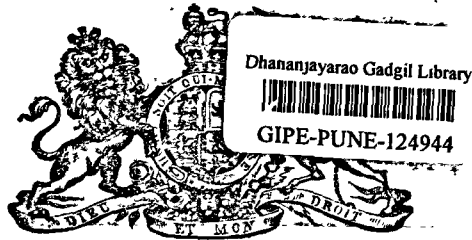


THE Rare section



Bombay Government Gazette.

1879.

PART IV.

ACTS

PASSED BY THE

GOVERNMENT OF INDIA

AND BY THE

GOVERNMENT OF BOMBAY.

Bombay:

PRINTED AT THE GOVERNMENT CENTRAL PRESS.

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Bombay Government Gazette.

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THURSDAY, 9TH JANUARY 1879.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 31st December 1878, and was promulgated for general information in the *Gazette of India* on the 4th January 1879:—

Act No. XVIII. of 1878.

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

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

It is hereby enacted as follows:—

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

D. FITZPATRICK,
Secretary to the Government of India.

[Published with the "Bombay Government Gazette" on the 16th January 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 31st December 1878, and was promulgated for general information in the *Gazette of India* on the 4th January 1879:—

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D. FITZPATRICK,
Secretary to the Government of India.

[Published with the "Bombay Government Gazette" on the 23rd January 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 31st December 1878, and was promulgated for general information in the *Gazette of India* on the 4th January 1879:—

Act. No. XVIII. of 1878.

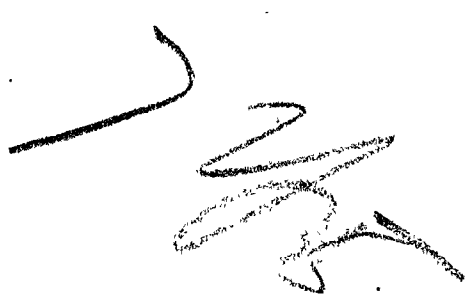
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D. FITZPATRICK,
Secretary to the Government of India.



[Published with the "Bombay Government Gazette" on the 6th February 1879.]

PART IV.

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The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 17th January, 1879, and was promulgated for general information in the *Gazette of India* of 18th January 1879:—

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- Short title. 1. This Act may be called "The Indian Stamp Act, 1879."
- Local extent. It extends to the whole of British India ;
And it shall come into force on the first day of April 1879.
- Commencement.

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

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

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

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

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

(4.) "Bond" means—

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

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

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

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

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

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

(8.) "Collector" means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and, without those limits, the Collec-

tor of a District, and includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office ;

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

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

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

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

(a) a pattá,

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

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

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

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

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

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

It includes a life-policy :

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

(17.) "Receipt" means any note, memorandum, writing or advertisement whereby any money or any bill of exchange, cheque or promissory note is acknowledged to have been received, or whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or whereby any debt or demand, or any part of a debt or demand, is acknowledged to

have been satisfied or discharged, or which signifies or imports any such acknowledgment, whether the same is or is not signed with the name of any person :

- (18.) "Schedule" means a schedule to this Act annexed :
- "Schedule."
- (19.) "Settlement" means any non-testamentary disposition in writing, of moveable or immovable property, made—
- "Settlement."
- (a) in consideration of marriage,
- (b) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or
- (c) for any religious or charitable purpose :
- It includes an agreement in writing to make such a disposition :
- (20.) "Vessel" means anything made for the conveyance by water of human beings or property :
- "Vessel."
- (21.) "Written" and "writing" include every mode in which words or figures can be expressed upon paper.
4. The schedules and everything therein contained shall be read and construed as part of this Act.
- Schedules to be read as part of Act.

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to duty.

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

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

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

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

6. Where, in the case of any sale, lease, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed for the conveyance, lease, mortgage or settlement in the

first schedule, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule :

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

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

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

8. The Governor General in Council may, by order published in the *Gazette of India*, reduce or remit the rates of duty.

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

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

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

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

(a) according to the provisions herein contained, or

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

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

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

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

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

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

Use of adhesive stamps.

namely :—

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

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

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

(d) notarial acts; and

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

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

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

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

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

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

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

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

C.—Of the Time of stamping Instruments,

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

17. Every instrument chargeable with duty executed only out of British India, and not being a bill of exchange, cheque or promissory note, may be stamped

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

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

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

D.—Of Valuations for duty.

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

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

One hundred francs are equivalent to forty rupees:

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

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

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

such stock or security according to the average price thereof on the day of the date of the instrument.

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

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

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

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

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

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

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

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

instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient.

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

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

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

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

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

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

(e.) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be

chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller; or where such duty would exceed five rupees, with a duty of five rupees.

E.—Duty by whom payable.

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

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

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

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

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

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

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

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

CHAPTER III.

ADJUDICATION AS TO STAMPS.

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

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

Provided that no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument

to which it relates is chargeable; and every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

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

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

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

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

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

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

Nothing in this section shall authorize the Collector to endorse—

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

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

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

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

Payment of fees under section 30 how made.

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

33. Every person having by law or consent of Examination and im- parties authority to re-ounding of instruments. ceive evidence, and

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

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

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

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

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

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

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

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

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

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

35. When the person impounding an instrument under section thirty-three has by law or consent of parties authority to receive evidence and admits such

instrument in evidence upon payment of a penalty as provided by section thirty-four, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of the duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

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

36. When a copy of an instrument is sent to a Collector under the Collector's power to refund penalty paid under section 35, 1st para. first paragraph of section thirty-five, he may, if he thinks fit, upon application made to him in this behalf, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument, or

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

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

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

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

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

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

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

38. If any instrument chargeable with duty and which is not duly stamped by accident, Instruments unduly stamped by accident. any person of his own motion before the Collector within one year from

the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped, and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections thirty-three and thirty-seven, receive such amount and proceed as next hereinafter prescribed.

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

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

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

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

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

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

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

41. When any duty or penalty has been paid, under section thirty-four, section thirty-seven or section thirty-eight, by any person in respect of an instrument, and by agreement, or under the provisions of section twenty-nine or any other enactment in force at the time such instrument

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

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was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid ; and for the purpose of such recovery any certificate granted in respect of such instrument under section thirty-nine shall be conclusive evidence of the matters therein certified.

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

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

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

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

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

CHAPTER V.

REFERENCE AND REVISION.

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

46. The Chief Controlling Revenue-Authority may state any case referred to it under section forty-five or otherwise coming to its notice, and refer such case with its

Remission of penalty paid under section 34 or 37.

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

Copy may be made of instrument so sent.

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

own opinion thereon, if the case arises in the territories for the time being administered by the Governor of Fort Saint George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay as the case may be; if it arises in the North-Western Provinces or Oudh—to the High Court of Judicature for the North-Western Provinces; if it arises in the territories for the time being administered by the Lieutenant-Governor of the Panjáb—to the Chief Court of the Panjáb; if it arises in the Central Provinces—to the High Court of Judicature at Bombay; and if it arises in any other part of British India—to the High Court of Judicature at Fort William.

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

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

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

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

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

50. When any Court in the exercise of civil or revenue jurisdiction makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of

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

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

Provided that no such prosecution shall be instituted where the amount (including duty and penalty) which according to the determination of such Court was payable in respect of the instrument under section thirty-four is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty:

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

CHAPTER VI.

ALLOWANCES FOR SPOILED STAMPS AND STAMPS NO LONGER REQUIRED.

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

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

(b.) The stamp used or intended to be used for any bill of exchange, cheque or promissory note, signed by or on behalf of the drawer or intended drawer, but not delivered out of his hands to the payee or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money, or in any way negotiated, issued or put in circulation, or made use of in any other manner, and which, being a

bill of exchange or cheque, has not been accepted by the drawee, and provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange or cheque to be afterwards written thereon :

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

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

- (1) an instrument executed by any party thereto, but afterwards found by a competent Court to be absolutely void in law from the beginning :
- (2) an instrument executed by any person, but afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended :
- (3) an instrument executed by any party thereto, but which, by reason of the death of any person, by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, or to advance any money intended to be thereby secured, cannot be completed so as to effect the intended transaction in the form proposed :
- (4) an instrument executed by any party thereto which, for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended :
- (5) an instrument executed by any party thereto which, by reason of the refusal of any person to act under the same, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose :
- (6) an instrument executed by any party thereto which becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument duly stamped :
- (7) an instrument executed by any party thereto which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided that in the case of an executed instrument—

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

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

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

52. When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty, or when any stamp used for an instrument has been inadvertently rendered useless under section fourteen owing to such instrument having been written in contravention of the provisions of section twelve, the Collector may, on application made within six months after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

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

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

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

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

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

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

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

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

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

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

CHAPTER VIII.

CRIMINAL OFFENCES AND PROCEDURE.

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

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

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

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

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

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

63. Any person who, with intent to defraud the Government of any duty, (a) executes any instrument in which all the facts and circumstances required by section twenty-seven to be set forth in such instrument are not fully and truly set forth, or

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

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

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

65. Every person who—

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

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

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

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

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

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

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

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

months, or with fine which may extend to five hundred rupees, or with both.

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

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

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

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

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

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

SCHEDULE I.

Description of Instrument.	Proper Stamp-duty.
1. ACKNOWLEDGMENT of a debt exceeding twenty rupees in amount or value, written or signed by or on behalf of a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper, when such book or paper is left in the creditor's possession	One anna.
2. ADMINISTRATION-BOND	The same duty as a Security-Bond (No. 14).
ADOPTION DEED ... See <i>Instrument, No. 38.</i>	

SCHEDULE I.—*continued.*

Description of Instrument.	Proper Stamp-duty.
3. AFFIDAVIT or declaration in writing on oath or affirmation made before a person authorized by law to administer an oath ... <i>See Exemptions, Schedule II, (No. 1).</i>	One rupee.
4. AGREEMENT TO LEASE ...	The same duty as a Lease (No. 39).
5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT ... <i>See Exemptions, Schedule II, (No. 2).</i>	<p>(a.) If relating to the sale of any Government security, share in a Company or Association or Bill of Exchange ... One anna.</p> <p>(b.) Whereby the owner or occupier of land in a village in the Bombay Presidency agrees to relinquish his right therein to the Government, and to accept rights in other land in exchange for the right so relinquished ... Four annas.</p> <p>(c.) If not otherwise provided for by this Act ... Eight annas.</p>
6. APPOINTMENT, in execution of a power, whether of trustees or of property moveable or immoveable, where made by any writing not being a Will ...	Fifteen rupees.
7. APPRAISEMENT or valuation made otherwise than under an order of the Court in the course of a suit ... <i>See Exemptions, Schedule II, (Nos. 3 and 4).</i>	The same duty as an Award (No. 10).
APPRENTICESHIP DEED ... <i>See Instrument, No. 31.</i>	
8. ARTICLES OF ASSOCIATION OF A COMPANY ...	Twenty-five rupees.
9. ARTICLES OF CLERKSHIP or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an Attorney in any High Court ...	Two hundred and fifty rupees.
ASSIGNMENT ... <i>See Conveyance, No. 21, and Transfer, No. 60.</i>	
AUTHORITY TO ADOPT ... <i>See Instrument, No. 38.</i>	
10. AWARD, that is to say, any decision in writing by an arbitrator or umpire on a reference made otherwise than by an order of the Court in the course of a suit. ... <i>See Exemption, Schedule II, (No. 6).</i>	<p>(a.) Where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000... The same duty as a Bond (No. 13) for such amount.</p> <p>(b.) In any other case ... Five rupees.</p>

SCHEDULE I.—continued.

Description of Instrument.		Proper Stamp-duty.		
11. BILL OF EXCHANGE OR PROMISSORY NOTE, not being a cheque, bond, bank-note or currency note.	(a.) When payable on demand and the amount exceeds Rs. 20 ...	One anna.		
	(b.) When payable otherwise than on demand, but not more than one year after date or sight.	If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
	If the amount of the bill or note does not exceed Rs. 200	Rs. a. p.	Rs. a. p.	Rs. a. p.
	If it exceeds 200 and does not exceed 400	0 2 0	0 1 0	0 1 0
	„ 400 600	0 4 0	0 2 0	0 2 0
	„ 600 1,000	0 6 0	0 3 0	0 2 0
	„ 1,000 1,200	0 10 0	0 5 0	0 4 0
	„ 1,200 1,600	0 12 0	0 6 0	0 4 0
	„ 1,600 2,500	1 0 0	0 8 0	0 6 0
	„ 2,500	1 8 0	0 12 0	0 8 0
For every Rs. 2,500 or part thereof in excess of Rs. 2,500 up to Rs. 10,000 ...	1 8 0	0 12 0	0 8 0	
For every Rs. 5,000 or part thereof in excess of Rs. 10,000 up to Rs. 30,000 ...	3 0 0	1 8 0	1 0 0	
And for every Rs. 10,000 or part thereof in excess of Rs. 30,000 ...	6 0 0	3 0 0	2 0 0	
(c.) When payable at more than one year after date or sight ...	The same duty as a Bond (No. 13) for the amount of such bill or note.			
12. BILL OF LADING ...	...	Four annas.	If a Bill of Lading is drawn in parts, the proper stamp therefor must be borne by each one of the set.	
See Exemption, Schedule II, (No. 7).	...	Rs.		
13. BOND (not otherwise provided for by this Act). See Administration-Bond (No. 2), Customs-Bond (No. 24), Indemnity-Bond (No. 28), Security-Bond (No. 14). See Exemptions, Schedule II, (No. 8).	When the amount or value secured does not exceed ...	10	Two annas.	
	When such amount or value exceeds Rs. 10, but does not exceed ...	50	Four annas.	
	When such amount or value exceeds Rs. 50, but does not exceed ...	100	Eight annas.	
	and for every Rs. 100 or part thereof in excess of Rs. 100 up to ...	1,000	Eight annas.	
	and for every Rs. 500 or part thereof in excess of ...	1,000	Two rupees eight annas.	
14. BOND OR MORTGAGE-DEED, executed by way of security for the due execution of an office, or to account for money received by virtue thereof ... See Exemptions, Schedule II, (Nos. 8 and 12).	(a.) When the amount secured does not exceed ...	1,000	The same duty as a Bond (No. 13).	
	(b.) In any other case ...	...	Five rupees.	

SCHEDULE I.—continued.

Description of Instrument.	Proper Stamp-duty.
15. BOTTOMRY-BOND , that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage.	The same duty as a Bond (No. 13).
16. CERTIFICATE OF SALE , granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer	The same duty as a Conveyance (No. 21) for a consideration equal to the amount of the purchase-money.
17. CERTIFICATE OR OTHER DOCUMENT evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any Company or Association, or to become proprietor of shares, scrip or stock in or of any Company or Association	One anna.
18. CHARTER-PARTY , that is to say, any instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer	One rupee.
19. CHEQUE , for an amount exceeding twenty rupees	One anna.
20. COMPOSITION-DEED , that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors.	Ten rupees.

SCHEDULE I.—*continued.*

Description of Instrument.		Proper Stamp-duty.	
21. CONVEYANCE, not being a TRANSFER mentioned in No. 60. See Exemptions, Schedule II, (Nos. 5 and 17).	When the amount of the consideration for such conveyance as set forth therein does not exceed	Rs. 50	Eight annas.
	When it exceeds Rs. 50 but does not exceed ...	100	One rupee.
	For every Rs. 100 or part thereof in excess of Rs. 100 up to ...	1,000	One rupee.
	and for every Rs. 500 or part thereof in excess of	1,000	Five rupees.
CO-PARTNERSHIP...	See Instrument, No. 32.		
22. COPY OR EXTRACT, certified to be a true copy or extract, by or by order of any public officer and not chargeable under the law for the time being in force relating to Court-fees	(a.) If the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed one rupee ...		Eight annas.
	(b.) In any other case ...		One rupee.
See Exemptions, Schedule II, (Nos. 9 and 10).			
23. COUNTERPART OR DUPLICATE of any instrument chargeable with duty, and in respect of which the proper duty has been paid	(a.) If the duty with which the original instrument is chargeable does not exceed one rupee.		The same duty as is payable on the original.
	(b.) In any other case ...		One rupee.
24. CUSTOMS-BOND			The same duty as a Security-Bond (No. 14).
25. DECLARATION OF ANY TRUST of or concerning any property, when made by any writing not being a will			Fifteen rupees.
26. DELIVERY-ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named, or his assigns, or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees			One anna.

SCHEDULE I.—continued.

Description of Instrument.	Proper Stamp-duty.
DEPOSIT OF TITLE-DEEDS ... See <i>Instrument, No. 29.</i>	
DISSOLUTION OF PARTNERSHIP ... See <i>Instrument, No. 33.</i>	
DUPLICATE ... See <i>Counterpart, No. 23.</i>	
27. ENTRY AS AN ADVOCATE, VAKIL OR ATTORNEY ON THE ROLL OF ANY HIGH COURT in exercise of powers conferred on such Court by letters patent ...	<p>In the case of an Advocate or Vakil... Five hundred rupees.</p> <p>In the case of an Attorney... Two hundred and fifty rupees.</p>
See <i>Exemption, Schedule II, (No. 11).</i>	
EXCHANGE ... See <i>Instrument, No. 35.</i>	
EXTRACT ... See <i>Copy, No. 22.</i>	
FURTHER CHARGE ... See <i>Instrument, No. 30.</i>	
GIFT ... See <i>Instrument, No. 36.</i>	
28. INDEMNITY-BOND ...	The same duty as a Security-Bond (No. 14).
INSPECTORSHIP-DEED See <i>Composition-deed, No. 20.</i>	
29. INSTRUMENT EVIDENCING AN AGREEMENT TO SECURE THE REPAYMENT OF A LOAN made upon the deposit of title-deeds or other valuable security, or upon the hypothecation of moveable property ...	<p>(a) When such loan is re-payable more than three months, but not more than one year, from the date of such instrument. The same duty as a Bill of Exchange (No. 11 (b)) for the amount secured.</p> <p>(b) When such loan is re-payable not more than three months from the date of such instrument. Half the duty payable on a Bill of Exchange (No. 11 (b)) for the amount secured.</p>
30. INSTRUMENT IMPOSING A FURTHER CHARGE ON MORTGAGED PROPERTY.	<p>(a) When the original mortgage is one of the description referred to in No. 44, clause (a), of this schedule. The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such instrument.</p> <p>(b) When such mortgage is one of the description referred to in No. 44, clause (b), of this schedule. The same duty as a Bond (No. 13) for the amount secured by such instrument.</p>
31. INSTRUMENT OF APPRENTICESHIP, including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employment, except articles of clerkship (No. 9 of this schedule)	
See <i>Exemption, Schedule II, (No. 12 (c)).</i>	Five rupees.

SCHEDULE I.—*continued.*

Description of Instrument.	Proper Stamp-duty.
32. INSTRUMENT OF CO-PARTNERSHIP.	Ten rupees.
33. INSTRUMENT OF DISSOLUTION OF PARTNERSHIP.	Five rupees.
34. INSTRUMENT OF DIVORCE, that is to say, any instrument by which any person effects the dissolution of his marriage.	One rupee.
35. INSTRUMENT OF EXCHANGE of any property	The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property of greater value as set forth in such instrument.
36. INSTRUMENT OF GIFT (OTHER THAN A SETTLEMENT OR WILL)	The same duty as a Conveyance (No. 21) for a consideration equal to the value of the property as set forth in such instrument.
37. INSTRUMENT OF PARTITION	The same duty as a Bond (No. 13) for the amount of the value of the property divided as set forth in such instrument.
38. INSTRUMENT (OTHER THAN A WILL) CONFERRING OR PURPORTING TO CONFERR AN AUTHORITY TO ADOPT...	Ten rupees.
INSURANCE	See <i>Policy, No. 49.</i>
39. LEASE. See <i>Agreement to lease (No. 4).</i> See <i>Exemptions, Schedule II, (No. 13).</i>	<p>(a) Whereby such lease the rent is fixed and no premium is paid or delivered and such lease purports to be for a term—</p> <p>of less than one year ... The same duty as a Bond (No. 13) for the whole amount payable or deliverable under such lease.</p> <p>of not less than one year, but not more than three years. ... The same duty as a Bond (No. 13) for the average annual rent reserved.</p> <p>exceeding three years ... The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent reserved.</p>

SCHEDULE I.—continued.

Description of Instrument.	Proper Stamp-duty.
<p>(b) Whereby such lease the rent is fixed and no premium is paid or delivered and such lease does not purport to be for any definite term</p> <p>39. LEASE—contd. See Agreement to lease (No. 4). See Exemptions, Schedule II, (No. 13).</p> <p>(c) Where the lease is granted for a fine or premium, and where no rent is reserved</p> <p>(d) Where the lease is granted for a fine or premium in addition to rent reserved</p>	<p>The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.</p> <p>The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease.</p> <p>The same duty as a Conveyance (No. 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium had been paid or delivered: Provided that, when an agreement to lease is stamped with the <i>ad valorem</i> stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.</p>
<p>40. LETTER OF ALLOTMENT OF SHARES in any Company, or proposed Company, or in respect of any loan to be raised by any Company or proposed Company</p>	<p>One anna.</p>
<p>41. LETTER OF CREDIT, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn</p>	<p>One anna.</p>
<p>42. LETTER OF LICENSE, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion.</p>	<p>Ten rupees.</p>

SCHEDULE I,—*continued.*

Description of Instrument.	Proper Stamp-duty.
43. MEMORANDUM OF ASSOCIATION OF A COMPANY.	Fifteen rupees.
44. MORTGAGE-DEED not provided for by No. 14, No. 15, No. 29 or No. 55 of this schedule. <i>See Exemptions, Schedule II, No. 12 and No. 14 (b).</i>	(a.) When at the time of execution possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given. The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such deed. (b.) When at the time of execution possession is not given or agreed to be given as aforesaid The same duty as a Bond (No. 13) for the amount secured by such deed.
45. NOTARIAL ACT, that is to say, any instrument, endorsement, note, attestation, certificate or entry made or signed by a Notary Public in the execution of the duties of his office or by any other person lawfully acting as a Notary Public.	One rupee.
46. NOTE OR MEMORANDUM sent by a Broker or Agent to his principal, intimating the purchase or sale on account of such principal of any goods, stock or marketable security exceeding in value twenty rupees.	One anna.
47. NOTE OF PROTEST BY THE MASTER OF A SHIP	Eight annas.
PARTITION	See <i>Instrument, No. 37.</i>
PARTNERSHIP	See <i>Instrument, Nos. 32 and 33.</i>
48. PETITION FOR LEAVE TO FILE A SPECIFICATION OF AN INVENTION, or for the extension of the term of the exclusive privilege of making or using or selling such invention in India	One hundred rupees.

SCHEDULE I.—continued.

Description of Instrument.	Proper Stamp-duty.			
	If drawn singly.	If drawn in duplicate for each part.		
	Rs. a. p.	Rs. a. p.		
49. POLICY OF INSURANCE... See Exemption, Schedule II, (No. 14 (a)).	(a.) In the case of Sea-insurance— When the amount insured Rs. does not exceed ... 1,000	0 4 0	0 2 0	
	And for every farther sum of Rs. 1,000 or part thereof in excess of ... 1,000	0 4 0	0 2 0	
	(b.) In the case of any other insurance— When the amount insured does not exceed ... 1,000	0 6 0	0 3 0	
	And for every farther sum of Rs. 1,000 or part thereof in excess of ... 1,000	0 6 0	0 3 0	
50. POWER OF ATTORNEY, not being a proxy chargeable under No. 51.	(a.) When executed for the sole purpose of procuring the presentation of one or more documents for registration in relation to a single transaction ...	Eight annas.		
	(b.) When authorizing one person or more to act in a single transaction other than that mentioned in (a) ...	One rupee.		
	(c.) When authorizing not more than five persons to act jointly and severally in more than one transaction or generally. ...	Five rupees.		
	(d.) When authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally ...	Ten rupees.		
	(e.) In any other case ...	One rupee for each person authorized.		
<p><i>Explanation.</i>—For the purposes of this number more persons than one when belonging to the same firm shall be deemed to be one person.</p> <p>PROMISSORY NOTE. See <i>Bill of Exchange, No. 11.</i></p> <p>PROTEST, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note ... See <i>Notarial Act, No. 45.</i></p> <p>PROTEST BY THE MASTER OF A SHIP, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in</p>				

SCHEDULE I.—continued.

Description of Instrument	Proper Stamp-duty.
writing made by him against charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such. See <i>Notarial Act, No. 45.</i>	
51. PROXY empowering any person to vote at any one meeting of— (a.) Members of a Company whose stock or funds is or are divided into shares and transferable: (b.) Municipal Commissioners: (c.) Proprietors, Members or Contributors to the funds of any Institution ...	... One anna.
52. RECEIPT FOR ANY MONEY OR OTHER PROPERTY THE AMOUNT OR VALUE OF WHICH EXCEEDS TWENTY RUPEES ... See <i>Exemptions, Schedule II, (No. 15).</i>	... One anna.
53. RE-CONVEYANCE OF MORTGAGED PROPERTY. (a.) If the consideration for which the property was mortgaged does not exceed ... (b.) In any other case ...	Rs. ... 1,000 The same duty as a Conveyance (No. 21) for the amount of such consideration as set forth in the re-conveyance. ... Ten rupees.
54. RELEASE, that is to say, any instrument whereby a person renounces a claim upon another person or against any specified property ... (a.) If the amount or value of the claim does not exceed ... (b.) In any other case ...	1,000 The same duty as a Bond (No. 13) for such amount or value as set forth in the release. ... Five rupees.
55. RESPONDE NTIA-BOND, that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making re-payment contingent on the arrival of the cargo at the port of destination ...	... The same duty as a Bond (No. 13).

SCHEDULE I.—concluded.

Description of Instrument.	Proper Stamp-duty.
56. REVOCATION OF ANY TRUST of or concerning any property by any instrument other than a will	Ten rupees.
57. SETTLEMENT	The same duty as a Bond (No. 13) for a sum equal to the amount or value of the property settled as set forth in such settlement.
58. SHIPPING-ORDER for or relating to the conveyance of goods on board of any vessel	One anna.
59. SURRENDER OF LEASE	The duty with which such lease is chargeable.
See Exemption, Schedule II, (No. 16).	Five rupees.
60. TRANSFER See Exemptions, Schedule II, (No. 17).	The duty with which such Bond, Lease, Mortgage-deed or Policy of Insurance is chargeable.
TRUST	Five rupees.
VALUATION	Ten rupees.
61. WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be	Four annas.

SCHEDULE II.

INSTRUMENTS EXEMPTED FROM STAMP-DUTY.

1. Affidavit or declaration in writing when made—
 - (a) as a condition of enlistment under the Indian Articles of War ;
 - (b) for the immediate purpose of being filed or used in any Court or before the officer of any Court ; or
 - (c) for the sole purpose of enabling any person to receive any pension or charitable allowance.
2. Agreement or memorandum of agreement—
 - (a) for or relating to the sale of goods or merchandize exclusively, not being a note or memorandum chargeable under No. 46 of schedule I ;
 - (b) for service in British Burma under the Chief Commissioner of that Province entered into between Natives of India emigrating to British Burma and the Superintendent of State Emigration or other Government officer acting as representative of the said Chief Commissioner ;
 - (c) made by raiyats for the cultivation of the poppy for Government ;
 - (d) made in the form of tenders to the Government of India for or relating to any loan ;
 - (e) made regarding the occupancy of land denoted by a survey-number, and the payment of revenue therefor, under Bombay Act I of 1865 ;
 - (f) made under the European Vagrancy Act, 1874, section 17.
3. Appraisalment or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.
4. Appraisalment of crops for the purpose of ascertaining the amount to be given to a landlord as rent.
5. Assignment of copyright by entry made under Act No. XX of 1847, section 5.
6. Award under Bombay Act VI of 1873, section 81, or Bombay Act III of 1874, section 18.
7. Bill of lading, when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1875, and are to be delivered at another place within the limits of the same port.
8. Bond when executed by—
 - (a) the sureties of middlemen (Iambardárs or khattadárs) taking advances for the cultivation of the poppy for Government ;
 - (b) headmen nominated under rules framed in accordance with Bengal Act III of 1876, section 99, for the due performance of their duties under that Act ;
 - (c) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.
9. Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.
10. Copy of registration of emigrants furnished under section 27 or section 29 of the Indian Emigration Act, 1871.
11. Entry—
 - (a) of an advocate, vakíl or attorney on the roll of any High Court, when he has previously been enrolled in a High Court established by Royal Charter ;
 - (b) on the roll of any High Court, as an attorney, of an articled clerk bound as such before this Act comes into force.
12. Instruments—
 - (a) executed by persons taking advances under the Land Improvement Act, 1871, or by their sureties, as security for the re-payment of such advances ;
 - (b) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money received by virtue thereof.
 - (c) of apprenticeship executed by a Magistrate under Act XIX of 1850 or by which a person is apprenticed by or at the charge of any public charity.
13. Leases and Counterparts—
 - (a) Leases of fisheries granted under the Burma Fisheries Act, 1875 ;
 - (b) Lease, executed in the case of a cultivator without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the annual rent reserved does not exceed one hundred rupees ;
 - (c) Counterpart of any lease granted to a cultivator.
14. Letter—
 - (a) of cover or engagement to issue a policy of insurance :
Provided that, unless such letter or engagement bear the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned.
 - (b) of hypothecation accompanying a bill of exchange.

