.

POWER TO MAKE RULES.

28. The Diwan may, with the sanction of His Highness the Maharaja, by notification in the *Cochin Government Gazette*, make rules consistent with this Act for all or any of the following purposes, namely:— Power to make rules.

(a) for laying down the standard conditions in respect of material, design and construction which shall be required for the purpose of enabling the registration and certification of a boiler under this Act ;

(b) for prescribing the method of determining the maximum pressure at which a boiler may be used ;

(c) for providing for the registration of boilers, prescribing the fees payable therefor, the drawings, specifications, certificates and particulars to be produced by the owner, the method of preparing a boiler for examination, the form of the Inspector's report thereon, the method of marking the register number, and the period within which such number is to be marked on the boiler ;

(d) for providing for inspection and examination of boilers and steam-pipes and prescribing forms of certificates and provisional orders therefor ;

(e) for ensuring the safety of persons working inside a boiler ;

(f) for prescribing the qualifications and duties of the Inspector, for regulating his salary, allowances and conditions of service, for prescribing or constituting authorities to which he shall be sub-ordinate, and the limits of the administrative control to be exercised by them ;

(g) for regulating the transfer of boilers ;

(h) for requiring boilers to be in charge of persons holding certificates of competency, constituting the authorities for conducting examinations of competency, the conduct of such examinations, for settling the duties and emoluments of examiners appointed under this Act, prescribing the qualifications to be required of candidates at the said examinations, the fees to be paid by them, the forms of and conditions under which certificates may be granted, the capacity or kind of boiler of which each certificate shall qualify the holder thereof to be in charge, prescribing the conditions under which duplicates of such certificates may be granted and the fees to be paid therefor, providing for inquiries into allegations of drunkenness, misconduct or negligence on the part of the holders of such certificates, the deposit of the certificates, of such persons, pending the inquiry, their cancellation or restoration in case satisfactory explanation is offered ;

(i) for prescribing the times within which the Inspector shall be required to examine boilers under section 7 or section 8 ;

(j) for prescribing the fees payable for the issue of renewed certificates and the method of determining the amount of such fees in each case ;

(k) for regulating inquiries into accidents and prescribing the forms for the submission of reports of accidents ;

(l) for constituting the appellate authority referred to in section 20 and for determining its powers and procedure ;

(m) for determining the mode of disposal of fees, costs and penalties levied under this Act ;

(n) for providing for the registration and certification of boilers in accordance with the rules made under this Act ;

(o) and generally to provide for any other matter, which is, in the opinion of the Diwan, necessary for carrying out the provisions of this Act.

29. Any person who contravenes any rule made under section 28 shall, where no other penalty is specifically provided, be punishable with fine which may extend to one hundred rupees. Penalty for breach of rules.

30. (1) The power to make rules conferred by section 28 shall be subject to the condition of the rules being made after previous publication. Publication of rules.

(2) Rules so made shall be published in the Cochin Government Gazette and on such publication shall have as much effect as if enacted in this Act and shall take effect from the date of such publication, unless some later date is appointed.

CHAPTER XI.

MISCELLANEOUS.

31. All fees, costs and penalties levied under this Act shall be recoverable as arrears of land revenue. Recovery of fees, etc.

32. Save as otherwise expressly provided, this Act shall apply to boilers and steam-pipes belonging to the Government. Applicability to the Government.

33. (1) The Diwan may, by notification in the Cochin Government Gazette, exempt from the operation of this Act subject to such conditions and restrictions as he thinks fit, any boilers or classes or type of boilers used exclusively for the heating of buildings or the supply of hot water. Power to suspend in case of emergency.

(2) In case of any emergency, the Diwan may, by general or special order in writing, exempt any boiler or steam-pipes from the operation of all or any of the provisions of this Act.

Repeal and
savings.

34. On and from the commencement of this Act, the enactments mentioned in the Schedule shall be repealed to the extent specified in the fourth column thereof :

Provided (1) that any Inspector appointed under any enactment so repealed shall be deemed to have been appointed under this Act and

(2) that any rules made, scales and forms prescribed and power conferred under any enactment hereby repealed shall, so far as they are not inconsistent with this Act have the same force and effect as if they had been respectively made, prescribed and conferred under this Act and by the authority empowered thereby in such behalf.

THE SCHEDULE.

(See section 34)

ENACTMENTS REPEALED.

Year	No.	Short title	Extent of repeal
1091	III	The Cochin Steam Boilers and Prime Movers Act.	The whole.
1095	XVI	The Cochin Steam Boilers and Prime Movers (Amendment) Act.	do.
1107	II	The Cochin Steam Boilers and Prime Movers (Amendment) Act.	do.
1107	V	The Cochin Steam Boilers and Prime Movers (Amendment) Act.	do.

THE COCHIN PORTS ACT,
(VI of 1113.)

CONTENTS.

CHAPTER I.
PRELIMINARY.

SECTIONS

1. Title and extent.
2. Savings.
3. Definitions.

CHAPTER II.

POWERS OF THE GOVERNMENT.

4. Power to extend or withdraw the Act or certain portions thereof.
5. Alteration of limits of ports.
6. Power to make port-rules.

CHAPTER III.

PORT-OFFICIALS AND THEIR POWERS AND DUTIES.

7. Appointment of conservator.
8. Power of conservator to give and enforce directions for certain specified purposes.
9. Power to cut warps and ropes.
10. Removal of obstructions within limits of port.
11. Recovery of expenses of removal.
12. Removal of lawful obstructions.
13. Fouling of Government moorings.
14. Raising or removal of wreck impeding navigation within limits of port.
15. Power to board vessels and enter buildings.
16. Power to require crews to prevent or extinguish fire.
17. Appointment and powers of health-officer.
18. Indemnity of Government against act or default of port-official or pilot.

PORTS.

CHAPTER IV.

RULES FOR THE SAFETY OF SHIPPING AND THE
CONSERVATION OF PORTS.*General Rules.*

SECTIONS

19. Injuring buoys, beacons and moorings.
20. Wilfully loosening vessel from moorings.
21. Improperly discharging ballast.
22. Graving vessel within prohibited limits.
23. Boiling pitch on board vessel within prohibited limits.
24. Drawing spirits by unprotected artificial light. ;
25. Warping.
26. Leaving out warp or hawser after sunset.
27. Discharge of fire-arms in port.
28. Penalty on master omitting to take order to extinguish fire.
29. Unauthorized person not to search for lost stores.
30. Removing stones or injuring shores of port prohibited.

Special Rules.

31. Moving of vessels without pilot or permission of harbour-master.
32. Provision of certain vessels with fire-extinguishing apparatus.

CHAPTER V.

PORT-DUES, FEES AND OTHER CHARGES.