15. Receipt—

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

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

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

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

17. Transfers by endorsement—

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

General Exemption.

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

SCHEDULE III.

ACTS REPEALED.

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

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



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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 8th March 1879, and was promulgated for general information in the *Gazette of India* on the 15th March 1879:—

Act. No. III of 1879.

An Act to authorize the destruction of Useless Records.

Whereas it is expedient to provide for the destruction or other disposal of useless records, books and papers in Courts and Revenue-offices; It is hereby enacted as follows:—

1. This Act may be called "The Destruction of Records Act, 1879:"

Short title. it extends to the whole
Local extent. of British India; and it
Commencement shall come into force at once.

2. The High Court may, from time to time, make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of such High Court, or the Courts of civil and criminal jurisdiction subordinate thereto, as the High Court may consider useless or unworthy of being permanently preserved.

So far as regards his own Court, the Court of Small Causes in Rangoon and the Courts of the Magistrates within the local limits of his ordinary civil jurisdiction, the Recorder of Rangoon shall, for the purposes of this section, be deemed to be a High Court.

IV.—9

3. Each of the High Courts of Judicature at Fort William, Madras and Bombay may from time to time make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of

(a) the local Court for the relief of Insolvent Debtors held under the provisions of the eleventh and twelfth of Victoria, chapter twenty-one,

(b) the local Administrator General, as the High Court may consider useless or unworthy of being permanently preserved.

4. The Chief Controlling Revenue-Authority may from time to time make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or in the custody of the Revenue Courts and offices as it may consider useless or unworthy of being permanently preserved.

5. All rules made under this Act shall, after being confirmed by the Local Government and sanctioned by the Governor General in Council, be published in the local official Gazette, and shall thereupon have the force of law.

6. All rules and orders heretofore made by a Local Government, a High Court or a Chief Controlling Revenue-Authority, for the purpose of making rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or in the custody of the Revenue Courts and offices as they may consider useless or unworthy of being permanently preserved, shall, from the date of the commencement of this Act, be deemed to have been made under this Act.

Authority for the destruction or other disposal of useless records, books and papers belonging to or in the custody of any Court or Revenue-office shall be deemed to have had the force of law from the date on which they were made, and all such rules now in force shall continue to have

the force of law until they are rescinded by rules made under this Act; and no suit or other proceeding shall be instituted, maintained or continued against any person for the disposal, by destruction or otherwise, of any records, books or papers in accordance with any such rules or with any order made by a Local Government, High Court or Chief Controlling Revenue-Authority.

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

8. Nothing herein contained shall be deemed to authorize the destruction of any document which, under the provisions of any law for the time being in force, is to be kept and maintained.

9. The enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column.

THE SCHEDULE.

(See Section 9.)

Enactments repealed.

(a).—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject or short title.	Extent of repeal.
XX of 1875	The Central Provinces Laws Act, 1875.	In section eight, clause (c), the last twenty-one words.
XVIII of 1876	The Oudh Laws Act, 1876.	In section thirty-nine, clause (e), the last eighteen words.

(b).—ACTS OF THE GOVERNOR OF BOMBAY IN COUNCIL.

Number and year.	Subject or short title.	Extent of repeal.
VI of 1865	To authorize the destruction of Useless Records in certain Courts of the Bombay Presidency.	The whole.
V of 1869	To authorize the destruction of Useless Records in the Courts of the Province of Sind.	The whole.

(c).—REGULATION UNDER 33 VIC., c. 3.

Number and year.	Subject or short title.	Extent of repeal.
III of 1877	The Ajmer Laws Regulation, 1877.	In section forty, clause (c), the last twenty-one words.

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

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 13th March, 1879, and was promulgated for general information in the *Gazette of India* on the 15th March 1879:—

Act No. IV of 1879.

THE INDIAN RAILWAY ACT, 1879.

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SCHEDULES.

An Act to consolidate and amend the law relating to Railways in India.

WHEREAS it is expedient to consolidate and amend the law relating to Railways in India; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title. 1. This Act may be called "The Indian Railway Act, 1879."

Local extent. It extends to the whole of British India and, so far as regards subjects of Her Majesty the Empress of India, to the dominions of Princes and States in India in alliance with Her said Majesty;

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

2. On and from that day, the Acts specified in the first schedule hereto annexed shall be repealed.

All rules made, notifications published and powers conferred under any of such Acts, or any enactment thereby repealed, shall (so far as they are consistent herewith) be deemed to have been respectively made, published and conferred under this Act.

Nothing in the Carriers Act, 1865, shall apply to carriers by railway

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

Interpretation-clause. "Railway" means a railway for the public conveyance of passengers or goods.

It includes—

(a) all land within the fences or other boundary-marks prescribed under section fifty-two;

(b) all lines of rail, sidings or branches worked over for the purposes of, or in connection with, a Railway;

(c) all stations, offices, warehouses, fixed machinery and other works constructed for the purposes of, or in connection with, a Railway;

(d) all vessels and rafts used for the purpose of carrying on the traffic of a Railway.

In section four, "Railway" includes a railway under construction, and in the remaining part of this section and in the following sections (namely), six, eight, sixteen, twenty-five, thirty, thirty

three, thirty-four, forty to forty-six (both inclusive), fifty-two and fifty-three, "Railway" includes a Railway under construction and a Railway not used for the public conveyance of passengers or goods :

"Railway-Administration" means in the case of a Railway worked by Government or a Native State, the Manager of such Railway, and in the case of a Railway worked by a Company or private individual, such Company or individual :

"Railway-servant" means any person employed by a Railway-Administration to perform any function in connection with a Railway,

and in section twenty-five, last clause, sections twenty-six, twenty-seven, thirty-eight, and forty-two includes any person employed to perform any such function by any other person in execution of a contract into which he has entered with a Railway-Administration.

4. It shall be lawful, with the previous sanction of the Governor General in Council, to use on every Railway locomotive engines or other motive power, and carriages and wagons to be drawn or propelled thereby.

CHAPTER II.

DUTIES OF THE RAILWAY-ADMINISTRATION.

5. No Railway or portion or extension of, or addition to, a Railway shall be opened for the public conveyance of passengers until the Railway-Administration has given to the Governor General in Council notice in writing of the intention of opening the same and until an officer appointed by the Governor General in Council to inspect such Railway, portion, extension or addition has, after inspection thereof, reported in writing to the Governor General in Council that in his opinion the opening of the same would not be attended with danger to the public using the same.

6. Every Railway-Administration shall, within forty-eight hours after the occurrence upon the Railway of—

(a) any accident attended with loss of human life or serious injury to person or property,

(b) any accident of a description usually attended with such loss or injury, and

(c) any accident of any other description which the Governor General in Council may, from time to time, direct to be notified.

give notice thereof to the Local Government ;

and the Station-master nearest to the place at which the accident occurs, or, where there is no Station-master; the officer in charge of the section of the Railway on which the accident occurs, shall without unnecessary delay give notice in writing or by telegraph of such accident to the nearest Magistrate and to the officer in charge of the Police-station in the jurisdiction of which the accident occurs or to such other Magistrate and Police-officer as the Local Government from time to time appoints in this behalf.

7. Every Railway-Administration shall make up and deliver to the Governor General in Council a return of accidents occurring in the course of the public traffic upon the Railway, whether attended with personal injury or not, in such form and manner, and at such intervals of time, as the Governor General in Council from time to time directs.

8. Every Railway-Administration shall make general rules for working the following purposes (that is to say) :

(a) for regulating the mode in which, and the speed at which, carriages and wagons used on the Railway are to be moved or propelled ;

(b) for regulating the maximum number of passengers which each carriage and compartment may carry, and the mode in which such number shall be denoted thereon ;

(c) for regulating the provision to be made for the accommodation and convenience of passengers;

(d) for declaring what shall be deemed to be, for the purposes of this Act, dangerous goods ; and

(e) generally for regulating the travelling upon, and the use, working and management of, the Railway ;

and may, from time to time, alter any such rules,

Any such rule may contain a provision that any

person committing a breach of it shall be liable to a fine which may extend to fifty rupees, or, in default of payment of such fine, to simple imprisonment for a term which may extend to two months.

No such rule shall take effect unless it is consistent with this Act and until it has received the sanction of the Governor General in Council.

All rules made under this section shall be published in the *Gazette of India*, and shall be otherwise notified to the Railway-servants and the public in such manner as the Governor General in Council, from time to time, directs,

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

9. An abstract of this Act, and a copy of the Time-tables and Tariff of charges which may, from time to time, be published for any Railway by any Railway-Administration, shall be exhibited in some conspicuous place at each station of such Railway, so that they may be easily seen and read.

All such documents shall be so exhibited in English and in the principal vernacular language of the district in which the station is situate, and in such other language, if any, as the Governor General in Council may direct.

CHAPTER III.

CARRIAGE OF PROPERTY.

10. Every agreement purporting to limit the obligation or responsibility imposed on a carrier by Railway by the Indian

Special contract limiting liability.

Contract Act, 1872, sections 151 and 161, in the case of loss, destruction or deterioration of, or damage to, property shall, in so far as it purports to limit such obligation or responsibility, be void unless—

(a) it is in writing signed by, or on behalf of, the person sending or delivering such property, and

(b) it is otherwise in a form approved by the Governor General in Council.

11. When any property mentioned in the second schedule hereto gold, silver, &c., unless value declared and increased charge accepted.

annexed is contained in any parcel or package delivered to a carrier by Railway, the carrier shall not be liable for loss, destruction or deterioration of, or damage to, such property, unless at the time of delivery the value and nature thereof have been declared by the person sending or delivering the same, and an increased charge for the safe conveyance of the same, or an engagement to pay such charge, has been accepted by some Railway-servant specially authorized in this behalf.

When any property of which the value and nature have been declared under this section has been lost, destroyed or damaged, or has deteriorated, the compensation recoverable for such loss, destruction, damage or deterioration shall not exceed the value so declared.

12. A carrier by Railway shall in no case be answerable for loss, destruction or deterioration of, or damage to, any passenger's luggage, unless a Railway-servant has booked and given a receipt for the same.

13. In any suit against a carrier by Railway for compensation for loss, destruction or deterioration of, or damage to, property delivered to a Railway-servant, it shall not be necessary for the plaintiff to prove in what manner such loss, destruction, deterioration or damage was caused.

14. If any person fails to pay on demand any sum due by him to a carrier by Railway for conveyance of any property by Railway, or for the custody of any property or for demurrage or wharfage in respect of the same, the Railway-Administration may detain the whole or any part of such property or, if the same have been removed from the Railway, any other property of such person then on such Railway or thereafter coming into the possession of the Railway-Administration ;

and may also sell by public auction, in the case of perishable property at once, and in the case of other property on the expiration of at least fifteen days' notice thereof published in one or more of the local newspapers or, where there are no such newspapers, in such manner as the Local Government may, from time to time, direct, sufficient of such property to produce the sum payable as aforesaid, and all charges and expenses of such detention, notice and sale, or, if such person fails to remove from the Railway within a reasonable time any property so detained, the whole of such property ;

IV.—10

and may, out of the proceeds of the sale, retain the sum so payable, together with all charges and expenses aforesaid, rendering the surplus, if any, of such proceeds, and so much of the property (if any) as remains unsold, to the person entitled thereto ;

or such carrier may recover any such sum by suit.

15. The owner or person having the care of any property which has been carried upon any Railway, or is brought into any station or warehouse for the purpose of being carried upon a Railway, shall, on demand by any Railway-servant appointed in this behalf by the Railway-Administration, deliver to him an exact account in writing signed by such owner or person of the quantity and description of such property.

16. No passenger shall take with him on a Railway, and no person shall deliver or tender for carriage upon any Railway, any dangerous luggage or goods without giving notice of their nature to a Railway-servant, or, in the case of luggage or goods delivered or tendered for carriage, distinctly marking their nature on the outside of the package containing the same.

Any Railway-servant may refuse to carry upon a Railway any luggage or parcel which he suspects to contain dangerous goods, and may require such luggage or parcel to be opened to ascertain the fact previously to carrying the same ; and in case any such luggage or parcel is received for the purpose of being carried upon a Railway, any Railway-servant may stop the transit thereof until he is satisfied as to the nature of its contents.

CHAPTER IV.

CARRIAGE OF PASSENGERS.

17. Every person desirous of travelling on a Railway shall, upon payment of his fare, be furnished with a ticket specifying in English and the principal vernacular language of the district in which the ticket is issued, the class of carriage for which, and the place from and place to which, the fare has been paid, and the amount of such fare ;

and every passenger shall, when required, show his ticket to any Railway-servant duly authorized to examine the same, and shall deliver up such ticket upon demand to any Railway-servant duly authorized to collect tickets.

18. At the intermediate stations; the fares shall be deemed to be accepted and the tickets furnished only upon condition that there be room in the train for which the tickets are furnished.

In case there is not room for all the passengers to whom tickets have been furnished, those who have obtained tickets for the longest distance shall have the preference ;

and those who have obtained tickets for the same distance shall have the preference according to the order in which they have received their tickets :

Provided that all officers and troops of Her Majesty on duty, and all other persons on the business of the Government who, by virtue of any contract with the Government or, in the case of a Railway worked by Government, of any direction of the Governor General in Council, are entitled to be conveyed on a Railway in preference to, or in priority over, the public, shall be entitled to such preference and priority without reference to the distance for which, or the order in which, they have received their tickets.

Any passenger to whom a ticket has been furnished at any station and for whom there is no room shall, on returning the ticket within a reasonable time after its issue, be entitled to have his fare at once refunded.

19. Except with the permission of the Railway-Administration or Fares to be prepaid, of such officer as it appoints in this behalf, no person shall enter any carriage used on any Railway for the purpose of travelling therein without having first paid his fare and obtained a ticket.

20. Any passenger found suffering from an infectious disease in a Railway-carriage or in any place on a Railway may, if his remaining in such carriage or place is likely to spread the infection of such disease, be removed from such carriage or place by any Railway-servant ;

Any passenger so removed who has paid his proper fare to or at the place at which he is so removed, shall be entitled, on returning his ticket, to have such fare refunded.

CHAPTER V.

OFFENCES AND PROCEDURE.

(A).—Offences by the Railway-Administration.

21. Any Railway-Administration opening, in contravention of section five, any Railway, or any portion or extension of, or addition to, a Railway, shall forfeit to Government the sum of one thousand rupees for every day during which the same continues open in contravention of that section.

22. Any Railway-Administration omitting to give notice as required by section six, shall forfeit to Government the sum of one hundred rupees for every day during which such omission continues.

23. Any Railway-Administration failing to deliver any return mentioned in section seven within fourteen days after the same ought to be delivered, or to make or notify any rules as required by section eight, or to exhibit any abstract or copy mentioned in section nine in manner required by that section, shall

forfeit to Government the sum of fifty rupees for every day during which such failure continues.

(B).—Offences by Railway-servants.

24. Any Station-master or other person omitting to give notice as required by section six, shall be punished with fine which may extend to fifty rupees.

25. Any Railway-servant who is in a state of intoxication whilst actually employed upon a Railway in the discharge of any duty, or who negligently omits to perform his duty, or who performs the same in an improper manner,

shall be punished with fine which may extend to fifty rupees ;

or if the duty in any of the cases aforesaid be such that the negligent omission or improper performance thereof would be likely to endanger the safety of any person travelling or being upon such Railway, such servant shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

26. If any Railway-servant in the discharge of his duty endangers the safety of persons—

(a) by disobeying any general rule sanctioned and published and notified in the manner prescribed by section eight ; or

(b) by disobeying any rule or order not inconsistent with the general rules aforesaid, and which such servant was bound by the terms of his employment to obey, and of which he had notice ; or

(c) by any rash or negligent act or omission, he shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five hundred rupees, or with both.

27. Every Railway-servant shall be deemed a "public servant" within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code.

In the definition of legal remuneration contained in the said section 161, the word "Government" shall, for the purposes of this section, be deemed to include any employer of a Railway-servant as such.

28. Any Railway-servant who compels or attempts to compel any passenger to enter a carriage or compartment containing the maximum number of passengers denoted thereon in accordance with a rule made and notified under section eight, shall be punished with fine which may extend to one hundred rupees.

(C).—Offences by Persons generally.

29. Any person required under section fifteen to give an account of the quantity and description of any property who neglects or refuses to give such account,

or who wilfully gives a false account, shall be punished with fine which may extend to five rupees for every maund (of 3,200 tolahs) of such property; and such fine shall be in addition to any charge to which such property may be liable.

30. Whoever, in contravention of section sixteen, takes with him any dangerous goods on a Railway, or delivers or tenders any such goods for the purpose of being carried upon a Railway, shall be punished with fine which may extend to two hundred rupees.

For taking dangerous goods on Railway or delivering such goods without notice.

31. Any passenger travelling on a Railway without a proper ticket or having such a ticket and not showing or delivering up the same when so required under section seventeen, shall be liable to pay the fare of the class in which he is found travelling, from the place whence the train originally started, unless he can prove that he has travelled a less distance only, in which case he shall be liable to pay the fare of the class aforesaid only from the place whence he has travelled.

For travelling without ticket or not showing or delivering up ticket.

Every such fare shall, on application by a Railway-servant to a Magistrate, and on proof of the passenger's liability, be recoverable from such passenger as if it were a fine, and shall, when recovered, be paid to the Railway-Administration.

32. Any person who defrauds, or attempts to defraud, any carrier by Railway—

For evading payment of fare.

(a) by travelling, or attempting to travel, on any Railway without having previously paid his fare;

(b) by riding or attempting to ride in or on a carriage, or by a train, of a higher class than that for which he has paid his fare;

(c) by using or attempting to use a ticket on any day for which such ticket is not available;

(d) by continuing his journey in or upon any carriage beyond the place to which he has paid his fare, without previously paying the fare for the additional distance;

or who, in any other manner whatever, attempts to evade the payment of his fare,

or who wilfully alters or defaces his ticket so as to render the date, number or other material portion thereof illegible,

For altering ticket.

shall be punished with fine which may extend to fifty rupees, and shall also be liable to pay the fare (if any) which he ought to have paid; and such fare shall be recoverable in manner provided by section thirty-one and shall, when recovered, be paid to the Railway-Administration.

33. Any passenger who gets into or upon, or attempts to get into or upon, or quits, or attempts to quit, any carriage upon any Railway, while such carriage is in motion, shall be punished with fine which may extend to twenty rupees;

For entering carriage in motion.

and any passenger who rides, or attempts to ride, on the steps, or any other part of a carriage, upon any Railway, except on those parts which are intended for the accommodation of passengers, shall be punished with fine which may extend to fifty rupees.

For riding on the steps.

34. Any person who, without the permission of the Railway-Administration, rides or attempts to ride upon any locomotive-engine or tender upon any Railway; or in or upon any vehicle not appropriated to the carriage of passengers, shall be punished with fine which may extend to one hundred rupees.

For riding on engine, tender, &c.

35. Any person who, without the consent of his fellow-passengers, if any, in the same compartment, smokes in or upon any Railway carriage, except in a carriage or compartment specially provided for the purpose, shall be punished with fine which may extend to twenty rupees;

For smoking.

and any person who persists in so smoking (except as aforesaid) after being warned by any Railway-servant to desist may, in addition to incurring the liability above mentioned, be removed by any Railway-servant from any such carriage, and from the premises of the Railway, and where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

36. Any person who is in a state of intoxication, or who commits any nuisance or act of indecency in any Railway-carriage, or upon any part of any Railway;

For intoxication or nuisance.

or who wilfully and without lawful excuse interferes with the comfort of any passenger, or extinguishes any lamp in any Railway-carriage,

shall be punished with fine which may extend to fifty rupees; and may be removed by any Railway-servant from any such carriage, and also from the premises of the Railway, and where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

37. If any carriage, compartment, room or place be reserved by the Railway-Administration for the exclusive use of females, any male person who without lawful excuse enters such carriage, compartment, room or place knowing the same to be reserved as aforesaid, or remains therein after having been informed of its having been so reserved, shall be punished with fine which may extend to one hundred rupees,

For entering carriage or room reserved for females.

and may be removed therefrom, and also from the premises of the Railway, by any Railway-servant,

and, where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

38. Whoever wilfully obstructs or impedes any Railway-servant in the discharge of his duty, shall be punished with fine which may extend to one hundred rupees.

For obstructing Railway-servant in his duty.

39. Any passenger wilfully entering a carriage or compartment containing the maximum number of passengers which has been denoted thereon in accordance with a rule made and notified under section eight, shall be punished with fine which may extend to one hundred rupees.

40. Any person who without authority or reasonable excuse makes, alters, shows, hides, removes or extinguishes any signal or light upon any Railway, or upon any engine, carriage, wagon or other vehicle upon a Railway,

or who negligently damages any engine, carriage, wagon or other vehicle belonging to a Railway, or any warehouse, building, machine, fence or other thing so belonging,

or who needlessly interferes with the means of communication provided in any train between the guard and the engine-driver or passengers,

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

41. Any person who unlawfully enters upon a Railway shall be punished with fine which may extend to twenty rupees; and if any person so entering refuses to leave such Railway on being requested to do so by any Railway-servant, or by any other person on behalf of the Railway-Administration, he shall be punished with fine which may extend to fifty rupees, and may be immediately removed from such Railway by such servant or other person as aforesaid.

42. The owner or person in charge of any bulls, cows, bullocks, calves, elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids straying on any Railway provided with fences suitable for the exclusion of such animals, shall be punished with fine which may extend to ten rupees for each animal, in addition to any amount that may be recovered under the Cattle Trespass Act, 1871.

Whenever any such animals are wilfully and unlawfully driven, or knowingly and unlawfully permitted to be, on any Railway provided with fences suitable for the exclusion of such animals,

and whenever any such animals are wilfully driven, or knowingly permitted to be, on any Railway not so provided, otherwise than for the purpose of lawfully crossing the Railway, or for any other lawful purpose,

the person in charge of such animals, or if he cannot be identified, then the owner of the said animals, shall be punished with fine which may extend to fifty rupees for each animal, in addition to any amount that may be recovered under the same Act.

All fines imposed under this section may, if the convicting Magistrate so direct, be recovered in manner provided by section twenty-five of the said Cattle Trespass Act, 1871, and may be appropriated in whole or in part in compensation for loss or damage proved to his satisfaction.

The expression "public road" in sections eleven and twenty-six of the same Act shall be deemed to include a Railway. And any Railway-servant may exercise the powers of seizure provided by the said section eleven.

43. Whoever knowing or having reason to believe that any engine or train is approaching along a Railway opens any gate which the Railway-Administration has set up on either side of the Railway across any road for the use or accommodation of any person, or passes or attempts to pass, or drives or takes, or attempts to drive or take, any vehicle, animal or other thing, across the Railway;

and whoever at any time, in the absence of a gatekeeper, omits to shut and fasten such gate as soon as he and any vehicle, animal or other thing under his charge have passed through the same,

shall be punished with fine which may extend to fifty rupees.

44. Whenever any minor under twelve years of age unlawfully—
 (a) places or throws, or attempts to place or throw, upon or across a Railway any wood, stone or other thing, or

(b) removes or displaces, or attempts to remove or displace, any rail, sleeper, spike, key or other thing belonging to the permanent way of a Railway; or

(c) throws or causes to fall, or attempts to throw or cause to fall, against, into or upon any engine, tender, carriage or other vehicle used upon a Railway, any wood, stone or other thing,

such minor shall be deemed guilty of an offence, and the convicting Magistrate may, in his discretion, direct either that the minor, if a male, shall be punished with whipping, or that the father or guardian of the minor shall, within such reasonable time as the Magistrate may fix, execute a bond binding himself, in such penalty as the Magistrate may direct, to prevent the minor from repeating such offence.

The amount of such bond, if forfeited, shall be recoverable as if it were a fine.

Any person neglecting or refusing to execute a bond when required under this section so to do shall be punished with fine which may extend to fifty rupees.

45. Whoever wilfully does any act, or wilfully omits to do what he is legally bound to do, intending by such act or omission to endanger, or knowing that he is thereby likely to endanger, the safety of any person travelling or being upon any Railway, shall be punished with transporta-

tion (or in the case of an European or American, penal servitude) for a term of not less than seven years or with imprisonment for a term which may extend to ten years.

46. Whoever rashly or negligently does any act, or omits to do what he is legally bound to do, and such act or omission is likely to endanger the safety of any person travelling or being upon a Railway, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

47. Every driver or conductor of an omnibus, carriage or other vehicle shall, while in or upon any station-yard or other premises forming part of a Railway, obey the reasonable directions of any Railway-servant duly authorized in this behalf; and every person offending against this section shall be punished with fine which may extend to twenty rupees.

(D).—*Arrest of Offenders.*

48. If any person commits any offence punishable under this Act and there is reason to believe that he will abscond or his name and address are unknown, and he refuses to give his name and address, or there is reason to believe that the name or address given by him is incorrect, any Railway-servant or Police-officer, or any other person whom such Railway-servant or Police officer may call to his aid, may, without any warrant or written authority, arrest and detain such offender until he can be taken before a Magistrate or give sufficient security for his appearance before such Magistrate, or is otherwise discharged by due course of law.

49. Every person committing any offence mentioned in sections eight, twenty-five, twenty-six, thirty-six, thirty-seven, thirty-eight, forty-four, forty-five and forty-six may be arrested without any warrant or written authority by any Railway-servant or Police-officer, or by any other person whom such servant or officer may call to his aid;

and every person so arrested shall, without unnecessary delay, be taken before a Magistrate authorized to punish him or to commit him for trial.

(E).—*Jurisdiction.*

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

Any person committing any offence against this Act or the rules made under it, shall be triable for such offence in any place in which he may be found or which the Local Government may, from time to time, notify in this behalf, as well as in

any other place in which he might be tried under any law for the time being in force.

Every notification under this section shall be published in the local official Gazette and a copy thereof shall also be exhibited in some conspicuous place at each of such Railway-stations as the Local Government may direct, so that it may be easily seen and read.

(F).—*Saving of other Criminal Laws.*

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

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

CHAPTER VI.

MISCELLANEOUS.

52. The Governor General in Council, or the Local Government with the previous sanction of the Governor General in Council, may, from time to time, make rules requiring—

(a) that boundary-marks or fences be provided for any Railway or any part thereof, and for roads constructed in connection therewith;

(b) that gates or bars be erected at places where any Railway crosses a road on the level; and

(c) that persons be employed to open and shut such gates or bars;

and may by such rules determine what kind of fences shall, for the purposes of section forty-two, be deemed to be suitable for the exclusion of cattle,

and direct that any Railway-Administration willfully neglecting or violating any rule made under this section, shall forfeit to Government a sum not exceeding five hundred rupees for every such neglect or violation, or, when such neglect or violation is continuous, for every day during which it continues.

53. The Governor General in Council may, from time to time by notification in the Gazette of any Railway, declare what Government or other Authority shall be deemed to be, for the purposes of this Act, the Local Government in respect of the whole or any part of a Railway.

54. The Governor General in Council may, by notification, extend this Act or any portion thereof to any tramway worked by steam.

THE FIRST SCHEDULE.

ACTS REPEALED.

(See Section 2.)

Number and year.	Title.
XVIII of 1854 ...	An Act relating to Railways in India.
XXXI of 1867 ...	An Act to render penal certain offences committed by servants of Railway Companies.
XIII of 1870 ...	An Act to apply the provisions of Act No. XVIII of 1854 to Railways belonging to, or worked by, Government.
XXV of 1871 ...	An Act to amend the Railway Act.

THE SECOND SCHEDULE.

(See Section 11.)

- (a) Gold or silver, coined or uncoined, manufactured or unmanufactured ;
 (b) plated articles ;
 (c) cloths and tissue and lace of which gold or silver forms part ;

- (d) precious stones, jewellery, trinkets ;
 (e) watches, clocks or time-pieces of any description ;
 (f) Government securities ;
 (g) Government stamps ;
 (h) bills of exchange, hundis, promissory notes, bank-notes, orders or other securities for payment of money ;
 (i) maps, writings, title-deeds ;
 (j) paintings, engravings, lithographs, photographs, carvings, sculpture and other works of art ;
 (k) glass, china, marble ;
 (l) silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials ;
 (m) shawls ;
 (n) lace ;
 (o) opium ;
 (p) ivory, ebony, sandalwood, sandalwood-oil ;
 (q) musical and scientific instruments ;

D. FITZPATRICK,

Secy. to the Govt. of India.

[Published with the "Bombay Government Gazette" on the 27th March, 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 8th March 1879, and was promulgated for general information in the *Gazette of India* on the 15th March 1879:—

Act No. III. of 1879.

An Act to authorize the destruction of Useless Records.

Whereas it is expedient to provide for the destruction or other disposal of useless records, books and papers in Courts and Revenue-offices; It is hereby enacted as follows:—

1. This Act may be called "The Destruction of Records Act, 1879;"

Short title.	it extends to the whole
Local extent.	of British India; and it
Commencement.	shall come into force at once.
2. The High Court may, from time to time,

Power to High Court to make rules for disposal of records, &c.	make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of such High Court, or the Courts of civil and criminal jurisdiction subordinate thereto, as the High Court may consider useless or unworthy of being permanently preserved.
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So far as regards his own Court, the Court of Small Causes in Rangoon and the Courts of the Magistrates within the local limits of his ordinary civil jurisdiction, the Recorder of Rangoon shall, for the purposes of this section, be deemed to be a High Court.
3. Each of the High Courts of Judicature at Fort William, Madras and Bombay may from time to time make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of

Similar power to Presidency High Courts with respect to documents in Insolvency Courts and Administrator General's office.	Fort William, Madras and Bombay may from time to time make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of
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(a) the local Court for the relief of Insolvent Debtors held under the provisions of the eleventh and twelfth of Victoria, chapter twenty-one,

(b) the local Administrator General,

as the High Court may consider useless or unworthy of being permanently preserved.

4. The Chief Controlling Revenue-Authority may from time to time make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or in the custody of the Revenue Courts and offices as it may consider useless or unworthy of being permanently preserved.

5. All rules made under this Act shall, after being confirmed by the Local Government and sanctioned by the Governor General in Council, be published in the local official Gazette, and shall thereupon have the force of law.

6. All rules and orders heretofore made by a Local Government, a High Court or a Chief Controlling Revenue-Authority for the destruction or other disposal of useless records, books and papers belonging to or in the custody of any Court or Revenue-office shall be deemed to have had the force of law from the date on which they were made, and all such rules now in force shall continue to have the force of law until they are rescinded by rules made under this Act; and no suit or other proceeding shall be instituted, maintained or continued against any person for the disposal, by destruction or otherwise, of any records, books or papers in accordance with any such rules or with any order made by a Local Government, High Court or Chief Controlling Revenue-Authority.

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

8. Nothing herein contained shall be deemed to authorize the destruction of any document which, under the provi-

sions of any law for the time being in force, is to be kept and maintained.

9. The enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column.

THE SCHEDULE.

(See Section 9.)

Enactments repealed.

(a).—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject or short title.	Extent of repeal.
XX of 1875	The Central Provinces Laws Act, 1875.	In section eight, clause (c), the last twenty-one words.
XVIII of 1876	The Oudh Laws Act, 1876.	In section thirty-nine, clause (c), the last eighteen words.

(b).—ACTS OF THE GOVERNOR OF BOMBAY IN COUNCIL.

Number and year.	Subject or short title.	Extent of repeal.
VI of 1865	To authorize the destruction of Useless Records in certain Courts of the Bombay Presidency.	The whole.
V of 1869	To authorize the destruction of Useless Records in the Courts of the Province of Sind.	The whole.

(c).—REGULATION UNDER 33 VIC., C. 3.

Number and year.	Subject or short title.	Extent of repeal.
III of 1877	The Ajmer Laws Regulation, 1877.	In section forty, clause (c), the last twenty-one words.

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



Bombay Government Gazette.

Published by Authority.

SATURDAY, 29TH MARCH 1879.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 24th February 1879, and the assent of His Excellency the Governor General on the 27th March 1879, and is published for general information :—

Bombay Act No. I of 1879.

An Act to facilitate the introduction of the Bombay District Municipal Act into Sind.

WHEREAS the Bombay District Municipal Act was, on the 26th day of July 1878, extended by the Government of Bombay, with the previous sanction of the Governor General in Council, in virtue of the power conferred by Section 5 of the Scheduled Districts Act, 1874, to the Province of Sind with effect from the 1st October 1878; and whereas difficulties have arisen in introducing the said Act into the said Province owing, amongst other reasons, to certain portions of the said Act having been repealed by the Repealing Act, 1876, previous to the date of the said extension; and whereas doubts are entertained as to whether the said Act did not legally apply to the said Province from the date of the publication of the assent of the Governor General thereto; and whereas it is expedient to remedy the said difficulties and to remove the said doubts; It is enacted as follows :—

1. The Bombay District Municipal Act shall be deemed to have come into force in the Province of Sind on the first day of October 1878, and

not at any previous time.

2. Throughout the said Act the phrases “the date of this Act coming into force,” “the date of the passing of this Act,” and the like, shall, in Sind, be deemed to mean the said first day of October 1878.

3. The words “Sind Official Gazette” shall, in Sind, be substituted for “Bombay Government Gazette.” have always been substituted for the words “Bombay Government Gazette” wherever they occur in the said Act.

4. Act XXVI. of 1850 and Bombay Acts II. and IX. of 1862 and I. of 1871 shall be deemed to have been repealed,

Repeal of Act XXVI. of 1850 and other Acts in Sind.

in Sind, on and from the said first day of October 1878, except as to any assessment made, act done, liability incurred, money due, or proceedings commenced thereunder:

Provided that such repeal shall not take or be deemed to have taken effect in any place to which the said Acts have been applicable until six months from the said first day of October 1878, or until such date within the said period of six months as such place shall be, or shall have been, included in a Municipal District constituted under the Bombay District Municipal Act.

5. The provisions of clauses one to three of section 4 of the Bombay District Municipal Act shall not be and shall not be deemed at any

Section 4, clauses 1-3 of Bombay Act VI. of 1873 to what extent applicable in Sind.

time to have been applicable to Municipalities in Sind formed under Act XXVI. of 1850, which the Commissioner in Sind may deem or may have deemed fit to declare, by notification in the *Sind Official Gazette*, Municipal Districts under the said Bombay District Municipal Act.

Any such declaration shall be deemed sufficient authority for the constitution of the Municipality to which it relates into a Municipal District under the said Act.

6. Whenever any Municipality has

been so declared to be a Municipal District under the said Act, no suit, prosecution, or other proceeding to which the Municipal Commissioners appointed under Act XXVI. of 1850 were a party, and which was pending at the date on which such Municipal District was constituted, shall abate, or be in any wise affected by the operation of the said Bombay District Municipal Act or of this Act, and all decrees and orders made, and all fines and penalties imposed and incurred previous to the said date, shall be respectively enforceable and leviable, and all administrative proceedings commenced previous to the said date may be proceeded with and completed as if the said Acts had not been passed.

Saving of pending proceedings, &c., in which Municipal Commissioners under Act XXVI. of 1850 are concerned.

And the Municipality constituted under the said Bombay District Municipal Act shall in all such matters as are aforesaid occupy the place of the Municipal Commissioners aforesaid.

By order of His Excellency the Honourable the Governor in Council,

JOHN NUGENT,

Under Secretary to Government.

Bombay Castle, 29th March 1879.

[Published with the "Bombay Government Gazette" on the 3rd April 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 24th February 1879, and the assent of His Excellency the Governor General on the 27th March 1879, and is published for general information:—

Bombay Act No. I. of 1879.

An Act to facilitate the introduction of the Bombay District Municipal Act into Sind.

WHEREAS the Bombay District Municipal Act was, on the 26th day of July 1878, extended by the Government of Bombay, with the previous sanction of the Governor General in Council, in virtue of the power conferred by Section 5 of the Scheduled Districts Act, 1874, to the Province of Sind with effect from the 1st October 1878; and whereas difficulties have arisen in introducing the said Act into the said Province owing, amongst other reasons, to certain portions of the said Act having been repealed by the Repealing Act, 1876, previous to the date of the said extension; and whereas doubts are entertained as to whether the said Act did not legally apply to the said Province from the date of the publication of the assent of the Governor General thereto; and whereas it is expedient to remedy the said difficulties and to remove the said doubts; It is enacted as follows:—

1. The Bombay District Municipal Act shall be deemed to have come into force in the Province of Sind on the first day of October 1878, and not at any previous time.
Date on which Bombay Act VI. of 1873 is to be deemed to have come into force in Sind.
2. Throughout the said Act the phrases "the date of this Act coming into force," "the date of the passing of this Act," and the like, shall, in Sind, be deemed to mean the said first day of October 1878.
Certain expressions in Bombay Act VI. of 1873 defined.

3. The words "Sind Official Gazette" shall, in Sind, be substituted for "Bombay Government Gazette." have always been substituted for the words "Bombay Government Gazette" wherever they occur in the said Act.

4. Act XXVI. of 1850 and Bombay Acts II. and IX. of 1862 and I. of 1871 shall be deemed to have been repealed, in Sind, on and from the said first day of October 1878, except as to any assessment made, act done, liability incurred, money due, or proceedings commenced thereunder:
Repeal of Act XXVI. of 1850 and other Acts in Sind.

Provided that such repeal shall not take effect in any place to which the said Acts have been applicable until six months from the said first day of October 1878, or until such date within the said period of six months as such place shall be, or shall have been, included in a Municipal District constituted under the Bombay District Municipal Act.

5. The provisions of clauses one to three of section 4 of the Bombay District Municipal Act shall not be and shall not be deemed at any time to have been applicable to Municipalities in Sind formed under Act XXVI. of 1850, which the Commissioner in Sind may deem or may have deemed fit to declare,
Section 4, clauses 1-3 of Bombay Act VI. of 1873 to what extent applicable in Sind.

by notification in the *Sind Official Gazette*,
Municipal Districts under the said Bombay
District Municipal Act.

Any such declaration shall be deemed
sufficient authority for the constitution of
the Municipality to which it relates into a
Municipal District under the said Act.

6. Whenever any Municipality has
been so declared to
be a Municipal Dis-
trict under the said
Act, no suit, prosecu-
tion, or other pro-
ceeding to which the Municipal Commis-
sioners appointed under Act XXVI. of
1850 were a party, and which was pending

Saving of pending pro-
ceedings, &c., in which
Municipal Commission-
ers under Act XXVI.
of 1850 are concerned.

at the date on which such Municipal Dis-
trict was constituted, shall abate, or be in
any wise affected by the operation of the
said Bombay District Municipal Act or of
this Act, and all decrees and orders made,
and all fines and penalties imposed and
incurred previous to the said date, shall
be respectively enforceable and leviable,
and all administrative proceedings com-
menced previous to the said date may be
proceeded with and completed as if the
said Acts had not been passed.

And the Municipality constituted under
the said Bombay District Municipal Act
shall in all such matters as are aforesaid
occupy the place of the Municipal Com-
missioners aforesaid.

By order of His Excellency the Honourable the Governor in Council,

JOHN NUGENT,
Under Secretary to Government.

Bombay Castle, 29th March 1879.

[Published with the "Bombay Government Gazette" on the 3rd April 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA

The following Act of the Governor General of India in Council, received the assent of His Excellency the Governor General on the 8th March 1879, and was promulgated for general information in the *Gazette of India* on the 15th March 1879:—

Act No. III. of 1879.

An Act to authorize the destruction of Useless Records.

Whereas it is expedient to provide for the destruction or other disposal of useless records, books and papers in Courts and Revenue-offices; It is hereby enacted as follows:—

1. This Act may be called "The Destruction of Records Act, 1879:"

Short title. it extends to the whole
Local extent. of British India; and it
Commencement. shall come into force at once.

2. The High Court may, from time to time, make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of such High Court, or the Courts of civil and criminal jurisdiction subordinate thereto, as the High Court may consider useless or unworthy of being permanently preserved.

So far as regards his own Court, the Court of Small Causes in Rangoon and the Courts of the Magistrates within the local limits of his ordinary civil jurisdiction, the Recorder of Rangoon shall, for the purposes of this section, be deemed to be a High Court.

3. Each of the High Courts of Judicature at Fort William, Madras and Bombay may from time to time make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of

(a) the local Court for the relief of Insolvent Debtors held under the provisions of the eleventh and twelfth of Victoria, chapter twenty-one,

(b) the local Administrator General,

as the High Court may consider useless or unworthy of being permanently preserved.

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4. The Chief Controlling Revenue-Authority may from time to time make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or in the custody of the Revenue Courts and offices as it may consider useless or unworthy of being permanently preserved.

5. All rules made under this Act shall, after being confirmed by the Local Government and sanctioned by the Governor General in Council, be published in the local official Gazette, and shall thereupon have the force of law.

6. All rules and orders heretofore made by a Local Government, a High Court or a Chief Controlling Revenue-Authority for the destruction or other disposal of useless records, books and papers belonging to or in the custody of any Court or Revenue-office shall be deemed to have had the force of law from the date on which they were made, and all such rules now in force shall continue to have the force of law until they are rescinded by rules made under this Act; and no suit or other proceeding shall be instituted, maintained or continued against any person for the disposal, by destruction or otherwise, of any records, books or papers in accordance with any such rules or with any order made by a Local Government, High Court or Chief Controlling Revenue-Authority.

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

8. Nothing herein contained shall be deemed to authorize the destruction of any document which, under the provi-

Saving of documents kept under provision of law,

sions of any law for the time being in force, is to be kept and maintained.

9. The enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column.

THE SCHEDULE.

(See Section 9.)

Enactments repealed.

(a).—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject or short title.	Extent of repeal.
XX of 1875	The Central Provinces Laws Act, 1875.	In section eight, clause (c), the last twenty-one words.
XVIII of 1876	The Oudh Laws Act, 1876.	In section thirty-nine, clause (c), the last eighteen words.

(b).—ACTS OF THE GOVERNOR OF BOMBAY IN COUNCIL.

Number and year.	Subject or short title.	Extent of repeal.
VI of 1865	To authorize the destruction of Useless Records in certain Courts of the Bombay Presidency.	The whole.
V of 1869	To authorize the destruction of Useless Records in the Courts of the Province of Sind.	The whole.

(c).—REGULATION UNDER 83 VIC., c. 3.

Number and year.	Subject or short title.	Extent of repeal.
III of 1877	The Ajmer Laws Regulation, 1877.	In section forty, clause (c), the last twenty-one words.

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

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 13th March, 1879, and was promulgated for general information in the *Gazette of India* on the 15th March 1879:—

Act No. IV of 1879.
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1879.

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An Act to consolidate and amend the law relating to Railways in India.

WHEREAS it is expedient to consolidate and amend the law relating to Railways in India; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Indian Railway Act, 1879."
- It extends to the whole of British India and, so far as regards subjects of Her Majesty the Empress of India, to the dominions of Princes and States in India in alliance with Her said Majesty ;
- And it shall come into force on the first day of July, 1879.
2. On and from that day, the Acts specified in the first schedule hereto annexed shall be repealed.
- All rules made, notifications published and powers conferred under any of such Acts, or any enactment thereby repealed, shall (so far as they are consistent herewith) be deemed to have been respectively made, published and conferred under this Act.
- Nothing in the Carriers Act, 1865, shall apply to carriers by railway.
3. In this Act, unless there be something repugnant in the subject or context,—
- " Railway " means a railway for the public conveyance of passengers or goods.

It includes—

- (a) all land within the fences or other boundary-marks prescribed under section fifty-two ;
 (b) all lines of rail, sidings or branches worked over for the purposes of, or in connection with, a Railway ;
 (c) all stations, offices, warehouses, fixed machinery and other works constructed for the purposes of, or in connection with, a Railway ;
 (d) all vessels and rafts used for the purpose of carrying on the traffic of a Railway.

In section four, " Railway " includes a railway under construction, and in the remaining part of this section and in the following sections (namely), six, eight, sixteen, twenty-five, thirty, thirty-

three, thirty-four, forty to forty-six (both inclusive), fifty-two and fifty-three, " Railway " includes a Railway under construction and a Railway not used for the public conveyance of passengers or goods :

" Railway-Administration " means in the case of a Railway worked by Government or a Native State, the Manager of such Railway, and in the case of a Railway worked by a Company or private individual, such Company or individual :

" Railway-servant " means any person employed by a Railway-Administration to perform any function in connection with a Railway,

and in section twenty-five, last clause, sections twenty-six, twenty-seven, thirty-eight, and forty-two includes any person employed to perform any such function by any other person in execution of a contract into which he has entered with a Railway-Administration.

4. It shall be lawful, with the previous sanction of the Governor General in Council, to use on every Railway locomotive engines or other motive power, and carriages and wagons to be drawn or propelled thereby.

CHAPTER II.

DUTIES OF THE RAILWAY-ADMINISTRATION.

5. No Railway or portion or extension of, or addition to, a Railway when to be opened shall be opened for the public conveyance of passengers until the Railway-Administration has given to the Governor General in Council notice in writing of the intention of opening the same and until an officer appointed by the Governor General in Council to inspect such Railway, portion, extension or addition has, after inspection thereof, reported in writing to the Governor General in Council that in his opinion the opening of the same would not be attended with danger to the public using the same.
6. Every Railway-Administration shall, within forty-eight hours after the occurrence upon the Railway of—
- (a) any accident attended with loss of human life or serious injury to person or property,
 (b) any accident of a description usually attended with such loss or injury, and
 (c) any accident of any other description which the Governor General in Council may, from time to time, direct to be notified.
- give notice thereof to the Local Government ; and the Station-master nearest to the place at which the accident occurs, or, where there is no Station-master, the officer in charge of the section of the Railway on which the accident occurs, shall without unnecessary delay give notice in writing or by telegraph of such accident to the nearest Magistrate and to the officer in charge of the Police-station in the jurisdiction of which the accident occurs or to such other Magistrate and Police-officer as the Local Government from time to time appoints in this behalf.

7. Every Railway-Administration shall make up and deliver to the Governor General in Council a return of accidents occurring in the course of the public traffic upon the Railway, whether attended with personal injury or not, in such form and manner, and at such intervals of time, as the Governor General in Council from time to time directs.

8. Every Railway-Administration shall make general rules for the following purposes (that is to say):

(a) for regulating the mode in which, and the speed at which, carriages and wagons used on the Railway are to be moved or propelled;

(b) for regulating the maximum number of passengers which each carriage and compartment may carry, and the mode in which such number shall be denoted thereon;

(c) for regulating the provision to be made for the accommodation and convenience of passengers;

(d) for declaring what shall be deemed to be, for the purposes of this Act, dangerous goods; and

(e) generally for regulating the travelling upon, and the use, working and management of, the Railway;

and may, from time to time, alter any such rules.

Any such rule may contain a provision that any person committing a breach of it shall be liable to a fine which may extend to fifty rupees, or, in default of payment of such fine, to simple imprisonment for a term which may extend to two months.

No such rule shall take effect unless it is consistent with this Act and until it has received the sanction of the Governor General in Council.

All rules made under this section shall be published in the *Gazette of India*, and shall be otherwise notified to the Railway-servants and the public in such manner as the Governor General in Council, from time to time, directs.

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

9. An abstract of this Act, and a copy of the Time-tables and Tariff of charges which may, from time to time, be published for any Railway by any Railway-Administration, shall be exhibited in some conspicuous place at each station of such Railway, so that they may be easily seen and read.

All such documents shall be so exhibited in English and in the principal vernacular language of the district in which the station is situate, and in such other language, if any, as the Governor General in Council may direct.

CHAPTER III.

CARRIAGE OF PROPERTY.

10. Every agreement purporting to limit the obligation or responsibility imposed on a carrier by Railway by the Indian

Contract Act, 1872, sections 151 and 161, in the case of loss, destruction or deterioration of, or damage to, property shall, in so far as it purports to limit such obligation or responsibility, be void unless—

(a) it is in writing signed by, or on behalf of, the person sending or delivering such property, and

(b) is otherwise in a form approved by the Governor General in Council.

11. When any property mentioned in the second schedule hereto gold, silver, &c., unless annexed is contained in value declared and in any parcel or package increased charge accepted. delivered to a carrier by Railway, the carrier shall not be liable for loss, destruction or deterioration of, or damage to, such property, unless at the time of delivery the value and nature thereof have been declared by the person sending or delivering the same, and an increased charge for the safe conveyance of the same, or an engagement to pay such charge, has been accepted by some Railway-servant specially authorized in this behalf.

When any property of which the value and nature have been declared under this section has been lost, destroyed or damaged, or has deteriorated, the compensation recoverable for such loss, destruction, damage or deterioration shall not exceed the value so declared.

12. A carrier by Railway shall in no case be answerable for loss, destruction or deterioration of, or damage to, any passenger's luggage, unless a Railway-servant has booked and given a receipt for the same.

13. In any suit against a carrier by Railway for compensation for loss, destruction or deterioration of, or damage to, property delivered to a Railway-servant, it shall not be necessary for the plaintiff to prove in what manner such loss, destruction, deterioration or damage was caused.

14. If any person fails to pay on demand any sum due by him to a carrier by Railway for conveyance of any property by Railway, or for the custody of any property or for demurrage or wharfage in respect of the same, the Railway-Administration may detain the whole or any part of such property or, if the same have been removed from the Railway, any other property of such person then on such Railway or thereafter coming into the possession of the Railway-Administration;

and may also sell by public auction, in the case of perishable property at once, and in the case of other property on the expiration of at least fifteen days' notice thereof published in one or more of the local newspapers or, where there are no such newspapers, in such manner as the Local Government may, from time to time, direct, sufficient of such property to produce the sum payable as aforesaid, and all charges and expenses of such detention, notice and sale, or, if such person fails to remove from the Railway within a reasonable time any property so detained, the whole of such property;

and may, out of the proceeds of the sale, retain the sum so payable, together with all charges and expenses aforesaid, rendering the surplus, if any, of such proceeds, and so much of the property (if any) as remains unsold, to the person entitled thereto ;

or such carrier may recover any such sum by suit.

15. The owner or person having the care of any property which has been carried upon any Railway, or is brought into any station or warehouse for the purpose of being carried upon a Railway, shall, on demand by any Railway-servant appointed in this behalf by the Railway-Administration, deliver to him an exact account in writing signed by such owner or person of the quantity and description of such property.

16. No passenger shall take with him on a Railway, and no person shall deliver or tender for carriage upon any Railway, any dangerous goods, or any luggage or goods without giving notice of their nature to a Railway-servant, or, in the case of luggage or goods delivered or tendered for carriage, distinctly marking their nature on the outside of the package containing the same.

Any Railway-servant may refuse to carry upon a Railway any luggage or parcel which he suspects to contain dangerous goods, and may require such luggage or parcel to be opened to ascertain the fact previously to carrying the same ;

and in case any such luggage or parcel is received for the purpose of being carried upon a Railway, any Railway-servant may stop the transit thereof until he is satisfied as to the nature of its contents.

CHAPTER IV.

CARRIAGE OF PASSENGERS.

17. Every person desirous of travelling on a Railway shall, upon payment of his fare, be furnished with a ticket specifying in English and the principal vernacular language of the district in which the ticket is issued, the class of carriage for which, and the place from and place to which, the fare has been paid, and the amount of such fare ;

and every passenger shall, when required, show his ticket to any Railway-servant duly authorized to examine the same, and shall deliver up such ticket upon demand to any Railway-servant duly authorized to collect tickets.

18. At the intermediate stations, the fares shall be deemed to be accepted and the tickets furnished only upon condition that there be room in the train for which the tickets are furnished.

In case there is not room for all the passengers to whom tickets have been furnished, those who have obtained tickets for the longest distance shall have the preference ;

and those who have obtained tickets for the same distance shall have the preference according to the order in which they have received their tickets :

Provided that all officers and troops of Her Majesty on duty, and all other persons on the business of the Government who, by virtue of any contract with the Government or, in the case of a Railway worked by Government, of any direction of the Governor General in Council, are entitled to be conveyed on a Railway in preference to, or in priority over, the public, shall be entitled to such preference and priority without reference to the distance for which, or the order in which, they have received their tickets.

Any passenger to whom a ticket has been furnished at any station and for whom there is no room shall, on returning the ticket within a reasonable time after its issue, be entitled to have his fare at once refunded.

19. Except with the permission of the Railway-Administration or of such officer as it appoints in this behalf, no person shall enter any carriage used on any Railway for the purpose of travelling therein without having first paid his fare and obtained a ticket.

20. Any passenger found suffering from an infectious disease in a Railway-carriage or in any place on a Railway may, if his remaining in such carriage or place is likely to spread the infection of such disease, be removed from such carriage or place by any Railway-servant ;

Any passenger so removed who has paid his proper fare to or at the place at which he is so removed, shall be entitled, on returning his ticket, to have such fare refunded.

CHAPTER V.

OFFENCES AND PROCEDURE.

(A).—*Offences by the Railway-Administration.*

21. Any Railway-Administration opening, in contravention of section five, any Railway, or any portion or extension of, or addition to, a Railway, shall forfeit to Government the sum of one thousand rupees for every day during which the same continues open in contravention of that section.

22. Any Railway-Administration omitting to give notice as required by section six, shall forfeit to Government the sum of one hundred rupees for every day during which such omission continues.

23. Any Railway-Administration failing to deliver any return mentioned in section seven within fourteen days after the same ought to be delivered, or to make or notify any rules as required by section eight, or to exhibit any abstract or copy mentioned in section nine in manner required by that section, shall

forfeit to Government the sum of fifty rupees for every day during which such failure continues,

(B).—*Offences by Railway-servants.*

24. Any Station-master or other person omitting to give notice as required by section six, shall be punished with fine which may extend to fifty rupees.

25. Any Railway-servant who is in a state of intoxication whilst actually employed upon a Railway in the discharge of any duty,

or who negligently omits to perform his duty, or who performs the same in an improper manner,

shall be punished with fine which may extend to fifty rupees;

or if the duty in any of the cases aforesaid be such that the negligent omission or improper performance thereof would be likely to endanger the safety of any person travelling or being upon such Railway, such servant shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

26. If any Railway-servant in the discharge of his duty endangers the safety of any person—

(a) by disobeying any general rule sanctioned and published and notified in the manner prescribed by section eight; or

(b) by disobeying any rule or order not inconsistent with the general rules aforesaid, and which such servant was bound by the terms of his employment to obey, and of which he had notice; or

(c) by any rash or negligent act or omission, he shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five hundred rupees, or with both.

27. Every Railway-servant shall be deemed a "public servant" within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code.

In the definition of legal remuneration contained in the said section 161, the word "Government" shall, for the purposes of this section, be deemed to include any employer of a Railway-servant as such.

28. Any Railway-servant who compels or attempts to compel any passenger to enter a carriage or compartment containing the maximum number of passengers denoted thereon in accordance with a rule made and notified under section eight, shall be punished with fine which may extend to one hundred rupees.

(C).—*Offences by Persons generally.*

29. Any person required under section fifteen to give an account of the quantity and description of any property who neglects or refuses to give such account,

or who wilfully gives a false account,

shall be punished with fine which may extend to five rupees for every maund (of 3,200 tolahs) of such property; and such fine shall be in addition to any charge to which such property may be liable.

30. Whoever, in contravention of section sixteen, takes with him any dangerous goods on a Railway, or delivers or tenders any such goods for the purpose of being carried upon a Railway, shall be punished with fine which may extend to two hundred rupees.

31. Any passenger travelling on a Railway without a proper ticket or having such a ticket and not showing or delivering up the same when so required under section seventeen, shall be liable to pay the fare of the class in which he is found travelling, from the place whence the train originally started, unless he can prove that he has travelled a less distance only, in which case he shall be liable to pay the fare of the class aforesaid only from the place whence he has travelled.

Every such fare shall, on application by a Railway-servant to a Magistrate, and on proof of the passenger's liability, be recoverable from such passenger as if it were a fine, and shall, when recovered, be paid to the Railway-Administration.

32. Any person who defrauds, or attempts to defraud, any carrier by Railway—

(a) by travelling, or attempting to travel, on any Railway without having previously paid his fare;

(b) by riding or attempting to ride in or on a carriage, or by a train, of a higher class than that for which he has paid his fare;

(c) by using or attempting to use a ticket on any day for which such ticket is not available;

(d) by continuing his journey in or upon any carriage beyond the place to which he has paid his fare, without previously paying the fare for the additional distance;

or who, in any other manner whatever, attempts to evade the payment of his fare,

or who wilfully alters or defaces his ticket so as to render the date, number or other material portion thereof illegible,

shall be punished with fine which may extend to fifty rupees, and shall also be liable to pay the fare (if any) which he ought to have paid; and such fare shall be recoverable in manner provided by section thirty-one and shall, when recovered, be paid to the Railway-Administration.