33. Levy of port-dues.
34. Variation of port dues by government.
35. Fees for pilotage and certain other services.
36. Receipt, expenditure and account of port-charges .
37. Receipts for port-charges.
38. Master to report arrival.
39. Conservator may in certain cases ascertain draught and charge expense to master.
40. Ascertainment of tonnage of vessel liable to port-dues.
41. Distraint and sale on refusal to pay port charges.
42. No port-clearance to be granted until port-charges are paid.

SECTIONS

43. Port-charges payable in one port recoverable at any other port.
44. Penalty for evading payment of port-charges.
45. Port-due on vessels in ballast.
46. Port-due on vessels not discharging or taking in cargo.
47. Port-dues not to be chargeable in certain cases.
48. Power to impose hospital port-dues.
49. Application and account of hospital port-dues.

CHAPTER VI.

HOISTING SIGNALS.

50. Master to hoist number of vessel.
51. Pilot to require master to hoist number.
52. Penalty on pilot disobeying provisions of this Chapter.

CHAPTER VII.

PROVISIONS WITH RESPECT TO PENALTIES.

53. Penalty for disobedience to rules and orders of the Government.
54. Offences how triable, and penalties how recovered.
55. Costs of conviction.
56. Ascertainment and recovery of expenses and damages payable under this Act.
57. Costs of distress.
58. Magistrate to determine the amount to be levied in case of dispute.
59. Jurisdiction over offences beyond local limits of jurisdiction.
60. Conviction to be quashed on merits only.

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS.

61. Foreign deserters.
62. Application of sections 10 and 21.
63. Grant of sites for sailor's institutes.
64. Exercise of powers of conservator by his assistants.
65. Service of written notices of directions.
66. Publication of orders of Government.
67. Repeal.

The First Schedule.—Ports, Vessels chargeable, Rate of Port dues and Frequency of Payment.

The Second Schedule.—Enactments repealed.

THE COCHIN PORTS ACT,
(VI OF 1113.)

AN ACT TO CONSOLIDATE AND AMEND THE LAW
RELATING TO PORTS AND PORT-CHARGES.

*Passed by His Highness the Maharaja of Cochin on the
9th day of Vrischigam 1113, corresponding to the
24th day of November 1937.*

Whereas it is expedient to consolidate the law relating to ports and port-charges ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title and
extent.

1. (1) This Act may be called the "Cochin Ports Act, VI of 1113 ;"

(2) It shall extend, save as otherwise appears from its subject or context,—

- (a) to the ports mentioned in the first schedule ;
- (b) to the other ports or parts of navigable rivers or channels to which the Government, in exercise of the power hereinafter conferred, extends this Act.

(3) It shall come into force on such day as Government may, by notification in the Cochin Government Gazette, appoint in this behalf ;

(4) But nothing in section 31 or section 32 shall apply to any port , river or channel to which the section has not been specially extended by the Government.

Savings.

2. Nothing in this Act shall—

- (i) apply to any vessel belonging to, or in the service of the Government or His Majesty or the Government of India, or to any vessel of war belonging to any Foreign Prince or State, or

- (ii) deprive any person of any right of property or other private right, except as hereinafter expressly provided, or
- (iii) affect any law or rule relating to the customs or any order or direction lawfully made or given pursuant thereto.

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

(1) "Magistrate" means a person exercising powers under the Code of Criminal Procedure, not less than those of a Magistrate of the second class :

(2) "master," when used in relation to any vessel, means, subject to the provisions of any other enactment for the time being in force, any person (except a pilot or harbour-master) having for the time being the charge or control of the vessel :

(3) "pilot" means a person for the time being authorized by the Government to pilot vessels :

(4) "port" includes also any part of a river or channel in which this Act is for the time being in force :

(5) "port-officer" is synonymous with master-attendant :

(6) "ton" means a ton as determined or determinable by the rules for the time being in force for regulating the measurement of the net tonnage of British ships: and

(7) "vessel" includes anything made for the conveyance by water of human beings or of property.

CHAPTER II.

POWERS OF THE GOVERNMENT.

4. (1) The Government may, by notification in the Cochin Government Gazette,—

- (a) extend this Act to any port in which this Act is not in force or to any part of any

Power to extend or withdraw the Act or certain portions thereof.

navigable river or channel which leads to a port and in which this Act is not in force ;

(b) specially extend the provisions of section 31 or section 32 to any port to which they have not been so extended ;

(c) withdraw this Act or section 31 or section 32 from any port or any part thereof in which it is for the time being in force.

(2) A notification under clause (a) or clause (b) of sub-section (1) shall define the limits of the area to which it refers.

(3) Limits defined under sub-section (2) may include any piers, jetties, landing-places, wharves, quays, docks and other works made on behalf of the public for convenience of traffic, for safety of vessels, or for the improvement, maintenance or good government of the port and its approaches, whether within or without high-water-mark, and, subject to any rights of private property therein, any portion of the shore or bank within fifty yards of high-water-mark.

(4) In sub-section (3) the expression "high-water-mark" means the highest point reached by ordinary spring tides at any season of the year.

Alteration of limits of ports.

5. (1) The Government may, subject to any rights of private property, alter the limits of any port in which this Act is in force.

(2) When the Government alters the limits of a port under sub-section (1), it shall declare or describe by notification in the Cochin Government Gazette, and by such other means, if any, as it thinks fit, the precise extent of such limits.

Power to make port rules.

6. (1) The Government may, in addition to any rules which it may make under any other enactment for the time being in force, make such rules, consistent with this Act, as it thinks necessary for any of the following purposes, namely :—

- (a) for regulating the time and hours at and during which, the speed at which, and the manner and conditions in and on which, vessels generally or vessels of any class defined in the rules, may enter, leave or be moved in any port subject to this Act;
- (b) for regulating the berths, stations and anchorages to be occupied by vessels in any such port.
- (c) for striking the yards and top masts, and for rigging-in the booms and yards, of vessels in any such port, and for swinging or taking-in davits, boats and other things projecting from such vessels;
- (d) for the removal or proper hanging or placing of anchors, spars and other things being in or attached to vessels in any such port;
- (e) for regulating vessels whilst taking-in or discharging passengers, ballast or cargo, or any particular kind of cargo, in any such port, and the stations to be occupied by vessels whilst so engaged;
- (f) for regulating the manner in which oil or water mixed with oil shall be discharged in any such port and for the disposal of the same;
- (g) for regulating the bunkering of vessels with liquid fuel in any such port and the description of barges, pipe lines or tank vehicles to be employed in such bunkering;
- (h) for keeping free passages of such width as may be deemed necessary within any such port, and along or near to the piers, jetties, landing-places, wharves, quays, docks, moorings and other works in or adjoining to the same, and for marking out the spaces so to be kept free;

- (i) for regulating the anchoring, fastening mooring and unmooring of vessels in any such port;
- (j) for regulating the moving and warping of all vessels within any such port and the use of warps therein;
- (k) for regulating the use of the mooring buoys, chains and other moorings in any such port;
- (l) for fixing the rates to be paid for the use of such moorings when belonging to the Government, or of any boat, hawser or other thing belonging to the Government;
- (m) for regulating the use of piers, jetties, landing places, wharves, quays, warehouses and sheds when belonging to the Government, and for fixing the rates to be paid for the use of the same;
- (n) for licensing and regulating catamarans plying for hire, and flats and cargo, passenger and other boats plying, whether for hire or not, and whether regularly or only occasionally, in or partly within and partly without any such port and for licensing and regulating the crews of any such vessels and for determining the quantity of cargo or number of passengers or of the crew to be carried by any such vessels and may by such rules provide for the fees payable in respect of any such license, and in the case of passenger vessels plying for hire, for the rates of hire to be charged and the conditions under which such vessels shall be compelled to ply for hire, and further for the conditions under which any license may be revoked;
- (o) for regulating the use of fires and lights within any such port;

- (p) for enforcing and regulating the use of signals or signal-lights by vessels by day or by night in any such port ;
- (q) for regulating the number of the crew which must be on board any vessel afloat within the limits of any such port ;
- (r) for regulating the employment of persons engaged in cleaning or painting vessels, or in working in the bilges, boilers or double bottoms of vessels in any such port ;
- (s) for the prevention of danger arising to the public health by the introduction and the spread of any infectious or contagious disease from vessels arriving at, or being in, any such port, and for the prevention of the conveyance of infection or contagion by means of any vessel sailing from any such Port, and in particular and without prejudice to the generality of this provision, for—
 - (i) the signals to be hoisted and the places of anchorage to be taken up by such vessels having any case, or suspected case, of any infectious or contagious disease on board, or arriving at such Port from a Port in which, or in the neighbourhood of which, there is believed to be or to have been at the time when the vessel left such Port, any infectious or contagious disease ;
 - (ii) the medical inspection of such vessels and of persons on board such vessels ;
 - (iii) the questions to be answered and the information to be supplied by masters, pilots and other persons on board such vessels ;
 - (iv) the detention of such vessels and of persons on board such vessels ;

- (v) the duties to be performed in cases of any such disease by masters, pilots and other persons on board such vessels ;
- (vi) the removal to hospital or other place approved by the Health Officer and the detention therein of any person from any such vessel who is suffering or suspected to be suffering from any such disease ;
- (vii) the cleansing, ventilation and disinfection of such vessels or any part thereof and of any articles therein likely to retain infection or contagion, and the destruction of rats or other vermin in such vessels ; and
- (viii) the disposal of the dead on such vessels ; and
- (t) for securing the protection from heat of the officers and crew of vessels in any such port by requiring the owner or master of any such vessel—
 - (i) to provide curtains and double awnings for screening from the sun's rays such portions of the deck as are occupied by, or are situated immediately above, the quarters of the officers and crew ;
 - (ii) to erect windsails so far as the existing portholes or apertures in the deck admit of their being used for ventilating the quarters of the officers and crew ;
 - (iii) when the deck is made of iron and not wood sheathed, to cover with wooden planks or other suitable non-conducting material such portions of the deck as are situated immediately above the quarters of the officers and crew ;
 - (iv) when the quarters used by the crew and the gally are separated by an iron bulkhead only, to furnish a temporary screen of some suitable non-conducting material between such quarters and the galley.

(2) In addition to any rules which it is empowered to make under sub-section (1), the Government shall make rules prohibiting the employment in any port subject to this Act of children under the age of twelve years upon the handling of goods.

(3) The power to make rules under sub-section (1) and sub-section (2) is subject to the condition of the rules being made after previous publication.

(4) If any person disobeys any rule made under clause (s) of sub-section (1), he shall be punishable for every such offence with fine which may extend to one thousand rupees.

(5) If a master fails wholly or in part to do any act prescribed by any rule made under clause (s) of sub-section (1), the health-officer shall cause such act to be done, and the reasonable expenses incurred in doing such act shall be recoverable by him from such master.

CHAPTER III.

PORT-OFFICIALS AND THEIR POWERS AND DUTIES.

7. (1) The Government shall appoint some officer or body of persons to be conservator of every port subject to this Act. Appointment
of
Conservator.

(2) Subject to any direction by the Government to the contrary,—

(a) in ports where there is a port-officer, the port-officer shall be the conservator;

(b) in ports where there is no port-officer, but where there is a harbour-master, the harbour-master shall be the conservator.

(3) Where the harbour-master is not conservator, the harbour-master and his assistants shall be subordinate to, and subject to the control of, the conservator.

(4) The conservator shall be subject to the control of the Government, or of any intermediate authority which the Government may appoint.

Power of Conservator to give and enforce directions for certain specified purposes.

8. (1) The conservator of any port subject to this Act may, with respect to any vessel within the port, give directions for carrying into effect any rule for the time being in force therein under section 6.

(2) If any person wilfully and without lawful excuse refuses or neglects to obey any lawful direction of the conservator, after notice thereof has been given to him, he shall, for every such offence, be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to one hundred rupees for every day during which, after such notice as aforesaid, he is proved to have wilfully and without lawful excuse continued to disobey the direction.

(3) In case of such refusal or neglect, the conservator may do, or cause to be done, all acts necessary for the purpose of carrying the direction into execution and may hire and employ proper persons for that purpose, and all reasonable expenses incurred in doing such acts shall be recoverable by him from the person so refusing or neglecting to obey the direction.

Power to cut warps and ropes.

9. The conservator of any such port may, in case of urgent necessity, cut, or cause to be cut, any warp, rope, cable or hawser endangering the safety of any vessel in the port or at or near to the entrance thereof.

Removal of obstructions within limits of port.

10. (1) The conservator may remove, or cause to be removed, any timber, raft or other thing, floating or being in any part of any such port, which in his opinion, obstructs or impedes the free navigation thereof, or the lawful use of any pier, jetty, landing-place, wharf, quay, dock, mooring or other work on any part of the shore or bank which has been declared to be within the limits of the port and is not private property.

(2) The owner of any such timber, raft or other thing shall be liable to pay the reasonable expenses of the removal thereof, and if such owner or any other

person has without lawful excuse caused any such obstruction or impediment, or causes any public nuisance affecting or likely to affect such free navigation or lawful use, he shall also be punishable with fine which may extend to one hundred rupees.

(3) The conservator or any Magistrate having jurisdiction over the offence may cause any such nuisance to be abated.