33. Any passenger who gets into or upon, or attempts to get into or upon, or quits, or attempts to quit, any carriage upon any Railway, while such carriage is in motion, shall be punished with fine which may extend to twenty rupees;

and any passenger who rides, or attempts to ride, on the steps, or any other part of a carriage, upon any Railway, except on those parts which are intended for the accommodation of passengers, shall be punished with fine which may extend to fifty rupees.

34. Any person who, without the permission of the Railway-Administration, rides or attempts to ride upon any locomotive-engine or tender upon any Railway; or in or upon any vehicle not appropriated to the carriage of passengers, shall be punished with fine which may extend to one hundred rupees.

35. Any person who, without the consent of his fellow-passengers, if any, in the same compartment, smokes in or upon any Railway carriage, except in a carriage or compartment specially provided for the purpose, shall be punished with fine which may extend to twenty rupees;

and any person who persists in so smoking (except as aforesaid) after being warned by any Railway-servant to desist may, in addition to incurring the liability above mentioned, be removed by any Railway-servant from any such carriage, and from the premises of the Railway, and where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

36. Any person who is in a state of intoxication, or who commits any nuisance or act of indecency in any Railway-carriage, or upon any part of any Railway;

or who wilfully and without lawful excuse interferes with the comfort of any passenger, or extinguishes any lamp in any Railway-carriage,

shall be punished with fine which may extend to fifty rupees; and may be removed by any Railway-servant from any such carriage, and also from the premises of the Railway, and where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

37. If any carriage, compartment, room or place be reserved by the Railway-Administration for the exclusive use of females, any male person who without lawful excuse enters such carriage, compartment, room or place knowing the same to be reserved as aforesaid, or remains therein after having been informed of its having been so reserved, shall be punished with fine which may extend to one hundred rupees,

and may be removed therefrom, and also from the premises of the Railway, by any Railway-servant,

and, where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

38. Whoever wilfully obstructs or impedes any Railway-servant in the discharge of his duty, shall be punished with fine which may extend to one hundred rupees.

39. Any passenger wilfully entering a carriage or compartment containing the maximum number of passengers which has been denoted thereon in accordance with a rule made and notified under section eight, shall be punished with fine which may extend to one hundred rupees.

40. Any person who without authority or reasonable excuse makes, alters, shows, hides, removes or extinguishes any signal or light upon any Railway, or upon any engine, carriage, wagon or other vehicle upon a Railway,

or who negligently damages any engine, carriage, wagon or other vehicle belonging to a Railway, or any warehouse, building, machine, fence or other thing so belonging,

or who needlessly interferes with the means of communication provided in any train between the guard and the engine-driver or passengers,

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

41. Any person who unlawfully enters upon a Railway shall be punished with fine which may extend to twenty rupees; and if any person so entering refuses to leave such Railway on being requested to do so by any Railway-servant, or by any other person on behalf of the Railway-Administration, he shall be punished with fine which may extend to fifty rupees, and may be immediately removed from such Railway by such servant or other person as aforesaid.

42. The owner or person in charge of any bulls, cows, bullocks, calves, elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids straying on any Railway provided with fences suitable for the exclusion of such animals, shall be punished with fine which may extend to ten rupees for each animal, in addition to any amount that may be recovered under the Cattle Trespass Act, 1871.

Whenever any such animals are wilfully and unlawfully driven, or knowingly and unlawfully permitted to be, on any Railway provided with fences suitable for the exclusion of such animals,

and whenever any such animals are wilfully driven, or knowingly permitted to be, on any Railway not so provided, otherwise than for the purpose of lawfully crossing the Railway, or for any other lawful purpose,

the person in charge of such animals, or if he cannot be identified, then the owner of the said animals, shall be punished with fine which may extend to fifty rupees for each animal, in addition to any amount that may be recovered under the same Act.

All fines imposed under this section may, if the convicting Magistrate so direct, be recovered in manner provided by section twenty-five of the said Cattle Trespass Act, 1871, and may be appropriated in whole or in part in compensation for loss or damage proved to his satisfaction.

The expression "public road" in sections eleven and twenty-six of the same Act shall be deemed to include a Railway. And any Railway-servant may exercise the powers of seizure provided by the said section eleven.

43. Whoever knowing or having reason to believe that any engine or train is approaching along a Railway opens any gate which the Railway-Administration has set up on either side of the Railway across any road for the use or accommodation of any person, or passes or attempts to pass, or drives or takes, or attempts to drive or take, any vehicle, animal or other thing, across the Railway;

and whoever at any time, in the absence of a gatekeeper, omits to shut and fasten such gate as soon as he and any vehicle, animal or other thing under his charge have passed through the same, shall be punished with fine which may extend to fifty rupees.

44. Whenever any minor under twelve years of age unlawfully—
For minors obstructing line or throwing stones at train. (a) places or throws, or attempts to place or throw, upon or across a Railway any wood, stone or other thing, or

(b) removes or displaces, or attempts to remove or displace, any rail, sleeper, spike, key or other thing belonging to the permanent way of a Railway, or

(c) throws or causes to fall, or attempts to throw or cause to fall, against, into or upon any engine, tender, carriage or other vehicle used upon a Railway, any wood, stone or other thing,

such minor shall be deemed guilty of an offence, and the convicting Magistrate may, in his discretion, direct either that the minor, if a male, shall be punished with whipping, or that the father or guardian of the minor shall, within such reasonable time as the Magistrate may fix, execute a bond binding himself, in such penalty as the Magistrate may direct, to prevent the minor from repeating such offence.

The amount of such bond, if forfeited, shall be recoverable as if it were a fine.

Any person neglecting or refusing to execute a bond when required under this section so to do shall be punished with fine which may extend to fifty rupees.

45. Whoever wilfully does any act, or wilfully omits to do what he is legally bound to do, intending by such act or omission to endanger, or knowing that he is thereby likely to endanger, the safety of any person travelling or being upon any Railway, shall be punished with transporta-

tion (or in the case of an European or American, penal servitude) for a term of not less than seven years or with imprisonment for a term which may extend to ten years.

46. Whoever rashly or negligently does any act, or omits to do what he is legally bound to do, and such act or omission is likely to endanger the safety of any person travelling or being upon a Railway, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

47. Every driver or conductor of an omnibus, carriage or other vehicle &c., drivers to Railway-servants, shall, while in or upon any station-yard or other premises forming part of a Railway, obey the reasonable directions of any Railway-servant duly authorized in this behalf; and every person offending against this section shall be punished with fine which may extend to twenty rupees.

(D).—Arrest of Offenders.

48. If any person commits any offence punishable under this Act and there is reason to believe that he will abscond or his name and address are unknown, and he refuses to give his name and address, or there is reason to believe that the name or address given by him is incorrect, any Railway-servant or Police-officer, or any other person whom such Railway-servant or Police officer may call to his aid, may, without any warrant or written authority, arrest and detain such offender until he can be taken before a Magistrate or give sufficient security for his appearance before such Magistrate, or is otherwise discharged by due course of law.

49. Every person committing any offence mentioned in sections eight, twenty-five, twenty-six, thirty-six, thirty-seven, thirty-eight, forty-four, forty-five and forty-six may be arrested without any warrant or written authority by any Railway-servant or Police-officer, or by any other person whom such servant or officer may call to his aid;

and every person so arrested shall, without unnecessary delay, be taken before a Magistrate authorized to punish him or to commit him for trial.

(E).—Jurisdiction.

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

Any person committing any offence against this Act or the rules made under it, shall be triable for such offence in any place in which he may be found or which the Local Government may, from time to time, notify in this behalf, as well as in

any other place in which he might be tried under any law for the time being in force.

Every notification under this section shall be published in the local official Gazette and a copy thereof shall also be exhibited in some conspicuous place at each of such Railway-stations as the Local Government may direct, so that it may be easily seen and read.

(F).—*Saving of other Criminal Laws.*

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

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

CHAPTER VI.

MISCELLANEOUS.

52. The Governor General in Council, or the Local Government with the previous sanction of the Governor General in Council, may, from time to time, make rules requiring—

(a) that boundary-marks or fences be provided for any Railway or any part thereof, and for roads constructed in connection therewith;

(b) that gates or bars be erected at places where any Railway crosses a road on the level; and

(c) that persons be employed to open and shut such gates or bars;

and may by such rules determine what kind of fences shall, for the purposes of section forty-two, be deemed to be suitable for the exclusion of cattle,

and direct that any Railway-Administration wilfully neglecting or violating any rule made under this section, shall forfeit to Government a sum not exceeding five hundred rupees for every such neglect or violation, or, when such neglect or violation is continuous, for every day during which it continues.

53. The Governor General in Council may, from time to time by notification in the *Gazette of India*, declare what Government or other Authority shall be deemed to be, for the purposes of this Act, the Local Government in respect of the whole or any part of a Railway,

54. The Governor General in Council may, by notification, extend this Act or any portion thereof to any tramway worked by steam.

THE FIRST SCHEDULE.

ACTS REPEALED.

(See Section 2.)

Number and year.	Title.
XVIII of 1854 ...	An Act relating to Railways in India.
XXXI of 1867 ...	An Act to render penal certain offences committed by servants of Railway Companies.
XIII of 1870 ...	An Act to apply the provisions of Act No. XVIII of 1854 to Railways belonging to, or worked by, Government.
XXV of 1871 ...	An Act to amend the Railway Act.

THE SECOND SCHEDULE.

(See Section 11.)

(a) Gold or silver, coined or uncoined, manufactured or unmanufactured;

(b) plated articles;

(c) cloths and tissue and lace of which gold or silver forms part;

(d) precious stones, jewellery, trinkets;

(e) watches, clocks or time-pieces of any description;

(f) Government securities;

(g) Government stamps;

(h) bills of exchange, hundis, promissory notes, bank-notes, orders or other securities for payment of money;

(i) maps, writings, title-deeds;

(j) paintings, engravings, lithographs, photographs, carvings, sculpture and other works of art;

(k) glass, china, marble;

(l) silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials;

(m) shawls;

(n) lace;

(o) opium;

(p) ivory, ebony, sandalwood, sandalwood-oil;

(q) musical and scientific instruments.

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

THE



Bombay Government Gazette

Published by Authority.

SATURDAY, 5TH APRIL 1879.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 24th February 1879, and the assent of His Excellency the Viceroy and Governor General on the 22nd March 1879, and is published for general information :—

Bombay Act No. II. of 1879.

An Act to further amend Act XIII. of 1856.

WHEREAS Act XIII. of 1856 (*an Act for regulating the Police of the Towns of Calcutta, Madras, and Bombay*) was amended, so far as concerns the Bombay City Police Force, by Bombay Act I. of 1872, and it is expedient to further amend the said Act in manner hereinafter appearing; It is enacted as follows :—

1. For the word "pay" in the Section substituted by Section 17, Act XIII. of 1856. substituted by Section 2 of Bombay Act

I. of 1872, for Section seventeen of the said Act the words "salary and authorized allowances" shall be substituted.

2. For the words "upon a reduction of the Force" in Section seven of Bombay Act I. of 1872, the words "for any reason other than his own misconduct" shall be substituted.

By order of His Excellency the Honourable the Governor in Council,

JOHN NUGENT,

Under Secretary to Government.

Bombay Castle, 4th April 1879.

IV.—13



Bombay Government Gazette

Published by Authority.

THURSDAY, 10TH APRIL 1879.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 22nd March 1879, and was promulgated for general information in the *Gazette of India* on the 5th April 1879:—

Act No. V. of 1879.

An Act to amend the Presidency Banks Act, 1876.

WHEREAS it is expedient to amend the Presidency Banks Act, 1876, in manner hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called "The Presidency Banks Act, 1879;" and it shall come into force on the first day of May, 1879.

Short title.

Commencement.
2. To the first clause of section 28 of the Presidency Banks Act, 1876, the following proviso shall be added, that is to say:

Amendment of Act XI. of 1876, section 28.

"Provided that no person shall be chosen to be President or Vice-President twice in succession."
3. In the same Act, section 34, before the words "no Khazánchi," the words "without the previous sanction of the Board" shall be inserted.

Amendment of section 34 of same Act.
4. In the same Act, section 36, clause (a), sub-clause (4), after the words "municipal body," the words "or any body

of Commissioners for making improvements in any port or of trustees of any port" shall be inserted.

In the same section, the words "in the case of the Bank of Madras" shall be omitted in both the places in which they occur.

In the same section, after clause (m), the following clause shall be inserted, that is to say, "(m m) the borrowing of money in India for the purposes of the Bank's business and the giving of security for money so borrowed by pledging assets or otherwise."

5. In section 37 of the same Act, for clause (d), the following shall be substituted, that is to say,

"(d) Nor shall they (except upon the security mentioned in section 36, paragraph a, Nos. 1 to 5 inclusive)

discount bills for any individual or partnership-firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or

lend or advance in any way to any individual or partnership-firm an amount exceeding in the whole at any one time such sum as may be prescribed."

6. In section 63 of the same Act, clause (a), for the words "lent by discount of bills or otherwise to," the words "lent to or for which bills may be discounted for" shall be substituted.

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

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 22nd March 1879, and was promulgated for general information in the *Gazette of India* on the 5th April 1879:—

Act No. VI. of 1879.

An Act for the preservation of wild elephants.

WHEREAS it is expedient to provide for the preservation of wild elephants; It is hereby enacted as follows:—

Preamble.

Short title.

1. This Act may be called "The Elephants Preservation Act, 1879."

It extends to the territories now respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, British Burma and Coorg;

Local extent.

and the Local Government may, with the previous sanction of the Governor General in Council, extend it to any other local area by notification in the local official Gazette.

So far as regards the power to make declarations and rules, it shall come into force on the first day of April 1879.

Commencement.

2. The words "kills or catches elephants," in section 25, clause (i), of the Indian Forest Act, 1878, and the words "killing or catching elephants," in section 31, clause (j) of the same Act, shall be repealed in every local area to which this Act extends or is extended.

Repeal.

3. No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant, unless—

Killing and capture of wild elephants prohibited.

(a) in defence of himself or some other person;

(b) when such elephant is found injuring houses or cultivation, or upon or in the immediate vicinity of, any main public road or any railway or canal; or

(c) as permitted by a license granted under this Act.

4. Every elephant captured, and the tusks of every elephant killed, in any of the cases mentioned in section three, clauses (a) and (b), by any person not licensed under this Act, shall be the property of Government.

Rights of Government with respect to certain elephants and tusks.

5. The Collector or Deputy Commissioner of any District may, subject to such rules as may for the time being be in force under this Act, grant licenses to kill, or to capture, or to kill and capture, wild elephants in such district:

License to kill and capture wild elephants.

Provided that no such license shall authorize any person to enter upon any land without the consent of the owner or occupier thereof.

6. The Local Government may from time to time, subject to the control of the Governor General in Council,

Power of Local Government

declare what shall be deemed to be main public roads and canals within the meaning of this Act, and

to declare what are main roads and canals,

make rules consistent with this Act for regulating—

and to make rules as to licenses.

(a) the grant and renewal of licenses under this Act,

(b) the fees (if any) in money, tusks or captured elephants to be charged on such grant and renewal,

(c) the time during which such licenses shall continue in force, and

(d) the conditions (if any) on which they shall be granted.

All such declarations and rules shall be published in the local official Gazette and shall thereupon have the force of law.

7. Whoever, in contravention of section three, kills, injures or captures, or attempts to kill, injure or capture, any wild elephant, shall be punished with fine which may extend to five hundred rupees for each elephant concerned;

Penalty for contravening section 3.

and whoever breaks any condition contained in a license granted under this Act shall be punished with fine which may extend to five hundred rupees.

Any person convicted of a second offence under this section shall be punished with imprisonment which may extend to six months, or with fine, or with both.

When any person holding a license under this Act is convicted under this section, such license shall become void and shall be delivered up to the convicting Magistrate.

8. Any officer of Revenue or Police, or any forest-officer, who may find any person killing, injuring or capturing, or attempting to kill, injure or capture, any wild elephant, except in the cases mentioned in section three, clauses (a) and (b), may require him to produce and show a license granted to him under this Act.

License to be produced and shown on requisition of certain officers.

Any person who, on such request, wilfully refuses or is unable to produce and show such license as aforesaid, shall, in addition to any other punishment to which he may be liable under this Act, be punished with fine which may extend to one hundred rupees.

9. Every prosecution under this Act shall be commenced within six months from the commission of the offence in respect of which it is instituted.

Limitation of prosecution.

10. The amount or value of any fee payable under any license granted under this Act may be recovered from the licensee as if it were an arrear of land-revenue.

Recovery of fees.

D. FITZPATRICK,

Secretary to the Government of India.

[Published with the "Bombay Government Gazette" on the 10th April, 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 24th February 1879, and the assent of His Excellency the Governor General on the 27th March 1879, and is published for general information :—

Bombay Act No. I. of 1879.

An Act to facilitate the introduction of the Bombay District Municipal Act into Sind.

WHEREAS the Bombay District Municipal Act was, on the 26th day of July 1878, extended by the Government of Bombay, with the previous sanction of the Governor General in Council, in virtue of the power conferred by Section 5 of the Scheduled Districts Act, 1874, to the Province of Sind with effect from the 1st October 1878; and whereas difficulties have arisen in introducing the said Act into the said Province owing, amongst other reasons, to certain portions of the said Act having been repealed by the Repealing Act, 1876, previous to the date of the said extension; and whereas doubts are entertained as to whether the said Act did not legally apply to the said Province from the date of the publication of the assent of the Governor General thereto; and whereas it is expedient to remedy the said difficulties and to remove the said doubts; It is enacted as follows :—

1. The Bombay District Municipal Act shall be deemed to have come into force in the Province of Sind on the first day of October 1878, and not at any previous time.

Date on which Bombay Act VI. of 1873 is to be deemed to have come into force in Sind.

shall be deemed to have come into force in the Province of Sind on the first day of October 1878, and

2. Throughout the said Act the phrases "the date of this Act coming into force," "the date of the passing of this Act," and the like, shall, in Sind, be deemed to mean the said first day of October 1878.

Certain expressions in Bombay Act VI. of 1873 defined.

"the date of this Act coming into force," "the date of the passing of this Act," and

3. The words "*Sind Official Gazette*" shall, in Sind, be substituted for "*Bombay Government Gazette*," have always been substituted for the words "*Bombay Government Gazette*" wherever they occur in the said Act.

4. Act XXVI. of 1850 and Bombay Acts II. and IX. of 1862 and I. of 1871 shall be deemed to have been repealed, in Sind, on and from the said first day of October 1878, except as to any assessment made, act done, liability incurred, money due, or proceedings commenced thereunder :

Provided that such repeal shall not take or be deemed to have taken effect in any place to which the said Acts have been applicable until six months from the said first day of October 1878, or until such date within the said period of six months as such place shall be, or shall have been, included in a Municipal District constituted under the Bombay District Municipal Act.

5. The provisions of clauses one to three of section 4 of the Bombay District Municipal Act shall not be and shall not be deemed at any time to have been applicable to Municipalities in Sind formed under Act XXVI. of 1850, which the Commissioner in Sind may deem or may have deemed fit to declare,

Section 4, clauses 1-3 of Bombay Act VI. of 1873 to what extent applicable in Sind.

three of section 4 of the Bombay District Municipal Act shall not be and shall not be deemed at any time to have been applicable to Municipalities in Sind formed under Act XXVI. of 1850, which the Commissioner in Sind may deem or may have deemed fit to declare,

by notification in the *Sind Official Gazette*,
Municipal Districts under the said Bombay
District Municipal Act.

Any such declaration shall be deemed
sufficient authority for the constitution of
the Municipality to which it relates into a
Municipal District under the said Act.

6. Whenever any Municipality has
been so declared to
be a Municipal Dis-
trict under the said
Act, no suit, prosecu-
tion, or other pro-
ceeding to which the Municipal Commis-
sioners appointed under Act XXVI. of
1850 were a party, and which was pending

Saving of pending pro-
ceedings, &c., in which
Municipal Commission-
ers under Act XXVI.
of 1850 are concerned.

at the date on which such Municipal Dis-
trict was constituted, shall abate, or be in
any wise affected by the operation of the
said Bombay District Municipal Act or of
this Act, and all decrees and orders made,
and all fines and penalties imposed and
incurred previous to the said date, shall
be respectively enforceable and leviable,
and all administrative proceedings com-
menced previous to the said date may be
proceeded with and completed as if the
said Acts had not been passed.

And the Municipality constituted under
the said Bombay District Municipal Act
shall in all such matters as are aforesaid
occupy the place of the Municipal Com-
missioners aforesaid.

By order of His Excellency the Honourable the Governor in Council,

JOHN NUGENT,
Under Secretary to Government.

Bombay Castle, 29th March 1879.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 24th February 1879, and the assent of His Excellency the Viceroy and Governor General on the 22nd March 1879, and is published for general information :—

Bombay Act No. II. of 1879.

An Act to further amend Act XIII. of 1856.

WHEREAS Act XIII. of 1856 (*an Act for regulating the Police of the Towns of Calcutta, Madras, and Bombay*) was amended, so far as concerns the Bombay City Police Force, by Bombay Act I. of 1872, and it is expedient to further amend the said Act in manner hereinafter appearing ; It is enacted as follows :—

1. For the word “pay” in the Section substituted by Section 2 of Bombay Act
Amendment of section 17, Act XIII. of 1856.

I. of 1872, for Section seventeen of the said Act the words “salary and authorized allowances” shall be substituted.

2. For the words “upon a reduction of the Force” in Section seven of Bombay Act I. of 1872, the words “for any reason other than his own misconduct” shall be substituted.
Amendment of Section 7 of Bombay Act I. of 1872.

By order of His Excellency the Honourable the Governor in Council,

JOHN NUGENT,

Under Secretary to Government.

Bombay Castle, 4th April 1879.

[Published with the "Bombay Government Gazette" on the 17th April 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 24th February 1879, and the assent of His Excellency the Viceroy and Governor General on the 22nd March 1879, and is published for general information :—

Bombay Act No. II. of 1879.

An Act to further amend Act XIII. of 1856.

WHEREAS Act XIII. of 1856 (*an Act for regulating the Police of the Towns of Calcutta, Madras, and Bombay*) was amended, so far as concerns the Bombay City Police Force, by Bombay Act I. of 1872, and it is expedient to further amend the said Act in manner hereinafter appearing; It is enacted as follows :—

1. For the word "pay" in the Section substituted by Section 2 of Bombay Act
Amendment of section 17, Act XIII. of 1856.

I. of 1872, for Section seventeen of the said Act the words "salary and authorized allowances" shall be substituted.

2. For the words "upon a reduction of the Force" in Section seven of Bombay Act I. of 1872, the words "for any reason other than his own misconduct" shall be substituted.
Amendment of Section 7 of Bombay Act I. of 1872.

By order of His Excellency the Honourable the Governor in Council,

JOHN NUGENT,
 Under Secretary to Government.

Bombay Castle, 4th April 1879.

[Published with the "Bombay Government Gazette" on the 17th April 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 22nd March 1879, and was promulgated for general information in the *Gazette of India* on the 5th April 1879:—

Act No. V. of 1879.

An Act to amend the Presidency Banks Act, 1876.

WHEREAS it is expedient to amend the Presidency Banks Act, 1876, in manner hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called "The Presidency Banks Act, 1879;" and it shall come into force on the first day of May 1879.

Short title.	
Commencement.	on the first day of May 1879.
2. To the first clause of section 28 of the Presidency Banks Act, 1876, the following proviso shall be added, that is to say:

Amendment of Act XI. of 1876, section 28.	
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"Provided that no person shall be chosen to be President or Vice-President twice in succession."
3. In the same Act, section 34, before the words "no Khazānchi," the words "without the previous sanction of the Board" shall be inserted.

Amendment of section 34 of same Act	
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4. In the same Act, section 36, clause (a), sub-clause (4), after the words "municipal body," the words "or any body

of Commissioners for making improvements in any port or of trustees of any port" shall be inserted.

In the same section, the words "in the case of the Bank of Madras" shall be omitted in both the places in which they occur.

In the same section, after clause (m), the following clause shall be inserted, that is to say, "(m m) the borrowing of money in India for the purposes of the Bank's business, and the giving of security for money so borrowed by pledging assets or otherwise."

5. In section 37 of the same Act, for clause (d), the following shall be substituted, that is to say,

"(d) Nor shall they (except upon the security mentioned in section 36, paragraph a, Nos. 1 to 5 inclusive)

discount bills for any individual or partnership-firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or

lend or advance in any way to any individual or partnership-firm an amount exceeding in the whole at any one time such sum as may be so prescribed."

6. In section 63 of the same Act, clause (a), for the words "lent by discount of bills or otherwise to," the words "lent to or for which bills may be discounted for" shall be substituted,

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

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 22nd March 1879, and was promulgated for general information in the *Gazette of India* on the 5th April 1879:—

Act No. VI. of 1879.

An Act for the preservation of wild elephants.

WHEREAS it is expedient to provide for the preservation of wild elephants; It is hereby enacted as follows:—

Preamble.

preservation of wild elephants; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Elephants Preservation Act, 1879."

Local extent.

It extends to the territories now respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, British Burma and Coorg;

and the Local Government may, with the previous sanction of the Governor General in Council, extend it to any other local area by notification in the local official Gazette.

So far as regards the power to make declarations and rules, it shall come into force on the passing thereof. In other respects it shall come into force on the first day of April 1879.

Commencement.

2. The words "kills or catches elephants," in section 25, clause (i), of the Indian Forest Act, 1878, and the words "killing or catching elephants," in section 31, clause (j) of the same Act, shall be repealed in every local area to which this Act extends or is extended.

Repeal.

3. No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant, unless—

Killing and capture of wild elephants prohibited.

- (a) in defence of himself or some other person;
- (b) when such elephant is found injuring houses or cultivation, or upon or in the immediate vicinity of, any main public road or any railway or canal; or
- (c) as permitted by a license granted under this Act.

4. Every elephant captured, and the tusks of every elephant killed, in any of the cases mentioned in section three, clauses (a) and (b), by any person not licensed under this Act, shall be the property of Government.

Rights of Government with respect to certain elephants and tusks.

5. The Collector or Deputy Commissioner of any District may, subject to such rules as may for the time being be in force under this Act, grant licenses to kill, or to capture, or to kill and capture, wild elephants in such district;

License to kill and capture wild elephants.

Provided that no such license shall authorize any person to enter upon any land without the consent of the owner or occupier thereof.

6. The Local Government may from time to time, subject to the control of the Governor General in Council,

Power of Local Government

declare what shall be deemed to be main public roads and canals within the meaning of this Act, and

to declare what are main roads and canals,

make rules consistent with this Act for regulating—

and to make rules as to licenses.

(a) the grant and renewal of licenses under this Act,

(b) the fees (if any) in money, tusks or captured elephants to be charged on such grant and renewal,

(c) the time during which such licenses shall continue in force, and

(d) the conditions (if any) on which they shall be granted.

All such declarations and rules shall be published in the local official Gazette and shall thereupon have the force of law.

7. Whoever, in contravention of section three, kills, injures or captures, or attempts to kill, injure or capture, any wild elephant, shall be punished with fine which may extend to five hundred rupees for each elephant concerned;

Penalty for contravening section 3.

and whoever breaks any condition contained in a license granted under this Act shall be punished with fine which may extend to five hundred rupees.

Any person convicted of a second offence under this section shall be punished with imprisonment which may extend to six months, or with fine, or with both.

When any person holding a license under this Act is convicted under this section, such license shall become void and shall be delivered up to the convicting Magistrate.

8. Any officer of Revenue or Police, or any forest-officer, who may find any person killing, injuring or capturing, or attempting to kill, injure or capture, any wild elephant, except in the cases mentioned in section three, clauses (a) and (b), may require him to produce and show a license granted to him under this Act.

License to be produced and shown on requisition of certain officers.

Any person who, on such request, wilfully refuses or is unable to produce and show such license as aforesaid, shall, in addition to any other punishment to which he may be liable under this Act, be punished with fine which may extend to one hundred rupees.

9. Every prosecution under this Act shall be commenced within six months from the commission of the offence in respect of which it is instituted.

Limitation of prosecution.

10. The amount or value of any fee payable under any license granted under this Act may be recovered from the licensee as if it were an arrear of land-revenue.

Recovery of fees.

D. FITZPATRICK,

Secretary to the Government of India.

[Published with the "Bombay Government Gazette" on the 24th April 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 22nd March 1879, and was promulgated for general information in the *Gazette of India* on the 5th April 1879 :—

Act No. V. of 1879.

An Act to amend the Presidency Banks Act, 1876.

WHEREAS it is expedient to amend the Presidency Banks Act, 1876, in manner hereinafter appearing; It is hereby enacted as follows :—

1. This Act may be called "The Presidency Banks Act, 1879;" and it shall come into force on the first day of May 1879.

Short title.