11. If the owner of any such timber, raft or other thing, or the person who has caused any such obstruction, impediment or public nuisance as is mentioned in the last foregoing section, neglects to pay the reasonable expenses incurred in the removal thereof, within one week after demand, or within fourteen days after such removal has been notified in the Cochin Government Gazette or in such other manner as the Government by general or special order directs, the conservator may cause such timber, raft or other thing, or the materials of any public nuisance so removed, or so much thereof as may be necessary, to be sold by public auction ;

Recovery of expenses of removal.

and may retain all the expenses of such removal and sale out of the proceeds of the sale, and shall pay the surplus of such proceeds, or deliver so much of the thing or materials as may remain unsold, to the person entitled to receive the same ;

and, if no such person appears, shall cause the same to be kept and deposited in such manner as the Government directs ;

and may, if necessary, from time to time, realize the expenses of keeping the same, together with the expenses of sale, by a further sale of so much of the thing or materials as may remain unsold.

12. (1) If any obstruction or impediment to the navigation of any port subject to this Act has been lawfully made, or has become lawful by reason of the long continuance of such obstruction or impediment, or

Removal of lawful obstructions

otherwise, the conservator shall report the same for the information of the Government, and shall, with the sanction of the Government, cause the same to be removed or altered, making reasonable compensation to the person suffering damage by such removal or alteration.

(2) Any dispute arising concerning such compensation shall be determined according to the law relating to like disputes in the case of land required for public purposes.

Fouling of
Government
moorings.

13. (1) If any vessel hooks or gets foul of any of the buoys or moorings laid down by or by the authority of the Government in any such port, the master of such vessel shall not, nor shall any other person, except in case of emergency, lift the buoy or mooring for the purpose of unhooking or getting clear from the same without the assistance of the conservator ;

and the conservator, immediately on receiving notice of such accident, shall assist and superintend the clearing of such vessel ;

and the master of such vessel shall, upon demand, pay such reasonable expenses as may be incurred in clearing the same.

(2) Any master or other person offending against the provisions of this section shall, for every such offence, be punishable with fine which may extend to one hundred rupees.

Raising or
removal of
wreck
impeding
navigation
within limits
of port.

14. (1) If any vessel is wrecked, stranded or sunk in any such port so as to impede, or be likely to impede, the navigation thereof, the conservator may cause the vessel to be raised, removed or destroyed.

(2) If any property recovered by a conservator acting under sub-section (1) is unclaimed or the person claiming it fails to pay the reasonable expenses incurred by the conservator under that sub-section and a further sum of twenty per cent of the amount of such expenses, the conservator may sell the property by public auction,

if the property is of a perishable nature, forthwith, and, if it is not of a perishable nature, at any time not less than six months after the recovery thereof.

(3) The expenses and further sum aforesaid shall be payable to the conservator out of the sale-proceeds of the property, and the balance shall be paid to the person entitled to the property recovered, or, if no such person appears and claims the balance, shall be held in deposit for payment, without interest, to any person thereafter establishing his right thereto :

Provided that the person makes his claim within three years from the date of the sale.

15. (1) The conservator or any of his assistants may, whenever he suspects that any offence against this Act has been, or is about to be, committed, or whenever it is necessary for him so to do in the performance of any duty imposed upon him by this Act,

Power to board vessels and enter buildings.

and the person appointed under this Act to receive any port-dues, fees or other charges payable in respect of any vessel, may, whenever it is necessary for him so to do in the performance of any duty imposed upon him by this Act,

either alone or with any other person, board any vessel, or enter any building or place, within the limits of any port subject to this Act.

(2) If the master of the vessel, or any person in possession or occupation of the building or place without lawful excuse, refuses to allow any such person as is mentioned in sub-section (1) to board or enter such vessel, building or place in the performance of any duty imposed upon him by this Act, he shall for every such offence be punishable with fine which may extend to two hundred rupees.

Power to require crews to prevent or extinguish fire.

16. (1) For the purpose of preventing or extinguishing fire in any port subject to this Act, the conservator or port-officer may require the master of any vessel within the port to place at his disposal such number as he requires, not exceeding three fourths, of the crew then under the orders of such master.

(2) Any master refusing or neglecting to comply with such requisition shall be punishable with fine which may extend to five hundred rupees, and any seaman then under his orders who, after being directed by the master to obey the orders of the conservator or port-officer for the purpose aforesaid, refuses to obey such orders, shall be punishable with fine which may extend to twenty-five rupees.

Appointment and powers of health-officer.

17. (1) The Government may appoint at any port subject to this Act an officer to be called the health-officer.

(2) A health-officer shall, subject to the control of the Government, have the following powers, within the limits of the port for which he is appointed, namely :—

- (a) power to enter on board any vessel and medically examine all or any of the seamen or apprentices on board the vessel;
- (b) power to require and enforce the production of the log-book and any other books, papers or documents which he thinks necessary for the purpose of enquiring into the health and medical condition of the persons on board the vessel;
- (c) power to call before him and question for any such purpose all or any of those persons and to require true answers to any questions which he thinks fit to ask;
- (d) power to require any person so questioned to make and subscribe a declaration of the truth of the statements made by him.

18. The Government shall not be responsible for any act or default of any conservator, port-officer or harbour-master, of any port subject to this Act or of any deputy or assistant of any of the authorities aforesaid or of any person acting under the control or direction of any such authority, deputy or assistant or for any act or default of any pilot, or for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers or other things belonging to the Government which may be used by the vessel :

Indemnity of Government against act or default of port-official or pilot.

Provided that nothing in this section shall protect the Government from a suit in respect of any act done by or under the express order or sanction of the Government.

CHAPTER IV.

RULES FOR THE SAFETY OF SHIPPING AND THE CONSERVATION OF PORTS

General Rules.

19. (1) No person shall, without lawful excuse, lift, injure, loosen or set adrift any buoy, beacon or mooring fixed or laid down by, or by the authority of, the Government in any port subject to this Act.

Injuring buoys, beacons and moorings.

(2) If any person offends against the provisions of this section, he shall for every such offence be liable, in addition to the payment of the amount of damage done, to fine which may extend to two thousand rupees, or to imprisonment for a term which may extend to two years.

20. If any person wilfully and without lawful excuse loosens or removes from her moorings any vessel within any such port without leave or authority from the owner or master of the vessel, he shall, for every such offence, be punishable with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months.

Wilfully loosening vessel from moorings.

Improperly
discharging
ballast.

21. (1) No ballast or rubbish, and no other thing likely to form a bank or shoal or to be detrimental to navigation, shall, without lawful excuse, be cast or thrown into any such port or into or upon any place on shore from which the same is liable to be washed into any such port, either by ordinary or high tides, or by storms or land-floods and no oil or water mixed with oil shall be discharged in or into any such port, to which any rules made under clause (f) of sub-section (1) of section 6 apply otherwise than in accordance with such rules.

(2) Any person who by himself or another so casts or throws any ballast or rubbish or any such other thing or so discharges any oil or water mixed with oil, and the master of any vessel from which the same is so cast, thrown or discharged, shall be punishable with fine which may extend to five hundred rupees, and shall pay any reasonable expenses which may be incurred in removing the same.