Commencement.
2. To the first clause of section 28 of the Presidency Banks Act, 1876, the following proviso shall be added, that is to say :

Amendment of Act XI. of 1876, section 28.

"Provided that no person shall be chosen to be President or Vice-President twice in succession."
3. In the same Act, section 34, before the words "no Khazánchi," the words "without the previous sanction of the Board" shall be inserted.

Amendment of section 34 of same Act.
4. In the same Act, section 36, clause (a), sub-clause (4), after the words "municipal body," the words "or any body

of Commissioners for making improvements in any port or of trustees of any port" shall be inserted.

In the same section, the words "in the case of the Bank of Madras" shall be omitted in both the places in which they occur.

In the same section, after clause (m), the following clause shall be inserted, that is to say, "(m m) the borrowing of money in India for the purposes of the Bank's business, and the giving of security for money so borrowed by pledging assets or otherwise."

5. In section 37 of the same Act, for clause (d), the following shall be substituted, that is to say,

"(d) Nor shall they (except upon the security mentioned in section 36, paragraph a, Nos. 1 to 5 inclusive)

discount bills for any individual or partnership-firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or

lend or advance in any way to any individual or partnership-firm an amount exceeding in the whole at any one time such sum as may be so prescribed."

6. In section 63 of the same Act, clause (a), for the words "lent by discount of bills or otherwise to," the words "lent to or for which bills may be discounted for" shall be substituted.

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

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 22nd March 1879, and was promulgated for general information in the *Gazette of India* on the 5th April 1879:—

Act No. VI. of 1879.

An Act for the preservation of wild elephants.

WHEREAS it is expedient to provide for the preservation of wild elephants; It is hereby enacted as follows:—

Preamble.

Short title.

It extends to the territories now respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, British Burma and Coorg;

Local extent.

and the Local Government may, with the previous sanction of the Governor General in Council, extend it to any other local area by notification in the local official Gazette.

So far as regards the power to make declarations and rules, it shall come into force on the passing thereof. In other respects it shall come into force on the first day of April 1879.

Commencement.

2. The words "kills or catches elephants," in section 25, clause (i), of the Indian Forest Act, 1878, and the words "killing or catching elephants," in section 31, clause (j) of the same Act, shall be repealed in every local area to which this Act extends or is extended.

Repeal.

3. No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant, unless—

Killing and capture of wild elephants prohibited.

- in defence of himself or some other person;
- when such elephant is found injuring houses or cultivation, or upon or in the immediate vicinity of, any main public road or any railway or canal; or
- as permitted by a license granted under this Act.

4. Every elephant captured, and the tusks of every elephant killed, in any of the cases mentioned in section three, clauses (a) and (b), by any person not licensed under this Act, shall be the property of Government.

5. The Collector or Deputy Commissioner of any District may, subject to such rules as may for the time being be in force under this Act, grant licenses to kill, or to capture, or to kill and capture, wild elephants in such district:

License to kill and capture wild elephants.

Provided that no such license shall authorize any person to enter upon any land without the consent of the owner or occupier thereof.

6. The Local Government may from time to time, subject to the control of the Governor General in Council,

Power of Local Government

IV.—14 f

to declare what are main roads and canals, declare what shall be deemed to be main public roads and canals within the meaning of this Act, and

make rules consistent with this Act for renewing and to make rules as to licenses.

- the grant and renewal of licenses under this Act,
- the fees (if any) in money, tusks or captured elephants to be charged on such grant and renewal,
- the time during which such licenses shall continue in force, and
- the conditions (if any) on which they shall be granted.

All such declarations and rules shall be published in the local official Gazette and shall thereupon have the force of law.

7. Whoever, in contravention of section three, kills, injures or captures, or attempts to kill, injure or capture, any wild elephant, shall be punished with fine which may extend to five hundred rupees for each elephant concerned;

and whoever breaks any condition contained in a license granted under this Act shall be punished with fine which may extend to five hundred rupees.

Any person convicted of a second offence under this section shall be punished with imprisonment which may extend to six months, or with fine, or with both.

When any person holding a license under this Act is convicted under this section, such license shall become void and shall be delivered up to the convicting Magistrate.

8. Any officer of Revenue or Police, or any forest-officer, who may find any person killing, injuring or capturing, or attempting to kill, injure or capture, any wild elephant, except in the cases mentioned in section three, clauses (a) and (b), may require him to produce and show a license granted to him under this Act.

Any person who, on such request, wilfully refuses or is unable to produce and show such license as aforesaid, shall, in addition to any other punishment to which he may be liable under this Act, be punished with fine which may extend to one hundred rupees.

9. Every prosecution under this Act shall be commenced within six months from the commission of the offence in respect of which it is instituted.

10. The amount or value of any fee payable under any license granted under this Act may be recovered from the licensee as if it were an arrear of land-revenue.

Limitation of prosecution.

Recovery of fees.

D. FITZPATRICK,

Secretary to the Government of India.

THE



Bombay Government Gazette.

Published by Authority.

TUESDAY, 27TH MAY 1879.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 24th February 1879, and the assent of His Excellency the Viceroy and Governor General on the 10th May 1879, and is published for general information:—

Bombay Act No. III. of 1879.

An Act to provide for the levy of Fees for the use of Government Landing-places in the Port of Kurrachee.

WHEREAS it is expedient to provide for the levy of fees for the use of the Government landing-places in the Port of Kurrachee, it is enacted as follows:—

1. This Act shall be called "the Kurrachee Landing and Wharfage Fees Act of 1879."

Short Title. Kurrachee Landing and Wharfage Fees Act of 1879."
2. In this Act the term "landing-place" includes a bund, wharf, pier, jetty, hard, and any place used for the landing, shipping, wharfage, craning, or storage of goods.

"Landing-place" defined.
3. It shall be lawful for the Governor in Council from time to time, by Notification in the *Bombay Government Gazette* and in the *Sind Official Gazette*:

The Governor in Council to fix limits of bunds, &c., and the fees to be levied.

(a). To determine the limits of any Government landing place to which the provisions of this Act shall apply;

(b). To fix the fees to be levied—

- (1). For the landing, shipping, wharfage, craning, storage or demurrage of goods at; and
- (2). For permitting animals or vehicles to bring or remove goods to or from, or to ply for hire at; and
- (3). For permitting vessels or boats to approach or lie alongside, any such landing-place:

Provided that it shall be lawful for the Governor in Council at any time to exempt any goods, vessel, boat, animal or vehicle, either wholly or partially, from any fee to which the same may be liable under this section.

4. The levy of fees under this Act shall be made, and all other powers and duties conferred and imposed by this Act or by any bye-laws made hereunder, shall be exercised and performed by such officers as the Governor in Council shall from time to time direct, or by such persons as he shall from time to time appoint in this behalf.

5. The officers and persons whose duty it may be to levy fees under this Act shall have the same powers for collecting and enforcing payment of the same as are exercisable under the provisions of any law, for the time being in force, in respect of duties of sea-customs by the Collector of Customs and his subordinates, and shall have the same privileges and be subject to the same liabilities in respect of any thing done by them in collecting and enforcing payment of the said fees as the said Collector of Customs and his subordinates have, or are liable to, under the provisions of any such law.

The law for the time being in force for the punishment of offenders, offences relating to the levy or payment of duties of sea-customs, and for the reward of informers, shall, as far as may be, apply to similar offences committed in respect of the said fees.

6. Tables of the fees leviable under this Act in the English, Sindhi and Gujarathi languages shall be posted up in some conspicuous position at every landing-place at which such fees are leviable.

7. The Commissioner in Sind may, with the previous sanction of Government, from time to time make, and from time to time alter or repeal, bye-laws not inconsistent with the provisions of this Act:

- (a). Regulating the use of every landing-place to which this Act applies;

- (b). Providing for the management of the traffic over, on and about and to and from every such landing-place; and
- (c). Generally for the guidance of all persons in matters connected with the enforcement of this Act.

The bye-laws so made, and every alteration of the same and every order repealing the same or any portion thereof, shall be published in the *Bombay Government Gazette* and in the *Sind Official Gazette*.

8. The proceeds of all fees realized under this Act shall be applied:

- (a). In payment of the expenses of the administration of this Act;
- (b). In defraying the cost of acquiring or constructing new landing-places required for the convenience of the trade of the Port of Kurrachee or the interest on any moneys expended in any such acquisition or construction; and
- (c). In maintaining and improving any existing landing-place and generally in the improvement of the said Port.

Accounts of all receipts and expenditures under this Act shall be published once in every year in the *Bombay Government Gazette* and in the *Sind Official Gazette*.

9. The levy of wharfage dues heretofore made in the Port of Kurrachee in conformity with a Notification of the Governor in Council dated the 23rd October 1865, and published at page 1039 of the *Bombay Government Gazette* of the 26th October 1865, shall be deemed to have been lawfully made, and all officers are hereby indemnified in respect of any thing done by them under the authority of the said Notification which might have been done if the said Notification had been lawfully made, and no suit shall be maintained against Government or against any Officer of Government in respect of any thing so done.

By order of His Excellency the Honourable the Governor in Council,

C. G. W. MACPHERSON,
Acting Under Secretary to Government.

[Published with the "Bombay Government Gazette" on the 29th May 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 24th February 1879, and the assent of His Excellency the Viceroy and Governor General on the 10th May 1879, and is published for general information:—

Bombay Act No. III. of 1879.

An Act to provide for the levy of Fees for the use of Government Landing-places in the Port of Kurrachee.

WHEREAS it is expedient to provide for the levy of fees for the use of the Government landing-places in the Port of Kurrachee, it is enacted as follows:—

1. This Act shall be called "the Kurrachee Landing and Wharfage Fees Act of 1879."
2. In this Act the term "landing-place" includes a bunder, wharf, pier, jetty, hard, and any place used for the landing, shipping, wharfage, cramage, or storage of goods.
3. It shall be lawful for the Governor in Council from time to time, by Notification in the *Bombay Government Gazette* and in the *Sind Official Gazette*:
 - (a). To determine the limits of any Government landing place to which the provisions of this Act shall apply;
 - (b). To fix the fees to be levied—
 - (1). For the landing, shipping, wharfage, cramage, storage or demurage of goods at; and
 - (2). For permitting animals or vehicles to bring or remove goods to or from, or to ply for hire at; and
 - (3). For permitting vessels or boats to approach or lie alongside, any such landing-place:

Provided that it shall be lawful for the Governor in Council at any time to exempt any goods, vessel, boat, animal or vehicle, either wholly or partially, from any fee to which the same may be liable under this section.

4. The levy of fees under this Act shall be made, and all Powers and duties under this Act by whom other powers and to be exercised and performed. duties conferred and imposed by this Act or by any bye-laws made hereunder, shall be exercised and performed by such officers as the Governor in Council shall from time to time direct, or by such persons as he shall from time to time appoint in this behalf.

5. The officers and persons whose duty it may be to levy fees under this Act, shall Powers, privileges, and liabilities of Officers who collect fees. have the same powers for collecting and enforcing payment of the same as are exercisable under the provisions of any law, for the time being in force, in respect of duties of sea-customs by the Collector of Customs and his subordinates, and shall have the same privileges and be subject to the same liabilities in respect of any thing done by them in collecting and enforcing payment of the said fees as the said Collector of Customs and his subordinates have, or are liable to, under the provisions of any such law.

The law for the time being in force for the punishment of offenders. Punishment of offenders. The law for the time being in force for the punishment of offenders. The law for the time being in force for the punishment of offenders.

6. Tables of the fees leviable under this Act in the English, Sindhi and Gujarathi languages shall be posted up in some conspicuous position at every landing-place at which such fees are leviable.

7. The Commissioner in Sind may, with Power to make Bye-laws. the previous sanction of Government, from time to time make, and from time to time alter or repeal, bye-laws not inconsistent with the provisions of this Act :

- (a). Regulating the use of every landing-place to which this Act applies ;
- (b). Providing for the management of the traffic over, on and about and to and from every such landing-place ; and
- (c). Generally for the guidance of all persons in matters connected with the enforcement of this Act.

The bye-laws so made, and every alteration of the same and every order repealing the same or any portion thereof, shall be published in the *Bombay Government Gazette* and in the *Sind Official Gazette*.

8. The proceeds of all fees realized under this Act shall be applied : Fees realized under this Act how to be applied.

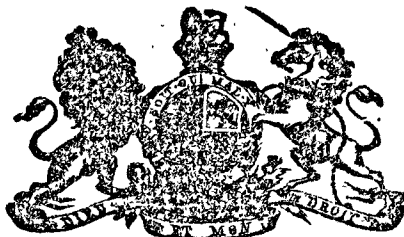
- (a). In payment of the expenses of the administration of this Act ;
- (b). In defraying the cost of acquiring or constructing new landing-places required for the convenience of the trade of the Port of Kurrachee or the interest on any moneys expended in any such acquisition or construction ; and
- (c). In maintaining and improving any existing landing-place and generally in the improvement of the said Port.

Accounts of all receipts and expenditures under this Act Yearly Accounts to be published. shall be published once in every year in the *Bombay Government Gazette* and in the *Sind Official Gazette*.

9. The levy of wharfage dues heretofore made in the Port of Kurrachee in conformity with a Notification of the Governor in Council dated the 23rd October 1865, and published at page 1039 of the *Bombay Government Gazette* of the 26th October 1865, shall be deemed to have been lawfully made, and all officers are hereby indemnified in respect of any thing done by them under the authority of the said Notification which might have been done if the said Notification had been lawfully made, and no suit shall be maintained against Government or against any Officer of Government in respect of any thing so done.

By order of His Excellency the Honourable the Governor in Council,

C. G. W. MACPHERSON,
Acting Under Secretary to Government.



Bombay Government Gazette.

Published by Authority.

THURSDAY, 29TH MAY 1879.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 23rd May, 1879, and was promulgated for general information in the *Gazette of India* of 24th May 1879:—

Act No. IX of 1879.

An Act to amend the law relating to Coast-lights in the eastern part of the Bay of Bengal.

Whereas it is expedient to increase the coast-light dues paid under the provisions of Act No. XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*), and to render chargeable with Coast-light dues certain vessels which are not now so chargeable; It is hereby enacted as follows:—

Preliminary.

1. This Act may be called "The Burma Coast-lights Act, 1879":

It shall come into force on the first day of July, 1879;

and it shall extend to the territories respectively administered by the Governors of Fort St. George and Bombay in Council, the Lieutenant-Governor of Bengal and the Chief Commissioners of British Burma and the Andaman and Nicobar Islands.

But nothing herein contained shall apply to any vessel belonging to or in the service of Her Majesty or the Government of India, or to any vessel of war belonging to any Foreign Prince or State.

IV.—16

2. Act No. XIII of 1867 (*to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*) is hereby repealed:

But any appointment made under the said Act shall be deemed to have been made under this Act.

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

"Customs-Collector" means a Customs-Collector appointed under the Sea Customs Act, 1878, and includes any person appointed by the Local Government by name or in virtue of his office to discharge the functions of a Customs-Collector under this Act at any port:

"Vessel" includes anything made for the conveyance by water of human beings or of property:

"Master," when used in relation to any vessel, means any person (except a Pilot or Harbour Master) having for the time being the charge or control of such vessel:

"Voyage" means the whole distance between a vessel's place of departure and her final place of arrival; but the return of a vessel from any place shall, notwithstanding the terms of any charter-party, be deemed a distinct voyage.

Coast-light Dues.

4. For the purpose of establishing and maintaining coast-lights in the eastern part of the Bay of Bengal, a toll, hereinafter called "coast-light dues,"

Coast-light dues payable in respect of vessels of fifty tons.

shall be paid in respect of every vessel of the burden of fifty tons and upwards making any voyage mentioned in the schedule hereto annexed at the rate of one anna and six pie per ton of burden :

Provided that such vessel sails from or enters during the course of, or at the termination of, any such voyage a port in British India, or takes in, or discharges, cargo off the coast of British India.

5. The said coast-light dues shall become due and payable—

(a) in the case of a vessel clearing out of a port in British India upon any such voyage—previous to the grant of any port-clearance ;

(b) in the case of a vessel entering a port in British India in the course, or at the termination of any such voyage—immediately upon her entering such port;

Provided that the said dues shall not be levied more than once on any vessel in the course of the same voyage.

6. The Governor-General in Council may from time to time, by notification in the *Gazette of India*, reduce or raise the rate of coast-light dues in respect of all vessels or any particular class or vessels :

Provided that such rate shall not in any case exceed the rate fixed by section four.

7. The Customs Collector shall collect the coast-light dues,

and shall grant to the person paying the same a voucher in writing under his hand, setting forth the

name of his office, the port at which the coast-light dues are paid, the amount so paid, the name, tonnage and other proper description of the vessel in respect of which such payment is made, and the voyage on which she is or has been bound.

8. Within twenty-four hours after the arrival within a port of any vessel chargeable with coast-light dues, the master of such vessel shall give notice of such arrival to the Customs-Collector.

9. In order to ascertain the tonnage of any vessel chargeable with coast-light dues, the following rules shall be observed :—

(a). If such vessel be a British registered vessel or a vessel registered under Act No. X of 1841 or Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, the Customs-Collector may require the owner or master of such vessel, or any other person having possession of her

register, to produce such register for inspection. If any such owner, master or other person neglects or refuses to produce such register, or otherwise to satisfy the Customs-Collector as to what is the true tonnage of the vessel, in respect of which such coast-light dues are payable; he shall be punished with fine which may extend to one hundred rupees, and the Customs-Collector may cause such vessel to be measured, and the tonnage thereof to be ascertained; and in such case the owner or master of such vessel shall also be liable to pay the expenses of such measurement.

(b) If such vessel be not a British registered vessel or a vessel registered under Act No. X of 1841 or Act No. XI of 1850; or under any other law for the time being in force for the registration of vessels in India, and the owner or master thereof fails to satisfy the Customs-Collector as to what is her true tonnage according to the mode of measurement prescribed by the law in force for the time being for regulating the measurement of British registered vessels, the Customs-Collector shall cause such vessel to be measured and the tonnage thereof, according to the mode aforesaid, to be ascertained; and in such case the owner or master of such vessel shall be liable to pay the expenses of such measurement.

10. If the master of any vessel refuses or neglects to pay to the Customs-Collector on demand by him the amount of any dues or expenses payable in respect of such vessel under this Act, the Customs-Collector may distrain or arrest such vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of such dues or expenses is paid ;

and in case any part of such dues or expenses, or of the costs of the distress or arrest, or of the keeping of the same remains unpaid for the space of five days next after any such distress or arrest so made, the Customs-Collector may cause the vessel or other thing so distrained or arrested to be sold, and with the proceeds of such sale may satisfy such dues, expenses and costs (including the costs of sale) remaining unpaid, and shall render the surplus (if any) to the master of such vessel upon demand.

11. The officer of Government whose duty it is to grant a port-clearance for any vessel shall not grant such port-clearance until her master or some other person has paid, or secured to the satisfaction of such officer, the amount of all dues, expenses and costs with which such vessel is chargeable under this Act, and of any fine to which any person is liable for anything done by him in contravention of this Act.

12. The master of any vessel departing from or entering any port in British India upon, or in the course of, or at the termination of, any voyage shall, upon the demand of the Customs-Collector, specify upon what voyage she is or has been bound.

13. If the master of any vessel evades, or attempts to evade, the payment of any coast-light dues, expenses or costs payable in respect of such vessel under this Act, he shall be punished with fine which may extend to two hundred rupees,

Determination of Disputes under Act.

14. If any dispute arises as to whether any vessel is chargeable with any coast-light dues, expenses or costs under this Act, or as to the amount of such dues, expenses or costs, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined in the towns of Calcutta, Madras and Bombay by a Presidency Magistrate, and elsewhere by any Magistrate exercising at the place where the dispute arises powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class. All decisions under this section shall be final.

Prosecutions under other Laws.

15. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act; provided that no person shall be punished twice for the same act or omission.

Statement of Receipts and Expenditure.

16. The Governor General in Council shall, on or before the first day of October in each year, publish in the *Gazette of India* a statement showing the amount received on account of coast-light dues during the year ending on the thirty-first day of March last preceding, and the amount expended during the same period on the establishment and maintenance of coast-lights in the eastern part of the Bay of Bengal.

And whereas it is also expedient to amend the Indian Ports Act, 1875, in manner hereinafter appearing; It is hereby further enacted as follows:—

17. For section 77 of the same Act the following shall be substituted:—

“77. The port due leviable under this Act in either of the ports of Maulmain and Bassein shall, to the extent of one anna and six pie per ton, be applicable in the first place to defray the expenses of maintaining the existing port-lights of British Burma.”

SCHEDULE.

(See section 4.)

1. A voyage to or from (a) from or to any port Chittagong or any place west in British Burma; or of the longitude of Chittagong—
(b) from or to any port in the Andaman and Nicobar Islands or any place east of the longitude of Mergui, by a course passing between the northern extremity of the Andaman Islands and the coast of British Burma.
2. A voyage to or from any port in British Burma— from or to any other port in British Burma
Except voyages to or from Maulmain, from or to Tavoy or Mergui, or to or from Tavoy, from or to Mergui.
3. A voyage to or from Rangoon and any port in British Burma west of the longitude of Rangoon— from or to any place east of the longitude of Mergui.
4. A voyage to or from any port in British Burma other than Tavoy and Mergui— from or to any port in the Andaman and Nicobar islands.

D. FITZPATRICK,

Secy. to the Govt. of India,
Legislative Department.

[Published with the "Bombay Government Gazette" on the 5th June 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 24th February 1879, and the assent of His Excellency the Viceroy and Governor General on the 10th May 1879, and is published for general information:—

Bombay Act No. III. of 1879.

An Act to provide for the levy of Fees for the use of Government Landing-places in the Port of Kurrachee.

WHEREAS it is expedient to provide for the levy of fees for the use of the Government landing-places in the Port of Kurrachee, it is enacted as follows:—

- 1. This Act shall be called "the Kurrachee Landing and Wharfage Fees Act of 1879."
- 2. In this Act the term "landing-place" includes a bunders, wharf, pier, jetty, hard, and any place used for the landing, shipping, wharfage, crannage, or storage of goods.
- 3. It shall be lawful for the Governor in Council from time to time, by Notification in the *Bombay Government Gazette* and in the *Sind Official Gazette*:
 - (a). To determine the limits of any Government landing place to which the provisions of this Act shall apply;
 - (b). To fix the fees to be levied—
 - (1). For the landing, shipping, wharfage, crannage, storage or demurrage of goods at; and
 - (2). For permitting animals or vehicles to bring or remove goods to or from, or to ply for hire at; and
 - (3). For permitting vessels or boats to approach or lie alongside,

Provided that it shall be lawful for the Governor in Council at any time to exempt any goods, vessel, boat, animal or vehicle, either wholly or partially, from any fee to which the same may be liable under this section.

4. The levy of fees under this Act shall be made, and all other powers and duties conferred and imposed by this Act or by any bye-laws made hereunder, shall be exercised and performed by such officers, as the Governor in Council shall from time to time direct, or by such persons as he shall from time to time appoint in this behalf.

5. The officers and persons whose duty it may be to levy fees under this Act shall have the same powers for collecting and enforcing payment of the same as are exercisable under the provisions of any law, for the time being in force, in respect of duties of sea-customs by the Collector of Customs and his subordinates, and shall have the same liabilities in respect of any thing done by them in collecting and enforcing payment of the said fees as the said Collector of Customs and his subordinates have, or are liable to, under the provisions of any such law.

The law for the time being in force for the punishment of offenders. Punishment of offenders. The law for the time being in force for the punishment of offenders relating to the levy or payment of duties of sea-customs, and for the reward of informers, shall, as far as may be, apply to similar offences committed in respect of the said fees.

6. Tables of the fees leviable under this Act in the English, Sindhi and Gujaráthi languages shall be posted up in some conspicuous position at every landing-place at which such fees are leviable.

7. The Commissioner in Sind may, with the previous sanction of Government, from time to time make, and from time to time alter or repeal, bye-laws not inconsistent with the provisions of this Act :

- (a). Regulating the use of every landing place to which this Act applies ;
- (b). Providing for the management of the traffic over, on and about and to and from every such landing-place ; and
- (c). Generally for the guidance of all persons in matters connected with the enforcement of this Act.

The bye-laws so made, and every alteration of the same and every order repealing the same or any portion thereof, shall be published in the *Bombay Government Gazette* and in the *Sind Official Gazette*.

8. The proceeds of all fees realized under this Act shall be applied :

- (a). In payment of the expenses of the administration of this Act ;
- (b). In defraying the cost of acquiring or constructing new landing-places required for the convenience of the trade of the Port of Kurrachee or the interest on any moneys expended in any such acquisition or construction ; and
- (c). In maintaining and improving any existing landing-place and generally in the improvement of the said Port.

Accounts of all receipts and expenditures under this Act shall be published once in every year in the *Bombay Government Gazette* and in the *Sind Official Gazette*.

9. The levy of wharfage dues heretofore made in the Port of Kurrachee in conformity with a Notification of the Governor in Council dated the 23rd October 1865, and published at page 1039 of the *Bombay Government Gazette* of the 26th October 1865, shall be deemed to have been lawfully made, and all officers are hereby indemnified in respect of any thing done by them under the authority of the said Notification which might have been done if the said Notification had been lawfully made, and no suit shall be maintained against Government or against any Officer of Government in respect of any thing so done.

By order of His Excellency the Honourable the Governor in Council,

C. G. W. MACPHERSON,
Acting Under Secretary to Government.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 23rd May, 1879, and was promulgated for general information in the *Gazette of India* of 24th May 1879 :—

Act No. IX of 1879.

An Act to amend the law relating to Coast-lights in the eastern part of the Bay of Bengal.

Whereas it is expedient to increase the coast-light dues paid under the provisions of Act No. XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*), and to render chargeable with Coast-light dues certain vessels which are not now so chargeable; It is hereby enacted as follows :—

Preliminary.

1. This Act may be called "The Burma Coast-lights Act, 1879":
It shall come into force on the first day of July, 1879;
and it shall extend to the territories respectively administered by the Governors of Fort St. George and Bombay in Council, the Lieutenant-Governor of Bengal and the Chief Commissioners of British Burma and the Andaman and Nicobar Islands.

But nothing herein contained shall apply to any vessel belonging to or in the service of Her Majesty or the Government of India, or to any vessel of war belonging to any Foreign Prince or State.

2. Act No. XIII, of 1867 (*to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*) is hereby repealed:

But any appointment made under the said Act shall be deemed to have been made under this Act.

3. In this Act, unless there is something repugnant in the subject or context,—
"Customs-Collector" means a Customs-Collector appointed under the Sea Customs Act, 1878, and includes any person appointed by the Local Government by name or in virtue of his office to discharge the functions of a Customs-Collector under this Act at any port:

"Vessel" includes anything made for the conveyance by water of human beings or of property:

"Master," when used in relation to any vessel, means any person (except a Pilot or Harbour Master) having for the time being the charge or control of such vessel:

"Voyage" means the whole distance between a vessel's place of departure and her final place of arrival; but the return of a vessel from any place shall, notwithstanding the terms of any charter-party, be deemed a distinct voyage.

iv.—16 b

Coast-light Dues.

4. For the purpose of establishing and maintaining coast-lights in the eastern part of the Bay of Bengal, a toll, hereinafter called "coast-light dues," shall be paid in respect of every vessel of the burden of fifty tons and upwards making any voyage mentioned in the schedule hereto annexed, at the rate of one anna and six pie per ton of burden:

Provided that such vessel sails from or enters during the course of, or at the termination of, any such voyage a port in British India, or takes in, or discharges, cargo off the coast of British India.

5. The said coast-light dues shall become due and payable—

(a) in the case of a vessel clearing out of a port in British India upon any such voyage—previous to the grant of any port-clearance;

(b) in the case of a vessel entering a port in British India in the course, or at the termination, of any such voyage—immediately upon her entering such port:

Provided that the said dues shall not be levied more than once on any vessel in the course of the same voyage.

6. The Governor General in Council may from time to time, by notification in the *Gazette of India*, reduce or raise the rate of coast-light dues in respect of all vessels or any particular class of vessels:

Provided that such rate shall not in any case exceed the rate fixed by section four.

7. The Customs Collector shall collect the coast-light dues,

and shall grant to the person paying the same a voucher in writing under his hand, setting forth the name of his office, the port at which the coast-light dues are paid, the amount so paid, the name, tonnage and other proper description of the vessel in respect of which such payment is made, and the voyage on which she is or has been bound.

8. Within twenty-four hours after the arrival within a port of any vessel chargeable with coast-light dues, the master of such vessel shall give notice of such arrival to the Customs-Collector.