(3) If, after receiving notice from the conservator of the port to desist from so casting or throwing any ballast or rubbish or such other thing or from so discharging any oil or water mixed with oil, any master continues so to cast, throw or discharge the same, he shall also be liable to simple imprisonment for a term which may extend to two months.

(4) Nothing in this section applies to any case in which the ballast or rubbish or such other thing is cast or thrown into or the oil or water mixed with oil is discharged in or into any such port with the consent in writing of the conservator, or within any limits within which such act may be authorized by the Government.

Graving
vessel within
prohibited
limits.

22. If any person graves, breams or smokes any vessel in any such port, contrary to the directions of the conservator, or at any time or within any limits at or within which such act is prohibited by the Government, he and the master of the vessel shall for every such

offence be punishable with fine which may extend to five hundred rupees each.

23. If any person boils or heats any pitch, tar, resine, dammer, turpentine, oil or other such combustible matter on board any vessel within any such port, or at any place within its limits where such act is prohibited by the Government, or contrary to the directions of the conservator, he and the master of the vessel shall for every such offence, be punishable with fine which may extend to two hundred rupees each.

Boiling pitch on board vessel within prohibited limits.

24. If any person, by an unprotected artificial light, draws off spirits on board any vessel within any port subject to this Act, he and the master of the vessel shall for every such offence, be punishable with fine which may extend to two hundred rupees each.

Drawing spirits by unprotected artificial light.

25. (1) Every master of a vessel in any port subject to this Act shall, when required so to do by the conservator, permit warps or hawsers to be made fast to the vessel for the purpose of warping any other vessel in the port, and shall not allow any such warp or hawser to be let go until required so to do.

Warping.

(2) A master offending against sub-section (1) shall be punishable for every such offence with fine which may extend to two hundred rupees.

26. (1) A master of a vessel shall not cause or suffer any warp or hawser attached to his vessel to be left out in any port subject to this Act after sunset in such a manner as to endanger the safety of any other vessel navigating in the port.

Leaving out warp or hawser after sunset.

(2) A master offending against sub-section (1) shall be punishable for every such offence with fine which may extend to two hundred rupees.

27. If any person, without lawful excuse, discharges any fire-arm in any port subject to this Act, or on or from any pier, landing-place, wharf or quay thereof, except a gun loaded only with gun powder for the purpose

Discharge of fire-arms in port.

of making a signal of distress or for such other purpose as may be allowed by the Government, he shall for every such offence be punishable with fine which may extend to fifty rupees.

Penalty on master omitting to take order to extinguish fire.

28. If the master of any vessel in which fire takes place while lying in any such port wilfully omits to take order to extinguish the fire or obstructs the conservator or the port-officer, or any person acting under the authority of the conservator or port-officer, in extinguishing or attempting to extinguish the fire, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Unauthorised person not to search for lost stores.

29. (1) No person without the permission of the conservator, shall, in any port subject to this Act, creep or sweep for anchors, cables or other stores lost or supposed to be lost therein.

(2) If any person offends against the provisions of sub-section (1), he shall be punishable with fine which may extend to one hundred rupees.

Removing stones or injuring shores of port prohibited.

30. (1) No person without the permission of the conservator shall in any port subject to this Act, remove or carry away any rock, stones, shingle, gravel, sand or soil or any artificial protection from any part of the bank or shore of the port.

and no person shall sink or bury in any part of such bank or shore, whether the same is public or private property, any mooring-post, anchor or any other thing, or do any other thing which is likely to injure or to be used so as to injure such bank or shore, except with the permission of the conservator, and with the aid or under the inspection of such person, if any, as the conservator may appoint to take part in or overlook the performance of such work.

(2) If any person offends against sub-section (1), he shall for every such offence be punishable with fine

which may extend to one hundred rupees and shall pay any reasonable expenses which may be incurred in repairing any injury done by him to the bank or shore.

Special Rules.

31. (1) No vessel of the measurement of two hundred tons or upwards shall enter, leave or be moved in any port to which this section has been specially extended without having a pilot harbour-master or assistant of the port-officer or harbour-master on board;

Moving of vessels without pilot or permission of harbour-master.

and no vessel of any measurement less than two hundred tons and exceeding one hundred tons shall enter, leave or be moved in any such port without having a pilot, harbour-master or assistant of the port-officer or harbour-master on board unless authority in writing so to do has been obtained from the conservator or some officer empowered by him to give such authority :

Provided that the Government may, by notification in the Cochin Government Gazette, direct that in any port specified in such notification the provisions of this sub-section shall not apply to sailing vessels of any measurement not exceeding a measurement so specified.

(2) Notwithstanding anything in sub-section (1), the owner or master of a vessel which is by that sub-section required to have pilot, harbour-master or assistant of the port-officer or harbour-master on board, shall be answerable for any loss or damage caused by the vessel or by any fault of the navigation of the vessel, in the same manner as he would have been if he had not been so required by that sub-section.

(3) If any vessel, except in case of urgent necessity, enters, leaves or is moved in the port contrary to the provisions of sub-section (1) the master of the

vessel shall for every such offence, be punishable with fine which may extend to two hundred rupees, unless upon application to the proper officer the master was unable to procure a pilot, harbour-master or assistant of the port-officer or harbour-master to go on board the vessel.

Provision of certain vessels with fire-extinguishing apparatus.

32. (1) Every vessel exceeding the measurement of two hundred tons and lying in any port to which this section has been specially extended shall be provided with a proper force-pump and hose and appurtenances, for the purpose of extinguishing any fire which may occur on board.

(2) The master of such a vessel who, having been required by the conservator to comply with the provisions of sub-section (1), neglects or refuses, without lawful excuse, so to do for the space of seven days after such requisition, shall be punishable with fine which may extend to five hundred rupees.

CHAPTER V.

PORT-DUES, FEES AND OTHER CHARGES.

Levy of port-dues.

33. (1) In each of the ports mentioned in the first schedule such port-due, not exceeding the amount specified for the port in the third column of the schedule as the Government directs, shall be levied on vessels entering the port and described in the second column of the schedule, but not oftener than the time fixed for the port in the fourth column of the schedule.

(2) Whenever the Government declares, any other port to be subject to this Act, it may, by the same or any subsequent declaration, further declare,—

(a) in the terms of any of the entries in the second column of the first schedule, the vessels which are to be chargeable with port-dues on entering the port,

- (b) the highest rates at which such dues may be levied in respect of vessels chargeable therewith, and
- (c) the times at which such vessels are to be so chargeable.

(3) All port dues now leviabie in any port shall continue to be so leviabie until it is otherwise declared in exercise of the powers conferred by this section.