9. In order to ascertain the tonnage of any vessel chargeable with coast-light dues, the following rules shall be observed :—

(a). If such vessel be a British registered vessel or a vessel registered under Act No. X of 1841 or Act No. XI. of 1850, or under any other law for the time being in force for the registration of vessels in India, the Customs-Collector may require the owner or master of such vessel, or any other person having possession of her register, to produce such register for inspection.

If any such owner, master or other person neglects or refuses to produce such register, or otherwise

to satisfy the Customs-Collector as to what is the true tonnage of the vessel in respect of which such coast-light dues are payable, he shall be punished with fine which may extend to one hundred rupees, and the Customs-Collector may cause such vessel to be measured and the tonnage thereof to be ascertained; and in such case the owner or master of such vessel shall also be liable to pay the expenses of such measurement.

(b) If such vessel be not a British registered vessel or a vessel registered under Act No. X of 1841 or Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, and the owner or master thereof fails to satisfy the Customs-Collector as to what is her true tonnage according to the mode of measurement prescribed by the law in force for the time being for regulating the measurement of British registered vessels, the Customs-Collector shall cause such vessel to be measured and the tonnage thereof, according to the mode aforesaid, to be ascertained; and in such case the owner or master of such vessel shall be liable to pay the expenses of such measurement.

10. If the master of any vessel refuses or neglects to pay to the Customs-Collector on demand by him the amount of any dues or expenses payable in respect of such vessel under this Act, the Customs-Collector may distrain or arrest such vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of such dues or expenses is paid;

and in case any part of such dues or expenses, or of the costs of the distress or arrest, or of the keeping of the same remains unpaid for the space of five days next after any such distress or arrest so made, the Customs-Collector may cause the vessel or other thing so distrained or arrested to be sold, and with the proceeds of such sale may satisfy such dues, expenses and costs (including the costs of sale) remaining unpaid, and shall render the surplus (if any) to the master of such vessel upon demand.

11. The officer of Government whose duty it is to grant a port-clearance for any vessel shall not grant such port-clearance until her master or some other person has paid, or secured to the satisfaction of such officer, the amount of all dues, expenses and costs with which such vessel is chargeable under this Act, and of any fine to which any person is liable for anything done by him in contravention of this Act.

12. The master of any vessel departing from or entering any port in British India upon, or in the course of, or at the termination of, any voyage, shall, upon the demand of the Customs-Collector, specify upon what voyage she is or has been bound.

13. If the master of any vessel evades, or attempts to evade, the payment of any coast-light dues, expenses or costs payable in respect of such vessel under this Act, he shall be punished with fine which may extend to two hundred rupees.

Determination of Disputes under Act.

14. If any dispute arises as to whether any vessel is chargeable with any coast-light dues, expenses or costs under this Act, or as to the amount of such dues, expenses or costs, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined in the towns of Calcutta, Madras and Bombay by a Presidency Magistrate, and elsewhere by any Magistrate exercising at the place where the dispute arises powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class. All decisions under this section shall be final.

Prosecutions under other Laws.

15. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act: provided that no person shall be punished twice for the same act or omission.

Statement of Receipts and Expenditure.

16. The Governor General in Council shall, on or before the first day of October in each year, publish in the *Gazette of India* a statement showing the amount received on account of coast-light dues during the year ending on the thirty-first day of March last preceding, and the amount expended during the same period on the establishment and maintenance of coast-lights in the eastern part of the Bay of Bengal.

And whereas it is also expedient to amend the Indian Ports Act, 1875, in manner hereinafter appearing; It is hereby further enacted as follows:—

17. For section 77 of the same Act the following shall be substituted:—

“77. The port due leviable under this Act in either of the ports of Maulmain and Bassein shall, to the extent of one anna and six pie per ton, be applicable in the first place to defray the expenses of maintaining the existing port-lights of British Burma.”

SCHEDULE.

(See section 4.)

1. A voyage to or from Chittagong or any place west of the longitude of Chittagong—

(a) from or to any port in British Burma; or
(b) from or to any port in the Andaman and Nicobar Islands or any place east of the longitude of Mergui, by a course passing between the northern extremity of the Andaman Islands and the coast of British Burma.

2. A voyage to or from any port in British Burma—
Except voyages to or from Maulmain, from or to Tavoy or Mergui, or to or from Tavoy, from or to Mergui.

3. A voyage to or from Rangoon and any port in British Burma west of the longitude of Rangoon—

4. A voyage to or from any port in British Burma other than Tavoy and Mergui—
from or to any port in the Andaman and Nicobar lands.

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

[Published with the "Bombay Government Gazette" on the 12th June 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 23rd May 1879, and was promulgated for general information in the *Gazette of India* of 24th May 1879:—

Act No. IX of 1879.

An Act to amend the law relating to Coast-lights in the eastern part of the Bay of Bengal.

Whereas it is expedient to increase the coast-light dues paid under the provisions of Act No. XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*), and to render chargeable with Coast-light dues certain vessels which are not now so chargeable; It is hereby enacted as follows:—

Preliminary.

Short title. i. This Act may be called "The Burma Coast-lights Act, 1879":

Commencement. It shall come into force on the first day of July 1879;

and it shall extend to the territories respectively administered by the Governors of Fort St. George and Bombay in Council, the Lieutenant-Governor of Bengal and the Chief Commissioners of British Burma and the Andaman and Nicobar Islands.

But nothing herein contained shall apply to any vessel belonging to or in the service of Her Majesty or the Government of India, or to any vessel of war belonging to any Foreign Prince or State.

2. Act No. XIII. of 1867 (*to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*) is hereby repealed:

But any appointment made under the said Act shall be deemed to have been made, under this Act.

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

"Customs-Collector" means a Customs-Collector appointed under the Sea Customs Act, 1878,

and includes any person appointed by the Local Government by name or in virtue of his office to discharge the functions of a Customs-Collector under this Act at any port:

"Vessel" includes anything made for the conveyance by water of human beings or of property:

"Master," when used in relation to any vessel, means any person (except a Pilot or Harbour Master) having for the time being the charge or control of such vessel:

"Voyage" means the whole distance between a vessel's place of departure and her final place of arrival; but the return of a vessel from any place shall, notwithstanding the terms of any charter-party, be deemed a distinct voyage.

Coast-light Dues.

4. For the purpose of establishing and maintaining coast-lights in the eastern part of the Bay of Bengal, a toll, hereinafter called "coast-light dues," shall be paid in respect of every vessel of the burden of fifty tons, and upwards making any voyage mentioned in the schedule hereto annexed, at the rate of one anna and six pie per ton of burden:

Provided that such vessel sails from or enters during the course of, or at the termination of, any such voyage a port in British India, or takes in, or discharges, cargo off the coast of British India.

5. The said coast-light dues shall become due and payable—

(a) in the case of a vessel clearing out of a port in British India upon any such voyage—previous to the grant of any port-clearance;

(b) in the case of a vessel entering a port in British India in the course, or at the termination, of any such voyage—immediately upon her entering such port:

Provided that the said dues shall not be levied more than once on any vessel in the course of the same voyage.

6. The Governor General in Council may from time to time, by notification in the *Gazette of India*, reduce or raise

the rate of coast-light dues in respect of all vessels or any particular class of vessels:

Provided that such rate shall not in any case exceed the rate fixed by section four.

Proviso.

Collection of dues.

7. The Customs Collector shall collect the coast-light dues,

and shall grant to the person paying the same a voucher in writing under his hand, setting forth the name of his office, the port at which the coast-light dues are paid, the amount so paid, the name, tonnage and other proper description of the vessel in respect of which such payment is made, and the voyage on which she is or has been bound.

Voucher to be given.

8. Within twenty-four hours after the arrival within a port of any vessel chargeable with coast-light dues, the master of such vessel shall give notice of such arrival to the Customs-Collector.

Master to report arrival.

9. In order to ascertain the tonnage of any vessel chargeable with coast-light dues, the following rules shall be observed:—

Tonnage of vessel chargeable with coast-light dues how ascertained.

(a). If such vessel be a British registered vessel or a vessel registered under Act No. X of 1841 or Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, the Customs-Collector may require the owner or master of such vessel, or any other person having possession of her register, to produce such register for inspection. If any such owner, master or other person neglects or refuses to produce such register, or otherwise to satisfy the Customs-Collector as to what is the true tonnage of the vessel in respect of which such coast-light dues are payable, he shall be punished with fine which may extend to one hundred rupees, and the Customs-Collector may cause such vessel to be measured and the tonnage thereof to be ascertained; and in such case the owner or master of such vessel shall also be liable to pay the expenses of such measurement.

(b) If such vessel be not a British registered vessel or a vessel registered under Act No. X of 1841 or Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, and the owner or master thereof fails to satisfy the Customs-Collector as to what is her true tonnage according to the mode of measurement prescribed by the law in force for the time being for regulating the measurement of British registered vessels, the Customs-Collector shall cause such vessel to be measured and the tonnage thereof, according to the mode aforesaid, to be ascertained; and in such case the owner or master of such vessel shall be liable to pay the expenses of such measurement.

10. If the master of any vessel refuses or neglects to pay to the Customs-Collector on demand by him the amount of any dues or expenses

payable in respect of such vessel under this Act, the Customs-Collector may distrain or arrest such vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of such dues or expenses is paid;

and in case any part of such dues or expenses, or of the costs of the distress or arrest, or of the keeping of the same remains unpaid for the space of five days next after any such distress or arrest so made, the Customs-Collector may cause the vessel or other thing so distrained or arrested to be sold, and with the proceeds of such sale may satisfy such dues, expenses and costs (including the costs of sale) remaining unpaid, and shall render the surplus (if any) to the master of such vessel upon demand.

11. The officer of Government whose duty it is to grant a port-clearance for any vessel shall not grant such port-clearance until her master or some other person has paid, or secured to the satisfaction of such officer, the amount of all dues, expenses and costs with which such vessel is chargeable under this Act, and of any fine to which any person is liable for anything done by him in contravention of this Act.

No port-clearance to be granted until dues, &c., are paid.

12. The master of any vessel departing from or entering any port in British India upon, or in the course of, or at the termination of, any voyage, shall, upon the demand of the Customs-Collector, specify upon what voyage she is or has been bound.

13. If the master of any vessel evades, or attempts to evade, the payment of any coast-light dues, expenses or costs payable in respect of such vessel under this Act, he shall be punished with fine which may extend to two hundred rupees.

Determination of Disputes under Act.

14. If any dispute arises as to whether any vessel is chargeable with any coast-light dues, expenses or costs under this Act, or as to the amount of such dues, expenses or costs, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined in the towns of Calcutta, Madras and Bombay by a Presidency Magistrate, and elsewhere by any Magistrate exercising at the place where the dispute arises powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class. All decisions under this section shall be final.

Prosecutions under other Laws.

15. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act: provided that no person shall be punished twice for the same act or omission.

Saving of prosecutions under other laws.

Statement of Receipts and Expenditure.

16. The Governor General in Council shall, on or before the first day of October in each year, publish in the *Gazette of India* a statement showing the amount received on account of coast-light dues during the year ending on the thirty-first day of March last preceding, and the amount expended during the same period on the establishment and maintenance of coast-lights in the eastern part of the Bay of Bengal.

And whereas it is also expedient to amend the Indian Ports Act, 1875, in manner hereinafter appearing; It is hereby further enacted as follows:—

17. For section 77 of the same Act the following Amendment of Indian Ports Act, 1875. shall be substituted:—

“77. The port due leviable under this Act in either of the ports of Maulmain and Bassein shall, to the extent of one anna and six pie per ton, be applicable in the first place to defray the expenses of maintaining the existing port-lights of British Burma.”

SCHEDULE.

(See section 4.)

1. A voyage to or from Chittagong or any place west of the longitude of Chittagong—

(a) from or to any port in British Burma; or

(b) from or to any port in the Andaman and Nicobar Islands or any place east of the longitude of Mergui, by a course passing between the northern extremity of the Andaman Islands and the coast of British Burma.

2. A voyage to or from any port in British Burma— from or to any other port in British Burma

Except voyages to or from Maulmain, from or to Tavoy or Mergui, or to or from Tavoy, from or to Mergui.

3. A voyage to or from Rangoon and any port in British Burma west of the longitude of Rangoon— from or to any place east of the longitude of Mergui.

4. A voyage to or from any port in British Burma other than Tavoy and Mergui— from or to any port in the Andaman and Nicobar lands.

D. FITZPATRICK,

*Secy. to the Govt. of India,**Legislative Department.*



Bombay Government Gazette.

Published by Authority.

FRIDAY, 27TH JUNE 1879.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 24th February 1879, and the assent of His Excellency the Viceroy and Governor General on the 14th April 1879, and is published for general information:—

Bombay Act No. IV. of 1879.

An Act to prohibit the practice of Inoculation, and to make the Vaccination of Children in the Town of Kurrachee compulsory.

WHEREAS it is expedient to prohibit the practice of inoculation, and to make the vaccination of children in the Town of Kurrachee compulsory; It is enacted as follows:—

Preliminary.

1. This Act may be cited as "The Kurrachee Vaccination Act, 1879."

Local extent. It extends only to the Town of Kurrachee.

Commencement. It shall come into force on such day as the Governor in Council directs by notification in the *Bombay Government Gazette*, and its operation may at any time be suspended by the Governor in Council by notification in the said *Gazette*.

2. In this Act, unless there be something repugnant in the subject or context:

(1) "Parent" includes the father and mother of a legitimate child and the mother of an illegitimate child;

(2) "Guardian" means any person to whom the care, nurture, or custody of any child falls by law, or by natural right or recognized usage, or who has accepted or assumed the care, nurture, or custody of any child, or to whom the care or custody of any child has been entrusted by any authority lawfully authorized in that behalf;

(3) "Public Vaccinator" means any vaccinator appointed under this Act, or any

deputy duly authorized to act for such Public Vaccinator;

(4.) "Medical Practitioner" means any "Medical Practitioner." person duly qualified by a diploma, degree, or license to practise in medicine or surgery, or specially licensed by the Governor in Council to practise vaccination and grant certificates under the provisions of this Act;

(5.) "Unprotected Child" means a "Unprotected Child." child who has not been protected from small-pox by having had that disease either naturally or by inoculation, or by having been successfully vaccinated, and who has not been certified under the provisions of this Act to be insusceptible to vaccination.

(6.) "Animal lymph" means vaccine taken from the calf.

Establishment.

3. For the purposes of this Act the Vaccination Districts. Civil Surgeon of Kurrachee, or such other officer as Government directs, shall divide the Town of Kurrachee into as many districts for the performance of vaccination as he shall from time to time deem fit. Each such district shall be called a "Vaccination District."

The Civil Surgeon, or other officer aforesaid, shall appoint ^{Appointment of Public Vaccinators.} a Public Vaccinator for every Vaccination District, and shall appoint such places as ^{Public Vaccine Stations.} he shall from time to time deem fit in each district to be stations for the performance of vaccination. Such stations shall be called "Public Vaccine Stations." Every such Public Vaccinator shall be removable from office by the Civil Surgeon or other officer aforesaid.

The limits of the Vaccination Districts ^{Notification of Districts and Stations.} made, and the positions of the Public Vaccine Stations fixed under the provisions of this section, and the days and hours of the Public Vaccinator's attendance at each station, shall be published from time to time in such manner as shall be directed in rules to be framed under Section thirty-one of this Act.

4. Every Public Vaccinator, unless ^{The Public Vaccinator} specially permitted by the Civil Surgeon or other officer aforesaid to live within his district.

to reside elsewhere, shall reside within the district for which he is appointed, and shall cause his name, with the addition of the words "Public Vaccinator for the District of _____," to be posted up in some conspicuous place on or near the outer door of his dwelling-house and of every public vaccine station in his district.

5. No person shall be appointed a ^{Qualifications of Public Vaccinator.} Public Vaccinator, or act as a deputy for a Public Vaccinator, who shall not possess a certificate of qualification signed by the Civil Surgeon or other officer aforesaid.

6. A Superintendent of Vaccination ^{Superintendent of Vaccination.} shall be appointed by Government, who, subject to the orders of the Civil Surgeon or other officer aforesaid, shall have a general control over all the proceedings of Public Vaccinators, and shall perform such duties, in addition to those prescribed by this Act, as shall be required by Government.

The Superintendent shall have, if necessary, one or more ^{Assistant Superintendents.} Assistants as Government may from time to time direct.

Vaccination.

7. The parent or guardian of every child ^{Parent or Guardian of children born in Kurrachee,} born in the Town of Kurrachee shall, within six months after the birth of such child, and the parent or guardian of every unprotected child under the ^{and of unprotected children brought to reside in Kurrachee,} age of fourteen years brought to reside, whether temporarily or permanently, in the Town of Kurrachee, shall, within three months after such child's arrival in the Town, or if the child be at the time of its arrival less than three months old, within six months after its birth; and

the parent or guardian of every unprotected child living in the Town of Kurrachee at the date of this Act coming into force and whose age at such date exceeds six months, but does not exceed fourteen years, shall, within six months from the said date,

take it, or cause it to be taken, to a Public Vaccinator to be vaccinated, or shall, within such period as aforesaid, cause it to be vaccinated by some medical practitioner;

and the Public Vaccinator to whom such child, or to whom any child under the age of fourteen years is brought for vaccination, is hereby required, with all reasonable despatch, subject to the conditions herein-after mentioned, to vaccinate such child.

8. At an appointed hour upon the same day in the following week after vaccination shall have been performed by a Public Vaccinator or a medical practitioner, or on an earlier day, if the Public Vaccinator or medical practitioner so desires, the parent or guardian shall again take the child, or cause it to be taken, to the Public Vaccinator or to the medical practitioner by whom the operation was performed, that he may inspect it and ascertain the result of the operation;

In the event of the vaccination being unsuccessful, such parent or guardian shall, if the Public Vaccinator or medical practitioner so direct, cause the child to be forthwith again vaccinated and subsequently inspected as on the previous occasion.

9. If any Public Vaccinator or medical practitioner shall be of opinion that any child is not in a fit state to be vaccinated, he shall forthwith deliver to the parent or guardian of such child a certificate under his hand, according to the form of Schedule A, hereto annexed, or to the like effect, that the child is then in a state unfit for vaccination:

The said certificate shall remain in force for two months only, but shall be renewable for successive periods of two months until

Which shall remain in force for two months, but shall be renewable. a Public Vaccinator or medical practitioner shall deem the child to be in a fit state for vaccination, when the child shall, with all reasonable despatch, be vaccinated, and a certificate of successful vaccination given in the form of Schedule C, hereto annexed, according to the provisions of Section eleven of this Act, if warranted by the result.

At or before the end of each successive period, the parent or guardian shall take, or cause the child to be taken, to some Public Vaccinator or medical practitioner, who shall then examine the child and give a fresh certificate according to the said form, A, so long as he deems requisite under the circumstances of the case.

10. If any Public Vaccinator or medical practitioner shall find that a child whom he has three times unsuccessfully vaccinated is insusceptible of successful vaccination, or that a child brought to him for vaccination has already had the small-pox, he shall deliver to the parent or guardian of such child a certificate under his hand, according to the form of Schedule B, hereto annexed, or to the like effect, and the parent or guardian shall thenceforth not be required to cause the child to be vaccinated.

11. Every Public Vaccinator or medical practitioner who shall have performed the operation of vaccination upon any child, and shall have ascertained that the same has been successful, shall deliver to the parent or guardian of such child a certificate, according to the form of Schedule C, hereto annexed, or to the like effect, certifying that the said child has been successfully vaccinated.

12. Except as is hereinafter otherwise provided, the vaccination of a child under the provisions of this Act must, if the parent or guardian of the child so require, be performed with animal lymph;

but it shall at any time be lawful for the Governor in Council, on its being shown to his satisfaction that animal lymph is not procurable, to direct, by notification in the *Bombay Government Gazette* :—

- (a) that, during such period as he may deem fit to appoint, the vaccination of children may, without the assent of the parents or guardians of such children, be performed with lymph taken from a human being; and
- (b) that the Public Vaccinator or medical practitioner to whom at any time during the said period a vaccinated child is brought under the provisions

of Section eight of this Act for inspection may, if he see fit, take from such child lymph for the performance of other vaccinations.

13. No fee or remuneration shall be charged by any Public Vaccinator to the parent or guardian of any child for any such certificate as aforesaid, nor for any vaccination done by him in pursuance of this Act at a public vaccine station.

No fee to be charged for vaccination at a public vaccine station or for certificates.

But it shall be lawful for a Public Vaccinator to accept a fee for vaccinating a child, by request of the parent or guardian, elsewhere than at a public vaccine station.

Proviso.

Registration.

14. On the registration of the birth of any child under the provisions of the bye-laws of the Kurrachee Municipality, or of any other law for the time being in force, the Registrar shall deliver to the person giving information of such birth a printed notice in the form of Schedule D, hereto annexed, or to the like effect, and such notice shall have attached thereto the several forms of certificates prescribed by this Act.

Registrar of Births to give notice of the requirement of vaccination.

15. Every Public Vaccinator or medical practitioner who gives to any parent or guardian a certificate in any of the forms of Schedules A, B, and C, hereto annexed, shall, within twenty-one days after giving the same, transmit a duplicate thereof to the Registrar of Births of the district where the birth of the child on whose account such certificate was given has been registered, or if that be not known to him, or if the child was born out of the Town of Kurrachee, or his birth has not been registered in the said city, to the Registrar of the district within which the child was vaccinated, or presented for vaccination.

Duplicates of all certificates to be transmitted to the Registrar.

16. The Registrar of Births shall keep a book, in such form as may from time to time be prescribed by the Civil Surgeon or other officer under Section twenty-nine of this Act, in which he shall enter minutes of the notices of vaccination given by him as herein required, and shall also register the duplicates of certificates transmitted to him as herein provided.

Registrar to keep a vaccination-notice and certificate book;

17. He shall also prepare and keep a duplicate of the Register of Births required to be kept by him under the provisions of the Bye-laws of the Kurrachee Municipality or of any other law for the time being in force, with such additional columns as shall from time to time be prescribed by the Civil Surgeon or other officer under Section twenty-nine of this Act, in which he shall record the date of every duplicate certificate in the form of Schedule B or Schedule C, hereto annexed, received by him concerning any child whose birth he has registered, and make an entry to the effect that the child has been vaccinated, or is insusceptible of vaccination, as the case may be.

and also a duplicate Register of Births, with entries concerning vaccination;

18. He shall also keep a Register of Postponed Vaccinations in the form of Schedule E, hereto annexed, in which he shall record the name of every child concerning whom he receives a duplicate certificate in the form of Schedule A, hereto annexed, together with the date of such duplicate certificate, and of each such successive duplicate certificate, if he receives more than one, and shall show the number and year of the entry, if any, in the Register of Births in which such child's birth has been registered.

and also a Register of Postponed Vaccinations.

19. Every Registrar shall transmit on the first of every month to the Superintendent of Vaccination a return, in such form as may from time to time be prescribed by the Civil Surgeon or other officer under Section twenty-nine of this Act, of all cases in which duplicate certificates have not been duly received by him in pursuance of the provisions of this Act during the last preceding month.

Transmission of returns to Superintendent.

Prosecutions and Offences.

20. Whoever produces, or attempts to produce, in any person by inoculation with variolous matter, or by wilful exposure to variolous matter, or to anything impregnated therewith, or who wilfully by any other means produces the disease of small-pox in any person;

Penalty for inoculating, or by wilful exposure to variolous matter, or to anything impregnated therewith, or who wilfully by any other means produces the disease of small-pox in any person;

and whoever having been inoculated with small-pox in a place to which this Act does not extend shall afterwards enter the Town

and for entering the Town of Kurrachee after inoculation.

of Kurrachee before the expiration of forty days from the date of such inoculation, or without a certificate from a medical practitioner that such person is no longer likely to cause contagion ;

and whoever having the charge, custody, or control of any person so inoculated, shall within such period, or without such certificate, as aforesaid, knowingly bring such person into, or permit such person to enter, the Town of Kurrachee ;

shall be punished with imprisonment of either description, within the meaning of the Indian Penal Code, for a term which may extend to three months, or to fine which may extend to two hundred rupees, or with both.

21. If the Superintendent of Vaccination shall give information in writing to a Magistrate that he has reason to believe that any child within the Town of Kurrachee, under the age of fourteen years, is an unprotected child, and that he has given notice to the parent or guardian of such child to procure its being vaccinated, and that the said notice has been disregarded, such Magistrate may summon such parent or guardian to appear with the child before him, and if the Magistrate shall find, after such examination as he shall deem necessary, that the child is an unprotected child, he may make an order, directing such child to be vaccinated within a certain time.

If, at the expiration of such time, the child shall not have been vaccinated, or shall not be shown to be then unfit to be vaccinated, or to be insusceptible of vaccination, the person upon whom such order shall have been made, shall, unless he can show some reasonable ground for his omission to carry the order into effect, be punished with fine, which may extend to fifty rupees :

Provided that if the Magistrate shall be of opinion that the person is improperly brought before him, and shall refuse to make an order for the vaccination of the child, he may order the informant to pay to such person such sum of money as he shall consider a fair compensation for his expenses and loss of time in attending before the Magistrate.

IV.—18

22. If any parent or guardian intentionally omits to produce a child whom he has been summoned to produce under the last preceding section, he shall be punished with simple imprisonment, within the meaning of the Indian Penal Code, for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty for neglect to take child to be vaccinated, &c. 23. Whoever, in contravention of this Act,

(a) neglects, without reasonable excuse, to take, or cause a child to be taken to be vaccinated, or after vaccination to be inspected ; or

(b) at any time during the period for which any notification made under Section 12 of this Act is in force, prevents any public vaccinator from taking lymph from any child whom he has vaccinated ; or

(c) neglects to fill up and sign and give to the parent or guardian of any child any certificate which such parent or guardian is entitled to receive from him, or to transmit a duplicate of the same to the Registrar of Births ; shall be punished for each such offence with fine which may extend to fifty rupees.

24. Whoever wilfully signs, or makes or procures the signing or making of, a false certificate, or duplicate certificate, under this Act, shall be punished with imprisonment of either description, within the meaning of the Indian Penal Code, for a term which may extend to six months, or with fine which may extend to one hundred rupees, or with both.

25. If any Public Vaccinator accepts, or obtains, or agrees to accept, or attempts to obtain from any person any fee, or remuneration, contrary to the provisions of Section thirteen of this Act, he shall be deemed to have committed an offence, punishable under Section 161 of the Indian Penal Code.

26. All offences under this Act shall be cognizable by a Magistrate of the first class subject to the provisions of any law for the time being in

Cognizance of offences under this Act.

force for the trial of offences, but no complaint of any such offence shall be entertained unless the prosecution be instituted by order of, or under authority from, Government or the Superintendent of Vaccination.

27. In any prosecution for neglect to procure the vaccination of a child, it shall not be necessary in support thereof to prove that the defendant had received notice from the Registrar, or any other officer, of the requirements of the law in this respect; but if the defendant produce any such certificate as hereinbefore described, or the duplicate of the Register of Births or the Register of Postponed Vaccinations kept by the Registrar as hereinbefore provided, in which such certificate shall be duly entered, the same shall be a sufficient defence for him, except, in regard to the certificate according to the form of Schedule A, when the time specified therein for the postponement of the vaccination shall have expired before the time when the information shall have been laid.

28. The provisions of Sections sixty-four to seventy, both inclusive, of the Indian Penal Code shall apply to all fines imposed under this Act.

Miscellaneous.

29. The Civil Surgeon of Kurrachee, or such other officer as Government directs, shall frame and provide appropriate books and forms for the use of the Public Vaccinators, and also such forms as shall be

required for the signature of medical practitioners under the provisions of this Act, and he shall also transmit to the Registrars such books and forms as are required by them under the provisions of this Act.

30. It shall be the duty of the Registrar appointed under the Bye-laws of the Kurrachee Municipality to show in any Annual General Abstract of Births and Deaths prepared by him the number of children successfully vaccinated, the number whose vaccination has been postponed, and the number certified to be successful vaccination during the year.

31. The Civil Surgeon of Kurrachee, or such other officer as Government directs, may, with the sanction of the Governor in Council, from time to time make rules or issue orders consistent with this Act:

- (a) providing for the appointment of deputies of Public Vaccinators, when necessary;
- (b) determining the qualifications to be required of Public Vaccinators, or their deputies, and regulating the grant of certificates of qualification under section five;
- (c) for the guidance of Public Vaccinators and others in all other matters connected with the working of this Act.

All such rules or orders shall be published in the *Bombay Government Gazette*.

SCHEDULE A.

(See Section 9.)

I, the undersigned, hereby certify that in my opinion the child of _____, resident at _____, in Kurrachee, is not now in a fit and proper state to be vaccinated, and I do hereby postpone the vaccination for the period of two months from this date.—Dated this _____ day of _____, 18 _____.

(Signature of Medical Practitioner or Public Vaccinator.)

SCHEDULE B.

(See Section 10.)