(4) An order increasing or imposing port-dues under this section shall not take effect till the expiration of sixty days from the day on which the order was published in the Cochin Government Gazette.

34. The Government may, after consulting the authority appointed under section 36 exempt, subject to such conditions, if any, as it thinks fit to impose, any vessel or class of vessels entering a port subject to this Act from payment of port-dues and cancel the exemption, or may vary the rates at which port-dues are to be levied in the port, in such manner as, having regard to the receipts and charges on account of the port, it thinks expedient, by reducing or raising the dues, or any of them or may extend the periods for which any vessel or class of vessels entering a port shall be exempt from liability to pay port-dues :

Variation of port-dues by Government.

Provided that the rates shall not in any case exceed the amount authorized to be taken by or under this Act.

35. (1) Within any port subject to this Act, fees may be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels, at such rates as the Government may direct.

Fees for pilotage and certain other services.

(2) The fees now chargeable for such services shall continue to be chargeable unless and until they are altered in exercise of the power conferred by subsection (1).

Receipt,
expenditure
and account
of port-
charges.

36. (1) The Government shall appoint some officer or body of persons at every port at which any dues, fees or other charges are authorized to be taken by or under this Act to receive the same and, subject to the control of the Government, to expend the receipts on any of the objects authorized by this Act.

(2) Such officer or body shall keep for the port a distinct account, to be called the port fund account, showing, in such detail as the Government prescribes, the receipts and expenditure of the port, and shall publish annually as soon after the first day of April as may be practicable an abstract, in such form as that Government prescribes, of the account for the past financial year.

(3) If, for any of the purposes of this Act, an advance of money has been or shall be made by the Government on account of any port subject to this Act simple interest upon that advance, or upon so much of it as remains or shall remain unrepaid, at such rate as the Government may determine, shall be charged in the port fund account of the port.

(4) All money received under this Act at or on account of any port subject to this Act, excluding receipts on account of pilotage but including—

(a) fines,

(b) proceeds of waifs, and

(c) any balance of the proceeds of a sale under section 14 where no right to the balance has been established on a claim made within three years from the date of the sale,

shall be credited in the port fund account of the port.

(5) All expenses incurred for the sake of any such port, excluding expenses on account of pilotage but including—

(a) the pay and allowances of all persons upon the establishment of the port,

- (b) the cost of buoys, beacons, lights and all other works maintained chiefly for the benefit of vessels being in or entering or leaving the port or passing through the rivers or channels leading thereto,
- (c) pensions, allowances and gratuities of persons who have been employed in the port under this or any other enactment relating to ports and port-dues, or such portion of those pensions, allowances and gratuities as the Government may by rule determine,
- (d) with the previous sanction of the Government, contributions towards the support of public hospitals or dispensaries suitable for the reception or relief of seamen or otherwise towards the provision of sanitary superintendance and medical aid for the shipping in the port and for seamen, whether ashore or afloat, belonging to vessels in the port, and
- (e) with the like sanction, contributions towards sailors' homes, institutes, rest-houses and coffee-houses and for other purposes connected with the health, recreation and temporal well-being of sailors,

shall be charged to the port fund account of the port.

(6) Subject to the provisions of any local law as to the disposal of any balance from time to time standing to the credit of a port fund account, any such balance may be temporarily invested in such manner as the Government may direct.

37. The person to whom any dues, fees or other charges authorized to be taken by or under this Act are paid shall grant to the person paying the same a proper voucher in writing under his hand, describing the name of his office, the port or place at which the

Receipts for
portcharges.

dues, fees or other charges are paid, and the name, tonnage and other proper description of the vessel in respect of which the payment is made.

Master to report arrival.

38. (1) Within twenty-four hours after the arrival within the limits of any port subject to this Act of any vessel liable to the payment of port-dues under this Act, the master of the vessel shall report her arrival to the conservator of the port.

(2) A master failing without lawful excuse to make such report within the time aforesaid shall for every such offence be punishable with fine which may extend to one hundred rupees.

(3) Nothing in this section applies to tug-steamers, ferry steamers or river steamers plying to and from any of the ports subject to this Act.

Conservator may in certain cases ascertain draught and charge expense to master.

39. If any vessel liable to the payment of port-dues is in any such port without proper marks on the stem and stern posts thereof for denoting her draught, the conservator may cause the same to be ascertained by means of the operation of hooking, and the master of the vessel shall be liable to pay the expenses of the operation.

Ascertainment of tonnage of vessel liable to port-dues.

40. In order to ascertain the tonnage of any vessel liable to pay port-dues, the following Rules shall be observed, namely:—

(1) (a) The conservator may require the owner or master of the vessel or any person having possession of her register to produce the register for inspection.

(b) If the owner or master or such person neglects or refuses to produce the register or otherwise to satisfy the conservator as to what is the true tonnage of the vessel in respect of which the port-dues are payable, he shall be punishable with fine which may extend to one hundred rupees, and the conservator may cause the vessel to be measured, and the tonnage thereof to be

ascertained, and in such case the owner or master of the vessel shall also be liable to pay the expenses of the measurement.

(2) If the vessel has no register or has lost her register or the master fails to satisfy the conservator of the true tonnage of the vessel, and the tonnage of the vessel cannot be ascertained by measurement, the tonnage of the vessel shall be determined by the conservator on such an estimate as may seem to him to be just.

41. If the master of any vessel in respect of which any port-dues, fees or other charges are payable under this Act, refuses or neglects to pay the same on demand, the authority appointed to receive such port-dues, fees or other charges may distrain or arrest the vessel, and the tackle, apparel and furniture belonging thereto or any part thereof, and detain the same until the amount due is paid ;

Distrain
and sale on
refusal to
pay port-
charges.

and in case any part of the port-dues, fees or other charges or of the costs of the distress or arrest or of the keeping of the vessel or other thing distrained or arrested, remains unpaid for the space of five days next after any such distress or arrest, may cause the vessel or other thing distrained or arrested to be sold, and with the proceeds of such sale may satisfy the port-dues, fees or other charges and the costs including the costs of sale remaining unpaid, and shall render the surplus if any, to the master of the vessel upon demand.

42. The officer of Government whose duty it is to grant a port-clearance for any vessel shall not grant such clearance until her owner or master, or some other person, has paid or secured to the satisfaction of such officer the amount of all port-dues, fees and other charges, and of all fines, penalties and expenses to which the vessel or her owner or master is liable under this Act.

No port-
clearance to
be granted
until port-
charges are
paid.

Port charges payable in one port recoverable at any other port.

43. (1) If the master of any vessel in respect of which any such sum as is mentioned in the last foregoing section is payable causes her to leave any port without having paid the sum, the authority appointed to receive port-dues, fees and other charges at the port under this Act may require in writing the authority appointed to receive port-dues, fees and other charges under this Act at any other port in Cochin to which she may proceed, or in which she may be, to levy the sum.