I, the undersigned, hereby certify that I have three times unsuccessfully vaccinated the child of _____, residing at _____, in Kurrachee (or that the child has already had small-pox, as the case may be,) and I am of opinion that the said child is insusceptible of successful vaccination.—Dated this _____ day of _____, 18 _____.

(Signature of Medical Practitioner or Public Vaccinator.)

SCHEDULE C.

(See Section 11.)

I, the undersigned, hereby certify that _____, the child of _____ age _____ resident at _____, in Kurrachee, has been successfully vaccinated by me.—Dated this _____ day of _____, 18_____.

(Signature of Medical Practitioner or Public Vaccinator.)

SCHEDULE D.

(See Section 14.)

To

(Here insert the name of the parent, guardian, or other person who gives information of the child's birth.)

Take notice that the child of (here enter the mother's name) whose birth has this day been registered, must be vaccinated under the provisions of the Kurrachee Vaccination Act, 187____, within six months from the date of its birth, under a penalty of ten rupees.

The public vaccine station nearest to the house in which the child was born is at No. _____. The days and hours for vaccination at that station are as follows:—

(Here insert the days and the hours when the Public Vaccinator is in attendance.)

On your taking, or causing the child to be taken, to the Public Vaccinator at the said station within the said hours on any of the said days, or at any other public vaccine station in the city on the days and within the hours prescribed for public vaccination at such station, it will be vaccinated free of charge.

You should be careful to have one of the annexed forms of certificates filled in by the Public Vaccinator, or if you employ a private medical practitioner to vaccinate the child by such medical practitioner, and to keep the same in your possession. Any such certificate will be granted to you by a Public Vaccinator free of charge.

Dated the _____ of _____ 187_____

Registrar of Births.

SCHEDULE E.

(See Section 18.)

Register of Postponed Vaccinations for the District of _____ in Kurrachee.

Consecutive Number.	Name of Child.	Birth.		Date of Certificate of Postponement.	Signature of Registrar.
		Year.	No. of Entry in Register.		
1	Venayek Pandurang	1868	12	1868 May 10	H. O.

By order of His Excellency the Honourable the Governor in Council,

C. G. W. MACPHERSON,
Acting Under Secretary to Government.

[Published with the "Bombay Government Gazette" on the 3rd July 1879.]

PART IV.

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WHEREAS it is expedient to prohibit the practice of inoculation, and to make the vaccination of children in the Town of Kurrachee compulsory; It is enacted as follows:—

Preliminary.

1. This Act may be cited as "The Kurrachee Vaccination Act, 1879."

It extends only to the Town of Kurrachee.

It shall come into force on such day as the Governor in Council directs by notification in the *Bombay Government Gazette*, and its operation may at any time be suspended by the Governor in Council by notification in the said *Gazette*.

2. In this Act, unless there be something repugnant in the subject or context:

(1.) "Parent" includes the father and mother of a legitimate child and the mother of an illegitimate child;

(2.) "Guardian" means any person to whom the care, nurture, or custody of any child falls by law, or by natural right or recognized usage, or who has accepted or assumed the care, nurture, or custody of any child, or to whom the care or custody of any child has been entrusted by any authority lawfully authorized in that behalf;

(3.) "Public Vaccinator" means any vaccinator appointed under this Act, or any deputy duly authorized to act for such Public Vaccinator;

(4.) "Medical Practitioner" means any person duly qualified by a diploma, degree, or license to practise in medicine or surgery, or specially licensed by the Governor in Council to practise vaccination and grant certificates under the provisions of this Act;

(5.) "Unprotected Child" means a child who has not been protected from small-pox by having had that disease either naturally or by inoculation, or by having been successfully vaccinated, and who has not been certified under the provisions of this Act to be insusceptible to vaccination.

(6.) "Animal lymph" means vaccine taken from the calf.

Establishment.

3. For the purposes of this Act the Civil Surgeon of Kurrachee, or such other officer as Government directs, shall divide the Town of Kurrachee into as many districts for the performance of vaccination as he shall from time to time deem fit. Each such district shall be called a "Vaccination District."

The Civil Surgeon, or other officer aforesaid, shall appoint a Public Vaccinator for every Vaccination

District, and shall appoint such places as he shall from time to time deem fit in each district to be stations for the performance of vaccination. Such stations shall be called "Public Vaccine Stations." Every such Public Vaccinator shall be removable from office by the Civil Surgeon or other officer aforesaid.

The limits of the Vaccination Districts made, and the positions of the Public Vaccine Stations fixed under the provisions of this section, and the days and hours of the Public Vaccinator's attendance at each station, shall be published from time to time in such manner as shall be directed in rules to be framed under Section thirty-one of this Act.

4. Every Public Vaccinator, unless specially permitted by the Civil Surgeon or other officer aforesaid to reside elsewhere, shall reside within the district for which he is appointed, and shall cause his name, with the addition of the words "Public Vaccinator for the District of" to be posted up in some conspicuous place on or near the outer door of his dwelling-house and of every public vaccine station in his district.

5. No person shall be appointed a Public Vaccinator, or act as a deputy for a Public Vaccinator, who shall not possess a certificate of qualification signed by the Civil Surgeon or other officer aforesaid.

6. A Superintendent of Vaccination shall be appointed by Government, who, subject to the orders of the Civil Surgeon or other officer aforesaid, shall have a general control over all the proceedings of Public Vaccinators, and shall perform such duties, in addition to those prescribed by this Act, as shall be required by Government.

The Superintendent shall have, if necessary, one or more Assistants as Government may from time to time direct.

7. The parent or guardian of every child born in the Town of Kurrachee shall, within six months after the birth of such child, and

the parent or guardian of every unprotected child under the age of fourteen years brought to reside, whether temporarily or permanently, in the Town of Kurrachee, shall, within three months after such child's arrival in the Town, or if the child be at the time of its arrival less than three months old, within six months after its birth; and

the parent or guardian of every unprotected child living in the Town of Kurrachee at the date of this Act coming into force and whose age at such date exceeds six months, but does not exceed fourteen years, shall, within six months from the said date,

take it, or cause it to be taken, to a Public Vaccinator to be vaccinated, or shall, within such period as aforesaid, cause it to be vaccinated by some medical practitioner;

and the Public Vaccinator to whom such child, or to whom any child under the age of fourteen years is brought for vaccination, is hereby required, with all reasonable despatch, subject to the conditions herein-after mentioned, to vaccinate such child.

8. At an appointed hour upon the same day in the following week after vaccination shall have been performed by a Public Vaccinator or a medical practitioner, or on an earlier day, if the Public Vaccinator or medical practitioner so desires, the parent or guardian shall again take the child, or cause it to be taken, to the Public Vaccinator or to the medical practitioner by whom the operation was performed, that he may inspect it and ascertain the result of the operation;

In the event of the vaccination being unsuccessful, such parent or guardian shall, if the Public Vaccinator or medical practitioner so direct, cause the child to be forthwith again vaccinated and subsequently inspected as on the previous occasion.

9. If any Public Vaccinator or medical practitioner shall be of opinion that any child is not in a fit state to be vaccinated, he shall forthwith deliver to the parent or

guardian of such child a certificate under his hand, according to the form of Schedule A, hereto annexed, or to the like effect, that the child is then in a state unfit for vaccination.

The said certificate shall remain in force for two months only, but shall be renewable for successive periods of two months until a Public Vaccinator or medical practitioner shall deem the child to be in a fit state for vaccination, when the child shall, with all reasonable despatch, be vaccinated, and a certificate of successful vaccination given in the form of Schedule C, hereto annexed, according to the provisions of Section eleven of this Act, if warranted by the result.

At or before the end of each successive period, the parent or guardian shall take, or cause the child to be taken, to some Public Vaccinator or medical practitioner, who shall then examine the child and give a fresh certificate according to the said form A, so long as he deems requisite under the circumstances of the case.

10. If any Public Vaccinator or medical practitioner shall find that a child whom he has three times unsuccessfully vaccinated is insusceptible of successful vaccination, or that a child brought to him for vaccination has already had the small-pox, he shall deliver to the parent or guardian of such child a certificate under his hand, according to the form of Schedule B, hereto annexed, or to the like effect, and the parent or guardian shall thenceforth not be required to cause the child to be vaccinated.

11. Every Public Vaccinator or medical practitioner who shall have performed the operation of vaccination upon any child, and shall have ascertained that the same has been successful, shall deliver to the parent or guardian of such child a certificate, according to the form of Schedule C, hereto annexed, or to the like effect, certifying that the said child has been successfully vaccinated.

12. Except as is hereinafter otherwise provided, the vaccination of a child under the provisions of this Act must, if the

parent or guardian of the child so require, be performed with animal lymph;

but it shall at any time be lawful for the Governor in Council, on its being shown to his satisfaction that animal lymph is not procurable, to direct, by notification in the *Bombay Government Gazette* :—

(a) that, during such period as he may deem fit to appoint, the vaccination of children may, without the assent of the parents or guardians of such children, be performed with lymph taken from a human being; and

(b) that the Public Vaccinator or medical practitioner to whom at any time during the said period a vaccinated child is brought under the provisions of Section eight of this Act for inspection may, if he see fit, take from such child lymph for the performance of other vaccinations.

13. No fee or remuneration shall be charged by any Public Vaccinator to the parent or guardian of any child for any such certificate as aforesaid, nor for any vaccination done by him in pursuance of this Act at a public vaccine station.

But it shall be lawful for a Public Vaccinator to accept a fee for vaccinating a child, by request of the parent or guardian, elsewhere than at a public vaccine station.

Registration.

14. On the registration of the birth of any child under the provisions of the bye-laws of the Kurrachee Municipality, or of any other law for the time being in force, the Registrar shall deliver to the person giving information of such birth a printed notice in the form of Schedule D, hereto annexed, or to the like effect, and such notice shall have attached thereto the several forms of certificates prescribed by this Act.

15. Every Public Vaccinator or medical practitioner who gives to any parent or guardian a certificate in any of the forms of Schedules A, B, and C, hereto annexed, shall, within twenty-one days after giving the same, transmit a duplicate thereof to the Registrar of Births of the district where the birth of the child on whose account such certificate was given has been

registered, or if that be not known to him, or if the child was born out of the Town of Kurrachee, or his birth has not been registered in the said city, to the Registrar of the district within which the child was vaccinated, or presented for vaccination.

16. The Registrar of Births shall keep a book, in such form as may from time to time be prescribed by the Civil Surgeon or other officer under Section twenty-nine of this Act, in which he shall enter minutes of the notices of vaccination given by him as herein required, and shall also register the duplicates of certificates transmitted to him as herein provided.

17. He shall also prepare and keep a duplicate of the Register of Births required to be kept by him under the provisions of the Bye-laws of the Kurrachee Municipality or of any other law for the time being in force, with such additional columns as shall from time to time be prescribed by the Civil Surgeon or other officer under Section twenty-nine of this Act, in which he shall record the date of every duplicate certificate in the form of Schedule B or Schedule C, hereto annexed, received by him concerning any child whose birth he has registered, and make an entry to the effect that the child has been vaccinated, or is insusceptible of vaccination, as the case may be.

18. He shall also keep a Register of Postponed Vaccinations in the form of Schedule E, hereto annexed, in which he shall record the name of every child concerning whom he receives a duplicate certificate in the form of Schedule A, hereto annexed, together with the date of such duplicate certificate, and of each such successive duplicate certificate, if he receives more than one, and shall show the number and year of the entry, if any, in the Register of Births in which such child's birth has been registered.

19. Every Registrar shall transmit on the first of every month to the Superintendent of Vaccination a return, in such form as may from time to time be prescribed by the Civil Surgeon or other officer under Section twenty-nine of this Act, of all cases in which duplicate certificates have not been duly

received by him in pursuance of the provisions of this Act during the last preceding month.

Prosecutions and Offences.

20. Whoever produces, or attempts to produce, in any person by inoculation with variolous matter, or by wilful exposure to variolous matter, or to anything impregnated therewith, or who wilfully by any other means produces the disease of small-pox in any person;

and whoever having been inoculated with small-pox in a place to which this Act does not extend shall afterwards enter the Town of Kurrachee before the expiration of forty days from the date of such inoculation, or without a certificate from a medical practitioner that such person is no longer likely to cause contagion;

and whoever having the charge, custody, or control of any person so inoculated, shall within such period, or without such certificate, as aforesaid, knowingly bring such person into, or permit such person to enter, the Town of Kurrachee;

shall be punished with imprisonment of either description, within the meaning of the Indian Penal Code, for a term which may extend to three months, or to fine which may extend to two hundred rupees, or with both.

21. If the Superintendent of Vaccination shall give information in writing to a Magistrate that he has reason to believe that any child within the Town of Kurrachee, under the age of fourteen years, is an unprotected child, and that he has given notice to the parent or guardian of such child to procure its being vaccinated, and that the said notice has been disregarded, such Magistrate may summon such parent or guardian to appear with the child before him, and if the Magistrate shall find, after such examination as he shall deem necessary, that the child is an unprotected child, he may make an order, directing such child to be vaccinated within a certain time.

If, at the expiration of such time, the child shall not have been vaccinated, or shall not be shown to be then unfit to be vaccinated, or to be insusceptible of vaccination, the person upon whom such order shall have been made, shall, unless he can show some rea-

sonable ground for his omission to carry the order into effect, be punished with fine, which may extend to fifty rupees :

Provided that if the Magistrate shall be of opinion that the person is improperly brought before him, and shall refuse to make an order for the vaccination of the child, he may order the informant to pay to such person such sum of money as he shall consider a fair compensation for his expenses and loss of time in attending before the Magistrate.

22. If any parent or guardian intentionally omits to produce a child whom he has been summoned to produce under the last preceding section, he shall be punished with simple imprisonment, within the meaning of the Indian Penal Code, for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty for neglect to take child to be vaccinated, &c. 23. Whoever, in contravention of this Act,

(a) neglects, without reasonable excuse, to take, or cause a child to be taken to be vaccinated, or after vaccination to be inspected ; or

(b) at any time during the period for which any notification made under Section 12 of this Act is in force, prevents any public vaccinator from taking lymph from any child whom he has vaccinated ; or

(c) neglects to fill up and sign and give to the parent or guardian of any child any certificate which such parent or guardian is entitled to receive from him, or to transmit a duplicate of the same to the Registrar of Births ;

shall be punished for each such offence with fine which may extend to fifty rupees.

24. Whoever wilfully signs, or makes or procures the signing or making of, a false certificate, or duplicate certificate, under this Act, shall be punished with imprisonment of either description, within the meaning of the Indian Penal Code, for a term which may extend to six months, or with fine which may extend to one hundred rupees, or with both.

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25. If any Public Vaccinator accepts, or obtains, or agrees to accept, or attempts to obtain from any person any fee, or re-

Penalty for accepting illegal fee or remuneration.

muneration, contrary to the provisions of Section thirteen of this Act, he shall be deemed to have committed an offence punishable under Section 161 of the Indian Penal Code.

26. All offences under this Act shall be cognizable by a Magistrate of the first class subject to the provisions of any law for the time being in force for the trial of offences, but no complaint of any such offence shall be entertained unless the prosecution be instituted by order of, or under authority from, Government or the Superintendent of Vaccination.

27. In any prosecution for neglect to procure the vaccination of a child, it shall not be necessary in support thereof to prove that the defendant had received notice from the Registrar, or any other officer, of the requirements of the law in this respect ; but if the defendant produce any such certificate as hereinbefore described, or the duplicate of the Register of Births or the Register of Postponed Vaccinations kept by the Registrar as hereinbefore provided, in which such certificate shall be duly entered, the same shall be a sufficient defence for him, except, in regard to the certificate according to the form of Schedule A, when the time specified therein for the postponement of the vaccination shall have expired before the time when the information shall have been laid.

28. The provisions of Sections sixty-four to seventy, both inclusive, of the Indian Penal Code shall apply to all fines imposed under this Act.

Miscellaneous.

29. The Civil Surgeon of Kurrachee, or such other officer as Government directs, shall frame and provide appropriate books and forms for the use of the Public Vaccinators, and also such forms as shall be required for the signature of medical practitioners under the provisions of this Act, and he shall also transmit to the Registrars such books and forms as are required by them under the provisions of this Act.

30. It shall be the duty of the Registrar appointed under the Bye-laws of the Kurrachee Municipality to show in any Annual General Abstract of Births and Deaths prepared by him the number of children successfully vaccinated, the number whose vaccination has been postponed, and the number certified to be insusceptible to successful vaccination during the year.

31. The Civil Surgeon of Kurrachee, or such other officer as Government directs, may, with the sanction of the Governor in Council, from

time to time make rules or issue orders consistent with this Act:

- (a) providing for the appointment of deputies of Public Vaccinators, when necessary;
- (b) determining the qualifications to be required of Public Vaccinators, or their deputies, and regulating the grant of certificates of qualification under section five;
- (c) for the guidance of Public Vaccinators and others in all other matters connected with the working of this Act.

All such rules or orders shall be published in the *Bombay Government Gazette*.

SCHEDULE A.

(See Section 9.)

I, the undersigned, hereby certify that in my opinion _____, the child of _____, resident at _____, in Kurrachee, is not now in a fit and proper state to be vaccinated, and I do hereby postpone the vaccination for the period of two months from this date.—Dated this _____ day of _____, 18 _____.

(Signature of Medical Practitioner or Public Vaccinator.)

SCHEDULE B.

(See Section 10.)

I, the undersigned, hereby certify that I have three times unsuccessfully vaccinated _____, the child of _____, residing at _____, in Kurrachee (or that the child has already had small-pox, as the case may be,) and I am of opinion that the said child is insusceptible of successful vaccination.—Dated this _____ day of _____, 18 _____.

(Signature of Medical Practitioner or Public Vaccinator.)

SCHEDULE C.

(See Section 11.)

I, the undersigned, hereby certify that _____, the child of _____ age _____, resident at _____, in Kurrachee, has been successfully vaccinated by me.—Dated this _____ day of _____, 18 _____.

(Signature of Medical Practitioner or Public Vaccinator.)

SCHEDULE D.

(See Section 14.)

To

(Here insert the name of the parent, guardian, or other person who gives information of the child's birth.)

Take notice that the child of (here enter the mother's name) whose birth has this day been registered, must be vaccinated under the provisions of the Kurrachee Vaccination Act, 187 _____, within six months from the date of its birth, under a penalty of ten rupees.

54 g.

The public vaccine station nearest to the house in which the child was born is at No. . The days and hours for vaccination at that station are as follows :—

(Here insert the days and the hours when the Public Vaccinator is in attendance.)

On your taking, or causing the child to be taken, to the Public Vaccinator at the said station within the said hours on any of the said days, or at any other public vaccine station in the city on the days and within the hours prescribed for public vaccination at such station, it will be vaccinated free of charge.

You should be careful to have one of the annexed forms of certificates filled in by the Public Vaccinator, or if you employ a private medical practitioner to vaccinate the child by such medical practitioner, and to keep the same in your possession. Any such certificate will be granted to you by a Public Vaccinator free of charge.

Dated the of 187

Registrar of Births.

SCHEDULE E.

(See Section 18.)

Register of Postponed Vaccinations for the District of in Kurrachee.

Consecutive Number.	Name of Child.	Birth.		Date of Certificate of Postponement.	Signature of Registrar.
		Year.	No. of Entry in Register.		
1	Venayek Pandurang	1868	12	1868 May | 10	H. O.

By order of His Excellency the Honourable the Governor in Council,
C. G. W. MACPHERSON,
 Acting Under Secretary to Government.

[Published with the "Bombay Government Gazette" on the 10th July 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 24th February 1879, and the assent of His Excellency the Viceroy and Governor General on the 14th April 1879, and is published for general information :—

Bombay Act No. IV. of 1879.

An Act to prohibit the practice of Inoculation, and to make the Vaccination of Children in the Town of Kurrachee compulsory.

WHEREAS it is expedient to prohibit the practice of inoculation, and to make the vaccination of children in the Town of Kurrachee compulsory; It is enacted as follows :—

Preliminary.

1. This Act may be cited as "The Kurrachee Vaccination Act, 1879."

Local extent. It extends only to the Town of Kurrachee.

It shall come into force on such day as the Governor in Council directs by notification in the *Bombay Government Gazette*, and its operation may at any time be suspended by the Governor in Council by notification in the said *Gazette*.

2. In this Act, unless there be something repugnant in the subject or context:

(1.) "Parent" includes the father and mother of a legitimate child and the mother of an illegitimate child;

(2.) "Guardian" means any person to whom the care, nurture, or custody of any child falls by law, or by natural right or recognized usage, or who has accepted or assumed the care, nurture, or custody of any child, or to whom the care or custody of any child has been entrusted by any authority lawfully authorized in that behalf;

IV.—18 c

(3.) "Public Vaccinator" means any "Public Vaccinator." vaccinator appointed under this Act, or any deputy duly authorized to act for such Public Vaccinator;

(4.) "Medical Practitioner" means any "Medical Practitioner." person duly qualified by a diploma, degree, or license to practise in medicine or surgery, or specially licensed by the Governor in Council to practise vaccination and grant certificates under the provisions of this Act;

(5.) "Unprotected Child" means a "Unprotected Child." child who has not been protected from small-pox by having had that disease either naturally or by inoculation, or by having been successfully vaccinated, and who has not been certified under the provisions of this Act to be insusceptible to vaccination.

(6.) "Animal lymph" means vaccine taken from the calf.

Establishment.

3. For the purposes of this Act the Vaccination Districts. Civil Surgeon of Kurrachee, or such other officer as Government directs, shall divide the Town of Kurrachee into as many districts for the performance of vaccination as he shall from time to time deem fit. Each such district shall be called a "Vaccination District."

The Civil Surgeon, or other officer aforesaid, shall appoint a Public Vaccinator for every Vaccination

Appointment of Public Vaccinators.

District, and shall appoint such places as he shall from time to time deem fit in each district to be stations for the performance of vaccination. Such stations shall be called "Public Vaccine Stations." Every such Public Vaccinator shall be removable from office by the Civil Surgeon or other officer aforesaid.

The limits of the Vaccination Districts made, and the positions of the Public Vaccine Stations fixed under the provisions of this section, and the days and hours of the Public Vaccinator's attendance at each station, shall be published from time to time in such manner as shall be directed in rules to be framed under Section thirty-one of this Act.

4. Every Public Vaccinator, unless specially permitted by the Civil Surgeon or other officer aforesaid to reside elsewhere, shall reside within the district for which he is appointed, and shall cause his name, with the addition of the words "Public Vaccinator for the District of _____," to be posted up in some conspicuous place on or near the outer door of his dwelling-house and of every public vaccine station in his district.

5. No person shall be appointed a Public Vaccinator, or act as a deputy for a Public Vaccinator, who shall not possess a certificate of qualification signed by the Civil Surgeon or other officer aforesaid.

6. A Superintendent of Vaccination shall be appointed by Government, who, subject to the orders of the Civil Surgeon or other officer aforesaid, shall have a general control over all the proceedings of Public Vaccinators, and shall perform such duties, in addition to those prescribed by this Act, as shall be required by Government.

The Superintendent shall have, if necessary, one or more Assistants as Government may from time to time direct.

7. The parent or guardian of every child born in the Town of Kurrachee shall, within six months after the birth of such child, and

the parent or guardian of every unprotected child under the age of fourteen years brought to reside, whether temporarily or permanently, in the Town of Kurrachee, shall, within three months after such child's arrival in the Town, or if the child be at the time of its arrival less than three months old, within six months after its birth; and

the parent or guardian of every unprotected child living in the Town of Kurrachee at the date of this Act coming into force and whose age at such date exceeds six months, but does not exceed fourteen years, shall, within six months from the said date,

take it, or cause it to be taken, to a Public Vaccinator to be vaccinated, or shall, within such period as aforesaid, cause it to be vaccinated by some medical practitioner;

and the Public Vaccinator to whom such child, or to whom any child under the age of fourteen years is brought for vaccination, is hereby required, with all reasonable despatch, subject to the conditions hereinafter mentioned, to vaccinate such child.

8. At an appointed hour upon the same day in the following week after vaccination shall have been performed by a Public Vaccinator or a medical practitioner, or on an earlier day, if the Public Vaccinator or medical practitioner so desires, the parent or guardian shall again take the child, or cause it to be taken, to the Public Vaccinator or to the medical practitioner by whom the operation was performed, that he may inspect it and ascertain the result of the operation;

In the event of the vaccination being unsuccessful, such parent or guardian shall, if the Public Vaccinator or medical practitioner so direct, cause the child to be forthwith again vaccinated and subsequently inspected as on the previous occasion.

9. If any Public Vaccinator or medical practitioner shall be of opinion that any child is not in a fit state to be vaccinated, he shall forthwith deliver to the parent or

guardian of such child a certificate under his hand, according to the form of Schedule A, hereto annexed, or to the like effect, that the child is then in a state unfit for vaccination.

The said certificate shall remain in force for two months only, but shall be renewable for successive periods of two months until a Public Vaccinator or medical practitioner shall deem the child to be in a fit state for vaccination, when the child shall, with all reasonable despatch, be vaccinated, and a certificate of successful vaccination given in the form of Schedule C, hereto annexed, according to the provisions of Section eleven of this Act, if warranted by the result.

At or before the end of each successive period, the parent or guardian shall take, or cause the child to be taken, to some Public Vaccinator or medical practitioner, who shall then examine the child and give a fresh certificate according to the said form A, so long as he deems requisite under the circumstances of the case.

10. If any Public Vaccinator or medical practitioner shall find that a child whom he has three times unsuccessfully vaccinated is insusceptible of successful vaccination, or that a child brought to him for vaccination has already had the small-pox, he shall deliver to the parent or guardian of such child a certificate under his hand, according to the form of Schedule B, hereto annexed, or to the like effect, and the parent or guardian shall thenceforth not be required to cause the child to be vaccinated.

11. Every Public Vaccinator or medical practitioner who shall have performed the operation of vaccination upon any child, and shall have ascertained that the same has been successful, shall deliver to the parent or guardian of such child a certificate, according to the form of Schedule C, hereto annexed, or to the like effect, certifying that the said child has been successfully vaccinated.

12. Except as is hereinafter otherwise provided, the vaccination of a child under the provisions of this Act must, if the

parent or guardian of the child so require, be performed with animal lymph;

but it shall at any time be lawful for the Governor in Council, on its being shown to his satisfaction that animal lymph is not procurable, to direct, by notification in the *Bombay Government Gazette* :—

- (a) that, during such period as he may deem fit to appoint, the vaccination of children may, without the assent of the parents or guardians of such children, be performed with lymph taken from a human being; and
- (b) that the Public Vaccinator or medical practitioner to whom at any time during the said period a vaccinated child is brought under the provisions of Section eight of this Act for inspection may, if he see fit, take from such child lymph for the performance of other vaccinations.

13. No fee or remuneration shall be charged by any Public Vaccinator to the parent or guardian of any child for any such certificate as aforesaid, nor for any vaccination done by him in pursuance of this Act at a public vaccine station.

But it shall be lawful for a Public Vaccinator to accept a fee for vaccinating a child, by request of the parent or guardian, elsewhere than at a public vaccine station.

Registration.

14. On the registration of the birth of any child under the provisions of the bye-laws of the Kurrachee Municipality, or of any other law for the time being in force, the Registrar shall deliver to the person giving information of such birth a printed notice in the form of Schedule D, hereto annexed, or to the like effect, and such notice shall have attached thereto the several forms of certificates prescribed by this Act.

15. Every Public Vaccinator or medical practitioner who gives to any parent or guardian a certificate in any of the forms of Schedules A, B, and C, hereto annexed, shall, within twenty-one days after giving the same, transmit a duplicate thereof to the Registrar of Births of the district where the birth of the child on whose account such certificate was given has been

Which shall remain in force for two months, but shall be renewable.

When successive postponement certificates are to be granted.

Provision for giving certificates of insusceptibility to successful vaccination.

Provision for giving certificates of successful vaccination.

Vaccination must ordinarily be performed with animal lymph.

No fee to be charged for vaccination at a public vaccine station or for certificates.

Registrar of Births to give notice of the requirement of vaccination.

Duplicates of all certificates to be transmitted to the Registrar.

registered, or if that be not known to him, or if the child was born out of the Town of Kurrachee, or his birth has not been registered in the said city, to the Registrar of the district within which the child was vaccinated, or presented for vaccination.

16. The Registrar of Births shall keep a book, in such form as may from time to time be prescribed by the Civil Surgeon or other officer under Section twenty-nine of this Act, in which he shall enter minutes of the notices of vaccination given by him as herein required, and shall also register the duplicates of certificates transmitted to him as herein provided.