(2) The authority to whom the requisition is directed shall proceed to levy such sum in the manner prescribed in section 41 and a certificate purporting to be made by the authority appointed to receive port-dues, fees and other charges at the port where such sum as is mentioned in the last foregoing section became payable, stating the amount payable, shall be sufficient *prima facie* proof of such amount in any proceeding under section 41 and also (in case the amount payable is disputed) in any subsequent proceeding under section 58.

Penalty for evading payment of port-charges.

44. (1) If the master of a vessel evades the payment of any such sum as is mentioned in section 42, he shall be punishable with fine which may extend to five times the amount of the sum.

(2) In any proceeding before a Magistrate on a prosecution under sub-section (1), any such certificate as is mentioned in section 43, sub-section (2), stating that the master has evaded such payment, shall be sufficient *prima facie* proof of the evasion, unless the master shows to the satisfaction of the Magistrate that the departure of the vessel without payment of the sum was caused by stress of weather, or that there was lawful or reasonable ground for such departure.

(3) Any Magistrate having jurisdiction under this Act in any port to which the vessel may proceed, or in which she may be found, shall be deemed to have jurisdiction in any proceeding under this section.

45. A vessel entering any port subject to this Act in ballast and not carrying passengers shall be charged with a port-due at a rate to be determined by the Government and not exceeding three-fourths of the rate with which she would otherwise be chargeable.

Port-due on vessels in ballast.

46. When a vessel enters a port subject to this Act, but does not discharge or take in any cargo or passengers therein (with the exception of such unshipment and re-shipment as may be necessary for purposes of repair) she shall be charged with a port-due at a rate to be determined by the Government and not exceeding half the rate with which she would otherwise be chargeable.

Port-due on vessels not discharging or taking in cargo.

47. No port-due shall be chargeable in respect of—

(a) any pleasure-yacht, or

(b) any vessel which, having left any port, is compelled to re-enter it by stress of weather or in consequence of having sustained any damage, or

(c) any vessel which having entered any port within Cochin State leaves it within forty-eight hours without discharging or taking in any passengers or cargo.

Port-dues not to be chargeable in certain cases.

48. (1) The Government may, by notification in the Cochin Government Gazette, order that there shall be paid in respect of every vessel entering any port subject to this Act, within a reasonable distance of which there is a public hospital or dispensary suitable for the reception or relief of seamen requiring medical aid, such further port-dues not exceeding one anna per ton as the Government thinks fit.

Power to impose hospital port dues.

(2) Such port-dues shall be called hospital port-dues, and the Government shall, in making any order under sub-section (1), have regard to any contributions made under section 36, sub-section (5), clause (d).

(3) An order imposing or increasing hospital port-dues shall not take effect till the expiration of sixty days from the day on which the order was published in the Cochin Government Gazette.

(4) Whenever the Government is satisfied that proper provision has been made by the owners or agents of any class of vessels for giving medical aid to the seamen employed on board such class of vessels, or that such provision is unnecessary in the case of any class of vessels, it may, by notification in the Cochin Government Gazette, exempt such class of vessels from any payment under this section.

Application
and account
of hospital
port-dues.

49. (1) Hospital port-dues shall be applied, as the Government may direct, to the support of any such hospital or dispensary as aforesaid, or otherwise for providing sanitary superintendence and medical aid for the shipping in the port in which they are levied and for the seamen belonging to the vessels therein, whether such seamen are ashore or afloat

(2) The Government shall publish annually in the Cochin Government Gazette, as soon after the first day of April as may be, an account, for the past financial year, of the sums received as hospital port-dues at each port where such dues are payable, and of the expenditure charged against those receipts.

(3) Such account shall be published as a supplement to the abstract published under section 36, sub-section (2).

CHAPTER VI.

HOISTING SIGNALS.

Master to
hoist
number of
vessel.

50. (1) The master of every inward or outward bound vessel on arriving within the limits of any part of a river or channel leading to a port subject to this Act, shall, on the requisition of the pilot in charge of the vessel, signify the name of the vessel, by hoisting the number by which she is known, or by adopting such

other means to this end as may be practicable and usual, and shall keep the signal flying until it is answered from the signal-station.

(2) If the master of a vessel arriving as aforesaid offends against sub-section (1), he shall be punishable for every such offence with fine which may extend to one thousand rupees.

51. (1) Every pilot in charge of a vessel shall require the number of the vessel to be duly signalled, as provided by the last foregoing section.

Pilot to require master to hoist number.

(2) When, on such requisition from the pilot, the master refuses to hoist the number of a vessel, or to adopt such other means of making her name known as may be practicable and usual, the pilot may, on arrival at the first place of safe anchorage, anchor the vessel and refuse to proceed on his course until the requisition has been complied with.

52. Any pilot in charge of a vessel who disobeys or abets disobedience to, any of the provisions of this Chapter shall be punishable with fine which may extend to five hundred rupees for each instance of such disobedience or abetment, and in addition shall be liable to have his authority to act as a pilot withdrawn.

Penalty on pilot disobeying provisions of this chapter.

CHAPTER VII.

PROVISIONS WITH RESPECT TO PENALTIES.

53. If any person disobeys any rule or order which the Government has made in pursuance of this Act, and for the punishment of disobedience to which express provision has not been made elsewhere in this Act, he shall be punishable for every such offence with fine which may extend to one hundred rupees.

Penalty for disobedience to rules and orders of the Government.

54. All offences against this Act shall be triable by a Magistrate, and any Magistrate may, by warrant under his hand, cause the amount of any fine imposed

Offences how triable, and penalties how recovered.

upon the owner or master of any vessel, for any offence committed on board of the vessel or in the management thereof or otherwise in relation thereto, whereof the owner or master is convicted, to be levied by distress and sale of the vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

Costs of conviction.

55. (1) In case of any conviction under this Act, the convicting Magistrate may order the offender to pay the costs of the conviction in addition to any fine or expenses to which he may be liable.

(2) Such costs may be assessed by the Magistrate and may be recovered in the same manner as any fine under this Act.

Ascertainment and recovery of expenses and damages payable under this Act.

56. (1) If any dispute arises as to the sum to be paid in any case as expenses or damages under this Act, it shall be determined by a Magistrate upon application made to him for that purpose by either of the disputing parties.

(2) Whenever any person is liable to pay any sum, not exceeding one thousand rupees, as expenses or damages under this Act, any Magistrate, upon application made to him by the authority to whom the sum is payable, may, in addition to or instead of any other means for enforcing payment, recover the sum as if it were a fine.

Costs of distress.

57. Whenever any fine, expenses or damages is or are levied under this Act, by distress and sale, the costs of the distress and sale may be levied in addition to such fine, expenses or damages, and in the same manner.

Magistrate to determine the amount to be levied in case of dispute.

58. If any dispute arises concerning the amount leviable by any distress or arrest under this Act or the costs payable under the last foregoing section, the person making the distress or using the arrest may detain the goods distrained or arrested, or the proceeds of the sale

thereof, until the amount to be levied has been determined by a Magistrate, who, upon application made to him for that purpose, may determine the amount and award such costs to be paid by either of the parties to the other of them as he thinks reasonable, and payment of such costs, if not paid on demand shall be enforced as if they were a fine.

59. (1) Any person offending against the provisions of this Act in any port subject to this Act shall be punishable by any Magistrate having jurisdiction over any district or place adjoining the port.

Jurisdiction over offences beyond local limits of jurisdiction.

(2) Such Magistrate may exercise all the powers of a Magistrate under this Act, in the same manner and to the same extent as if the offence had been committed locally within the limits of his jurisdiction, notwithstanding that the offence may not have been committed locally within such limits, and, in case any such Magistrate exercises the jurisdiction hereby vested in him, the offence shall be deemed, for all purposes, to have been committed locally within the limits of his jurisdiction.

60. (1) No conviction, order or judgment of any Magistrate under this Act shall be quashed for error of form or procedure, but only on the merits, and it shall not be necessary to state, on the face of the conviction, order or judgment, the evidence on which it proceeds.

Conviction to be quashed on merits only.

(2) If no jurisdiction appears on the face of the conviction, order or judgment, but the depositions taken supply that defect, the conviction, order or judgment shall be aided by what so appears in the depositions.

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS.

61. Any Magistrate, upon an application being made to him by the Resident, Madras States or by the

Foreign deserters.

Consul of any foreign Power or the representative of such Consul through the Resident, Madras States, aforesaid, and upon complaint on oath of the desertion of any seaman not being a slave from any vessel of the Paramount Power or such foreign Power, may issue his warrant for the apprehension of any such deserter, and, upon due proof of the desertion, may order him to be conveyed on board the vessel to which he belongs, or at the instance of the Resident or the Consul to be detained in custody until the vessel is ready to sail, or, if the vessel has sailed, for a reasonable time not exceeding one month:

Provided that a deposit be first made of such sum as the Magistrate deems necessary for the subsistence of the deserter during the detention and that the detention of the deserter shall not be continued beyond twelve weeks.

Application
of sections
10 and 21.

62. (1) The provisions of sections 10 and 21 shall be applicable to all ports heretofore or hereafter declared by the Government to be ports for the shipment and landing of goods but not otherwise subject to this Act, and may be enforced by any Magistrate to whose ordinary jurisdiction any such port is subject.

(2) Any penalties imposed by him, and any expenses incurred by his order, under the said provisions shall be recoverable respectively in the manner provided in sections 54 and 56.

(3) In any of the said ports for the shipment and landing of goods the consent referred to in section 21, sub-section (4), may be given by the principal officer of customs at such port or by any other officer appointed in that behalf by the Government.

Grant of
sites for
sailors'
institutes.

63. Any local authority in which any immovable property in or near a port is vested may, with the

previous sanction of the Government, appropriate and either retain and apply, or transfer by way of gift or otherwise, the whole or any part of the property as a site for, or for use as, a sailor's home or other institution for the health, recreation and temporal well-being of sailors.

64. (1) All acts, orders or directions by this Act authorized to be done or given by any conservator may, subject to his control, be done or given by any harbour-master or any deputy or assistant of such conservator or harbour-master.

Exercise of powers of conservator by his assistants.

(2) Any person authorized by this Act to do any act may call to his aid such assistance as may be necessary.

65. Any written notice of a direction given under this Act, left for the master of any vessel with any person employed on board thereof, or affixed on a conspicuous place on board of the vessel, shall, for the purposes of this Act, be deemed to have been given to the master thereof.

Service of written notices of directions.

66. Every declaration, order and rule of the Government made in pursuance of this Act shall be published in the Cochin Government Gazette, and a copy thereof shall be kept in the office of the conservator and at the custom-house, if any, of every port to which the declaration, order or rule relates, and shall there be open at all reasonable times to the inspection of any person without payment of any fee.

Publication of orders of Government.

67. The enactments mentioned in the second schedule are hereby repealed to the extent specified in the fourth column of that schedule.

Repeal.

THE FIRST SCHEDULE.

PORTS, VESSELS CHARGEABLE, RATE OF PORT-DUES AND
FREQUENCY OF PAYMENT.

(See Sections 1 and 33.)

Name of port.	Vessels Chargeable	Rate of Port-dues	Due how often chargeable in respect of same vessel.
Cochin.	Sea-going vessels of 15 tons and upwards.	<p style="text-align: center;">FOREIGN VESSELS.</p> <p>(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements or Ceylon calling at Cochin not exceeding three annas a ton.</p> <p>(b) In the case of any other foreign ship or steamer calling at Cochin not exceeding three annas a ton.</p> <p style="text-align: center;">COASTING VESSELS.</p> <p>(c) In the case of a coasting ship calling at Cochin, not exceeding one anna a ton.</p> <p>(d) In the case of a coasting steamer calling at Cochin, not exceeding three annas a ton.</p>	<p>The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again.</p> <p>The due is payable on each entry into port.</p> <p>The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again.</p> <p>The due is payable once in thirty days.</p>
Mali-puram.	do	do	do

EXPLANATION TO THE FIRST SCHEDULE.

(a) "ship" means a vessel propelled solely by wind power and "steamer" any vessel other than a ship;

(b) "coasting ship" or "coasting steamer" means respectively a ship or steamer which at any port discharges cargo exclusively from, or takes in cargo exclusively for, any port in the island of Ceylon or any part of India, between the westernmost part of Sind and the south easternmost part of Burma; and "coasting steamer" includes a coasting steam-vessel having a general pass under section 163 of the Cochin Sea Customs Act, XII of 1109;

(c) "foreign ship" or "foreign steamer" means respectively a ship or steamer not being a coasting ship or coasting steamer :

Provided that, for the purpose of the levy of port-dues, a vessel shall not be deemed, during one and the same voyage, to be both a coasting ship or steamer and a foreign ship or steamer, but port-dues shall, in respect of such voyage, be leviable on such vessel either as a coasting or as a foreign ship or steamer, whichever rate is the higher.

THE SECOND SCHEDULE.

ENACTMENTS REPEALED

(See Section 67)

Year.	Number.	Short title.	Extent of repeal
1082	II	The Cochin Ports Act.	The whole.
1110	VII	The Cochin Ports (Amendment) Act.	do
1106		Proclamation dated 7th Mee-nam 1106.	do
1107		Proclamation dated 31st Medam 1107.	do
1110		Proclamation dated 15th Mithu-nam 1110.	do
1112	II	Proclamation dated 4th Kanni 1112.	do