17. He shall also prepare and keep a duplicate of the Register of Births required to be kept by him under the provisions of the Bye-laws of the Kurrachee Municipality or of any other law for the time being in force, with such additional columns as shall from time to time be prescribed by the Civil Surgeon or other officer under Section twenty-nine of this Act, in which he shall record the date of every duplicate certificate in the form of Schedule B or Schedule C, hereto annexed, received by him concerning any child whose birth he has registered, and make an entry to the effect that the child has been vaccinated, or is insusceptible of vaccination, as the case may be.

18. He shall also keep a Register of Postponed Vaccinations in the form of Schedule E, hereto annexed, in which he shall record the name of every child concerning whom he receives a duplicate certificate in the form of Schedule A, hereto annexed, together with the date of such duplicate certificate, and of each such successive duplicate certificate, if he receives more than one, and shall show the number and year of the entry, if any, in the Register of Births in which such child's birth has been registered.

19. Every Registrar shall transmit on the first of every month to the Superintendent of Vaccination a return, in such form as may from time to time be prescribed by the Civil Surgeon or other officer under Section twenty-nine of this Act, of all cases in which duplicate certificates have not been duly

received by him in pursuance of the provisions of this Act during the last preceding month.

Prosecutions and Offences.

20. Whoever produces, or attempts to produce, in any person by inoculation with variolous matter, or by wilful exposure to variolous matter, or to anything impregnated therewith, or who wilfully by any other means produces the disease of small-pox in any person;

and whoever having been inoculated with small-pox in a place to which this Act does not extend shall afterwards enter the Town of Kurrachee before the expiration of forty days from the date of such inoculation, or without a certificate from a medical practitioner that such person is no longer likely to cause contagion;

and whoever having the charge, custody, or control of any person so inoculated, shall within such period, or without such certificate, as aforesaid, knowingly bring such person into, or permit such person to enter, the Town of Kurrachee;

shall be punished with imprisonment of either description, within the meaning of the Indian Penal Code, for a term which may extend to three months, or to fine which may extend to two hundred rupees, or with both.

21. If the Superintendent of Vaccination shall give information in writing to a Magistrate that he has reason to believe that any child within the Town of Kurrachee, under the age of fourteen years, is an unprotected child, and that he has given notice to the parent or guardian of such child to procure its being vaccinated, and that the said notice has been disregarded, such Magistrate may summon such parent or guardian to appear with the child before him, and if the Magistrate shall find, after such examination as he shall deem necessary, that the child is an unprotected child, he may make an order, directing such child to be vaccinated within a certain time.

If, at the expiration of such time, the child shall not have been vaccinated, or shall not be shown to be then unfit to be vaccinated, or to be insusceptible of vaccination, the person upon whom such order shall have been made, shall, unless he can show some rea-

sonable ground for his omission to carry the order into effect, be punished with fine, which may extend to fifty rupees :

Provided that if the Magistrate shall be of opinion that the person is improperly brought before him, and shall refuse to make an order for the vaccination of the child, he may order the informant to pay to such person such sum of money as he shall consider a fair compensation for his expenses and loss of time in attending before the Magistrate.

22. If any parent or guardian intentionally omits to produce a child whom he has been summoned to produce under the last preceding section, he shall be punished with simple imprisonment, within the meaning of the Indian Penal Code, for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty for neglect to take child to be vaccinated, &c. 23. Whoever, in contravention of this Act,

(a) neglects, without reasonable excuse, to take, or cause a child to be taken to be vaccinated, or after vaccination to be inspected ; or

(b) at any time during the period for which any notification made under Section 12 of this Act is in force, prevents any public vaccinator from taking lymph from any child whom he has vaccinated ; or

(c) neglects to fill up and sign and give to the parent or guardian of any child any certificate which such parent or guardian is entitled to receive from him, or to transmit a duplicate of the same to the Registrar of Births ;

shall be punished for each such offence with fine which may extend to fifty rupees.

24. Whoever wilfully signs, or makes or procures the signing or making of, a false certificate, or duplicate certificate, under this Act, shall be punished with imprisonment of either description, within the meaning of the Indian Penal Code, for a term which may extend to six months, or with fine which may extend to one hundred rupees, or with both.

iv.—18 d

25. If any Public Vaccinator accepts, or obtains, or agrees to accept, or attempts to obtain from any person any fee, or remuneration, contrary to the provisions of Section thirteen of this Act, he shall be deemed to have committed an offence punishable under Section 161 of the Indian Penal Code.

Penalty for accepting illegal fee or remuneration.

26. All offences under this Act shall be cognizable by a Magistrate of the first class subject to the provisions of any law for the time being in force for the trial of offences, but no complaint of any such offence shall be entertained unless the prosecution be instituted by order of, or under authority from, Government or the Superintendent of Vaccination.

27. In any prosecution for neglect to procure the vaccination of a child, it shall not be necessary in support thereof to prove that the defendant had received notice from the Registrar, or any other officer, of the requirements of the law in this respect ; but if the defendant produce any such certificate as hereinbefore described, or the duplicate of the Register of Births or the Register of Postponed Vaccinations kept by the Registrar as hereinbefore provided, in which such certificate shall be duly entered, the same shall be a sufficient defence for him, except, in regard to the certificate according to the form of Schedule A, when the time specified therein for the postponement of the vaccination shall have expired before the time when the information shall have been laid.

28. The provisions of Sections sixty-four to seventy, both inclusive, of the Indian Penal Code shall apply to all fines imposed under this Act.

Miscellaneous.

29. The Civil Surgeon of Kurrachee, or such other officer as Government directs, shall frame and provide appropriate books and forms for the use of the Public Vaccinators, and also such forms as shall be required for the signature of medical practitioners under the provisions of this Act, and he shall also transmit to the Registrars such books and forms as are required by them under the provisions of this Act.

30. It shall be the duty of the Registrar appointed under the Bye-laws of the Kurrachee Municipality to show in any Annual General Abstract of Births and Deaths prepared by him the number of children successfully vaccinated, the number whose vaccination has been postponed, and the number certified to be insusceptible to successful vaccination during the year.

31. The Civil Surgeon of Kurrachee, or such other officer as Government directs, may, with the sanction of the Governor in Council, from

time to time make rules or issue orders consistent with this Act:

- (a) providing for the appointment of deputies of Public Vaccinators, when necessary;
- (b) determining the qualifications to be required of Public Vaccinators, or their deputies, and regulating the grant of certificates of qualification under section five;
- (c) for the guidance of Public Vaccinators and others in all other matters connected with the working of this Act.

All such rules or orders shall be published in the *Bombay Government Gazette*.

SCHEDULE A.

(See Section 9.)

I, the undersigned, hereby certify that in my opinion the child of _____, resident at _____, in Kurrachee, is not now in a fit and proper state to be vaccinated, and I do hereby postpone the vaccination for the period of two months from this date.—Dated this _____ day of _____, 18 _____.

(Signature of Medical Practitioner or Public Vaccinator.)

SCHEDULE B.

(See Section 10.)

I, the undersigned, hereby certify that I have three times unsuccessfully vaccinated _____, the child of _____, residing at _____, in Kurrachee (or that the child has already had small-pox, as the case may be,) and I am of opinion that the said child is insusceptible of successful vaccination.—Dated this _____ day of _____, 18 _____.

(Signature of Medical Practitioner or Public Vaccinator.)

SCHEDULE C.

(See Section 11.)

I, the undersigned, hereby certify that _____, the child of _____ age _____, resident at _____, in Kurrachee, has been successfully vaccinated by me.—Dated this _____ day of _____, 18 _____.

(Signature of Medical Practitioner or Public Vaccinator.)

SCHEDULE D.

(See Section 14.)

To

(Here insert the name of the parent, guardian, or other person who gives information of the child's birth.)

Take notice that the child of (here enter the mother's name) whose birth has this day been registered, must be vaccinated under the provisions of the Kurrachee Vaccination Act, 187 _____, within six months from the date of its birth, under a penalty of ten rupees.

The public vaccine station nearest to the house in which the child was born is at No. . The days and hours for vaccination at that station are as follows :—

(Here insert the days and the hours when the Public Vaccinator is in attendance.)

On your taking, or causing the child to be taken, to the Public Vaccinator at the said station within the said hours on any of the said days, or at any other public vaccine station in the city on the days and within the hours prescribed for public vaccination at such station, it will be vaccinated free of charge.

You should be careful to have one of the annexed forms of certificates filled in by the Public Vaccinator, or if you employ a private medical practitioner to vaccinate the child by such medical practitioner, and to keep the same in your possession. Any such certificate will be granted to you by a Public Vaccinator free of charge.

Dated the of 187 .

Registrar of Births.

SCHEDULE E.

(See Section 18.)

Register of Postponed Vaccinations for the District of in Kurrachee.

Consecutive Number.	Name of Child.	Birth.		Date of Certificate of Postponement.	Signature of Registrar.
		Year.	No. of Entry in Register.		
1	Venayek Pandurang	1868	12	1868 May 10	H. O.

By order of His Excellency the Honourable the Governor in Council,

C. G. W. MACPHERSON,
Acting Under Secretary to Government.

THE



Bombay Government Gazette.

Published by Authority.

THURSDAY, 17TH JULY 1879.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 26th April 1879, and the assent of His Excellency the Viceroy and Governor General on the 30th June 1879, and is published for general information:—

Bombay Act No. V. of 1879. *A.C.*

The Bombay Land Revenue Code.

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Bombay Act No. V. of 1879.

An Act to consolidate and amend the Law relating to Revenue Officers and the Land Revenue in the Presidency of Bombay.

Whereas it is expedient to consolidate and amend the law relating to Revenue Officers, and to the assessment and recovery of Land Revenue, and to other matters connected with the Land Revenue Administration; it is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be cited as "The Bombay Land Revenue Code, 1879."

It extends to the whole of the Presidency of Bombay except the Scheduled Districts, as defined by Act XIV. of 1874, and the City of Bombay.

So much of section 2 as relates to Bombay Act I. of 1866 shall come into force from such date as the Governor in Council shall, by notification in the *Bombay Government Gazette*, direct. The rest of this Act shall come into force at once.

2. The Regulations and Acts mentioned in the Schedule A hereto annexed are repealed to the extent specified in the third column thereof, but not so as to render invalid anything done in accordance with any of them.

All references made in any Bombay Regulation or in any Act of the Governor of Bombay in Council, or in any Act of the Governor-General in Council passed before the coming into operation of the Indian Councils Act, 1861, to any enactment hereby repealed, shall be read as if made to the corresponding portion of this Act.

And all rules prescribed, appointments made, securities furnished, powers conferred, orders issued, and notifications published under any such enactment, and all other rules (if any) now in force and relating to any of the matters herein-after dealt with, shall (so far as they are consistent with this Act) be deemed to have been respectively prescribed, made, furnished, conferred, issued, and published hereunder.

And all proceedings now pending, which have been commenced under any enactment hereby repealed, shall be deemed to have been commenced under this Act, and shall hereafter be conducted in accordance with the provisions of this Act.

3. In this Act, unless there be something repugnant in the subject or context;

(1.) "revenue officer" means every officer of any rank whatsoever appointed under any of the provisions of this Act, and employed in or about the business of the land-revenue or of the surveys, assessment, accounts, or records connected therewith;

(2.) "survey officer" means an officer appointed under, or in the manner provided by section 18 of this Act;

(3.) the word "Collector" means the Collector of the District;

(4.) "land" includes benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth, and also shares in, or charges on, the revenue or rent of villages, or other defined portions of territory;

(5.) "estate" means any interest in lands and the aggregate of such interests vested in a person or aggregate of persons capable of holding the same;

(6.) "survey number" means a portion of land of which the area and other particulars are separately entered, under an indicative number in the survey records of the village, town, or city in which it is situated, and includes a recognized share of a survey number;

(7.) "recognized share of a survey number" means a sub-division of a survey number separately assessed and registered;

(8.) "building site" means a portion of land held for building purposes, whether any building be actually erected thereupon or not, and includes the open ground or court-yard enclosed by, or adjacent to, any building erected thereupon;

(9.) "boundary-mark" means any erection, whether of earth, stone or other material, and also any hedge, vacant strip of ground, or other object, whether natural or artificial, set up, employed, or specified by a survey officer, or other revenue officer having authority in that behalf, in order to designate the boundary of any division of land;

(10.) "to hold land" means to be legally invested with a right to the possession and enjoyment or disposal of such land, either immediate or at the termination of tenancies legally subsisting;

(11.) "holder" or "landholder," signifies the person in whom a right to hold land is vested, whether solely on his own account, or wholly or partly in trust for another person, or for a class of persons, or for the public. It includes a mortgagee vested with a right to possession;

- (12). "holding" signifies land over which such right extends ;
- "holding,"
- (13). "superior holder" signifies a holder entitled to receive from other holders rent or land revenue on account of lands held by them, whether he be accountable or not for the same, or any part thereof to the Government ;
- "superior holder."
- (14). "inferior holder" signifies a holder liable to pay the rent or land revenue to a superior holder, whether on account of such superior holder or Government ;
- "inferior holder."
- (15). "tenant" signifies a person who holds by a right derived from a superior holder called his "landlord," or from his landlord's predecessor in title ;
- "tenant," "landlord."
- (16). "occupant" signifies a holder of unalienated land,
- "occupant."
- or where there are more holders than one, the holder having the highest right in respect of any such land,
- or where such highest right vests equally in more holders than one, any one of such holders ;
- (17). "registered occupant" signifies a sole occupant or the eldest or principal of several joint occupants whose name is authorizedly entered in the Government records as holding unalienated land whether in person or by his co-occupant tenant, agent, servant, or other legal representative ;
- "registered occupant."
- (18). "occupancy" signifies the sum of the rights vested in an occupant as such ;
- "occupancy."
- (19). "alienated" means transferred in so far as the rights of Government to payment of the rent or land revenue are concerned, wholly or partially, to the ownership of any person ;
- "alienated."
- (20). the words "village, town, or city" include all lands belonging to any village, town, or city ;
- "village, town, or city."
- (21). the words "revenue year" or "year" means the period from, and exclusive of the 31st July of one calendar year until, and inclusive of, the 31st July in the next calendar year ;
- "revenue year," "year."
- (22). "section" means a section of this Act ;
- "section."
- (23). the words "this chapter" mean the chapter of this Act in which those words occur.
- "this chapter."

CHARTER II,

CONSTITUTION AND POWERS OF REVENUE OFFICERS.

4. The chief controlling authority in all matters connected with the land revenue is vested in the Commissioner, subject to the Governor in Council.

Chief controlling authority in revenue matters.

There shall be one or more Commissioners as the Governor in Council, subject to the orders of the Government of India, may direct ; and the Governor in Council shall prescribe what territories are to be under the control of each, whether generally or for any specific purpose, and may from time to time alter the limits of such territories, all orders made on this behalf being duly notified,

The territories under a Commissioner to be a division.

The territories under each Commissioner shall form, and be called, a division.

The present divisions shall continue as they are for the purposes of this Act, until altered by the Governor in Council.

Present divisions.

5. The Commissioners shall be appointed by the Governor in Council, and shall exercise the powers and discharge the duties conferred and imposed on a Commissioner under this Act, or under any other law for the time being in force, and so far as is consistent therewith all such other powers, or duties of appeal, superintendence, and control within their respective divisions, and over the officers subordinate to them as may from time to time be prescribed by Government.

Appointments and duties of Commissioners.

6. Each Commissioner shall have such number of Assistants as the Governor in Council may from time to time sanction, their appointment being made by the Governor in Council. Assistants so appointed shall perform such duties as the Commissioners to whom they are respectively subordinate may from time to time direct.

Assistants to Commissioners.

7. Each division, under the control of the Commissioner, shall be divided into such number of districts with such limits as may from time to time be prescribed by a duly published order of the Governor in Council.

A division to be divided into districts.

And each such district shall consist of such number of talukas, and each taluka shall consist of such number of mahals and villages, as may from time to time be prescribed in a duly published order of the Governor in Council,

A district to consist of talukas comprising such number of mahals and villages as Government may direct.

The present zillahs or collectorates shall form districts, and the present talukas shall remain as they are, for the purposes of this Act, until altered by the Governor in Council.

Present zillahs and talukas.

8. The Governor in Council shall appoint in each district an officer who shall be the Collector of the District, and who shall be subordinate to the Commissioner of his division and may exercise, throughout his district, all the powers, and discharge all the duties conferred and imposed on a Collector or an Assistant or Deputy Collector by this Act, or any other law for the time

being in force, and in all matters not specially provided for by law shall act according to the instructions of Government.

9. The Governor in Council may appoint to each district so many Assistant and Deputy Assistant Collectors and so many Deputy Collectors as he may deem expedient; the Assistants shall be called "First," "Second," "Supernumerary," &c, as may be expressed in the order of their appointment.

All such Assistant and Deputy Collectors and all other officers employed in the land revenue administration of the district shall be subordinate to the Collector.

10. Subject to the general orders of Government, a Collector may place any of his Assistants or Deputies in charge of the revenue administration of one or more of the talukas in his district, or may himself retain charge thereof.

Any Assistant or Deputy Collector thus placed in charge shall, subject to the provisions of Chapter XIII. of this Act, perform all the duties and exercise all the powers conferred upon a Collector of a district by this Act or any other law at the time being in force, so far as regards the taluka or talukas in his charge:

Provided that the Collector may, whenever he may deem fit, direct any such Assistant or Deputy not to perform certain duties or exercise certain powers, and may reserve the same to himself or assign them to any other Assistant or Deputy subordinate to him.

To such Assistant or Deputy Collector as it may not be possible or expedient to place in charge of talukas, the Collector shall, under the general orders of Government, assign such particular duties and powers as he may from time to time see fit.

11. If the Collector is disabled from performing his duties, or for any reason vacates his office or leaves his district, or dies, his Assistant of highest rank present in the district shall, unless other provision has been made by Government, succeed temporarily to his office, and shall be held to be the Collector of the district under this Act until the Collector resumes charge of his district, or until the Governor in Council appoints a successor to the former Collector, and such successor takes charge of his appointment.

An officer whose principal office is different from that of an Assistant Collector, and who is an Assistant Collector for special purposes only, shall not be deemed to be an Assistant for the purposes of this section.

12. The chief officer entrusted with the local revenue administration of a taluka shall be called a Mamlatdar. He shall be appointed by the Commissioner of the division in which his taluka is situated.

His duties and powers shall be such as may be expressly imposed or conferred upon him by this Act, or by any other law for the time being in force, or as may be imposed upon, or delegated to, him by the Collector under the general or special orders of Government. He shall continue to perform the duties and exercise the powers at present performed and exercised by him after the passing of this Act, until such time as he is otherwise directed by competent authority.

13. Whenever it may appear necessary to the Governor in Council, the Collector may appoint a Mahalkari to be in charge of a defined portion of a taluka; and subject to the orders of Government and of the Commissioner, the Collector may assign to him within his local limits such of the duties and powers of a Mamlatdar as he may from time to time see fit, and may also from time to time direct whether the Mahalkari's immediate superior shall, for the purposes of section 203 of this Act, be deemed to be the Mamlatdar or the Assistant or Deputy Collector, or the Collector in charge of the taluka.

14. It shall be competent to a Mamlatdar or Mahalkari, subject to such general orders as may from time to time be passed by the Commissioner or by the Collector, to employ any of his subordinates to perform any portion of his ministerial duties; provided that all acts and orders of his subordinates when so employed shall be liable to revision and confirmation by such Mamlatdar or Mahalkari.

The portion of a taluka in the charge of a Mahalkari shall be called a Mahal. The present mahals shall remain as they are, for the purposes of this Act, until altered by the Governor in Council.

15. If a Mamlatdar or Mahalkari is disabled from performing his duties, or for any reason vacates his office, or leaves his taluka or Mahal, or dies, such subordinate as may be designated by orders to be issued from time to time on this behalf by the Collector, shall succeed temporarily to the said Mamlatdar's or Mahalkari's office, and shall be held to be the Mamlatdar or Mahalkari under this Act until the Mamlatdar or Mahalkari resumes charge of his taluka or mahal, or until such time as a successor is duly appointed and takes charge of his appointment.

16. In villages where no hereditary Patel or Village Accountant exists, it shall be lawful for the Collector under the general orders of Government and of the Commissioner to appoint a stipendiary Patel or a Village Accountant who shall perform respectively all the duties of hereditary Patels or Village Accountants as hereinafter prescribed in this Act or in any other law for the time being in force, and

shall hold their situations under the rules in force with regard to subordinate revenue officers.

Nothing in this section shall be held to affect any subsisting rights of holders of alienated villages or others in respect of the appointment of Patels and Village Accountants in any alienated or other villages.

17. Subject to the general orders of Government and of the Commissioner, the Collector shall prescribe from time to time what registers, accounts, and other records shall be kept by the Village Accountant; and pending the first issue of orders under this section the Village Accountant shall continue to keep all such registers, accounts, and other records as he may hitherto have been required to keep.

It shall also be the duty of the Village Accountant to prepare, whenever called upon by the Patel of his village, or by any superior revenue or police officer of the taluka or district to do so, all writings connected with the concerns of the village which are required either for the use of Government or the public, such as notices, reports of inquests, and depositions and examinations in criminal matters.

18. For the purposes of Chapters VIII, IX, and X. of this Act, the Governor in Council may appoint such officers as may from time to time appear necessary. Such officers shall be designated "Commissioner of Survey," "Superintendent of Survey," "Survey Settlement Officers," and "Assistant," or otherwise as may seem requisite, and shall be subordinated the one to the other in such order as the Governor in Council may direct.

Subject to the orders of the Governor in Council the officers so appointed are vested with the cognizance of all matters connected with survey and settlement, and shall exercise all such powers and perform all such duties as may be prescribed by this or any other law for the time being in force.

19. It shall be lawful for the Governor in Council to appoint one and the same person, being otherwise competent according to law, to any two or more of the offices provided for in this chapter, or to confer upon an officer of one denomination all or any of the powers or duties of any other officer or officers within certain local limits or otherwise as may seem expedient.

20. The appointment of all officers mentioned in sections 4 to 13 and 18 and 19 shall be duly notified.

Any officer appointed to act temporarily for any such officer shall exercise the same powers and perform the same duties as might be performed or exercised by the officer for whom he is so appointed to act.

21. Subject to rules or orders made under section 214, the appointment of all members of the establishments of the undermentioned officers shall, unless otherwise directed by Government, be made by those officers respectively, viz. :-

The Commissioners,
 „ Collectors,
 „ Commissioner of Survey,
 „ Superintendent of Survey,
 „ Survey Settlement Officer.

The appointment of all members of the establishments of all other officers mentioned in the foregoing sections of this chapter shall be made in their respective departments by the Collector and the Superintendent of Survey, provided that it shall be lawful for them to delegate such portion of this power as they may deem fit to any subordinate officer, but subject to the retention of a right of revision at any time of the appointments that may be made by such subordinate officers.

22. The Governor in Council shall from time to time by notification prescribe what revenue officers shall use a seal, and what size and description of seal shall be used by each of such officers.

Pending the issue of the first orders under this section, the seals hitherto used shall continue to be used by such officers as have used them.

CHAPTER III.

OF THE SECURITY TO BE FURNISHED BY CERTAIN REVENUE OFFICERS AND THE LIABILITY OF PRINCIPALS AND SURETIES.

23. It shall be lawful for Government to direct that such revenue officers as it deems fit shall, previously to entering upon their office, furnish security to such amount as Government may in each case deem expedient, either by deposit of Government paper duly endorsed, accompanied by a power to sell, or in the form contained in Schedule B. to this Act.

The amount for which such security shall be furnished may be varied, from time to time, by order of Government, which shall also determine the number of sureties to be required when security is taken in the form of Schedule B.

24. The Collector or the Superintendent of Survey may, at any time after security has been given, by a revenue officer subordinate to him, if it appear to him that the security taken is unsatisfactory, or if the officer is transferred to an office for which larger security is required, or for other sufficient reason, demand fresh or additional security, and in case of the officer failing to give such security within one month after its being required of him, may suspend or dismiss him: provided always that no greater security shall be demanded than is required by the orders of Government under the last preceding section.

25. The Collector or the Superintendent of Survey or any other officer deputed by the Collector or Superintendent of Survey for this purpose shall in all cases

Demands for money, papers, &c., to be made known in writing to the person concerned.

in which he may have a claim on any revenue officer or on any person formerly employed as such in his department or district for public money or papers or other Government property, by writing under his official seal, if he use one, and signature, require the money, or the particular papers or property detained to be delivered either immediately to the person bearing the said writing, or to such person on such date and at such place as the writing may specify.

If the officer or other person aforesaid shall not discharge the money, or deliver up the papers or property as directed, he may cause him to be apprehended, and may send him with a warrant, in the form of Schedule C, to be confined in the civil jail till he discharges the sums or delivers up the papers or property demanded from him.

Provided that no person shall be detained in confinement by virtue of any such warrant for a longer period than one calendar month.

Provided that no person shall be kept in confinement more than a month.

26. The Collector of his own motion, if the officer or other person is or was serving in his department and district, and upon the application of the Superintendent of Survey, if such officer or person is or was serving in the survey department in his district, may also take proceedings to recover any public moneys due by him in the same manner and subject to the same rules as are laid down in this Act for the recovery of arrears of land revenue from defaulters, and for the purpose of recovering public papers or other property appertaining to Government may issue a search warrant and exercise all such powers with respect thereto as may be lawfully exercised by a Magistrate under the provisions of Chapter 27 of the Criminal Procedure Code (Act X. of 1872).

Public moneys may also be recovered as arrears of revenue;

and search warrant may be issued for recovery of papers or property.

It shall be the duty of all persons in possession of such public moneys, papers or other property appertaining to Government to make over the same forthwith to the Collector, and every person knowing where any such property is concealed shall be bound to give information of the same to the Collector.

27. The surety or sureties of such officer or other person as is aforesaid, who may enter into a bond, in the form of Schedule B, shall be liable to be proceeded against jointly and severally in the same manner as his or their principal is liable to be proceeded

Surety to be liable in the same manner as principal.

against, in case of default, and notwithstanding such principal may be so proceeded against:

Provided always that in any case of failure to discharge or make good any sum of money due to Government or to produce any property of Government of ascertained value, no greater sum than is sufficient to cover any loss or damage which the Government may actually sustain by the default of the principal, shall be recovered from the surety or sureties as the amount which may be due from such surety or sureties under the terms of the security bond executed by him or them.

And provided also, that the said surety or sureties shall in no case be liable to imprisonment in default of producing public papers or property, if he or they pay into the Government treasury the whole or such part of the penalty named in the bond as may be demanded.

Sureties not liable to imprisonment, if penalty be paid.

28. If an officer or other person as aforesaid or his surety or sureties against whom a demand is made, shall give sufficient security in the form of Schedule D, the Collector shall cause such officer or surety if in custody to be liberated, and countermand the sale of any property that may have been attached, and restore it to the owner.

An officer or surety in jail may, by furnishing certain security, obtain his release.

29. The liability of the surety or sureties shall not be affected by the death of a principal, or by his appointment to a situation different from that which he held when the bond was executed, but shall continue so long as the principal occupies any situation in which security is required under section 23, and until his bond is cancelled.

Liability of surety not affected by death of principal or by his taking a different appointment.

The heirs of a deceased officer shall be liable by suit in the Civil Court for any claims which Government may have against the deceased, in the same way as they would be for similar claims made by an individual.

Liability of heirs of deceased officer.

30. Any surety, whether under a separate or joint bond, may withdraw from his suretyship at any time on his stating, in writing, to the officer to whom the bond has been given, that he desires so to withdraw; and his responsibility under the bond shall cease after sixty days from the date on which he gives such writing as to all demands upon his principal concerning moneys, papers, or other property for which his principal may become chargeable after the expiration of such period of sixty days, but shall not cease as to any demands for which his principal may have become liable before the expiration of such period, even though the facts establishing such liability may not be discovered till afterwards.

How surety may withdraw from further liability.

CHAPTER IV.

OF CERTAIN ACTS PROHIBITED TO REVENUE OFFICERS, AND OF THEIR PUNISHMENT FOR MISCONDUCT.

31. No revenue officer shall, except with the express permission of Government, or of the Collector, or Superintendent of Survey to whom he is subordinate,

(1) engage in trade, or be in any way concerned, directly or indirectly, either as principal or agent, in any commercial transaction whatever;

(2) purchase or bid either in person or by agent, or in his own name or in the name of another, or jointly or in shares with others for any property which may under the provisions of this Act or of any other law for the time being in force be sold by order of any revenue or judicial authority in the district in which such officer is at the time employed;

(3) hold directly or indirectly any farm or be in any way concerned on his private account in the collection or payment of revenue of any kind in the district in which he is at the time employed;

(4) derive either for himself or for any other individual any profit or advantage beyond his lawful salary or emolument from any public money or property with the collection or charge of which he is entrusted or connected; or

(5) demand or receive under the colour or by the exercise of his authority as such revenue officer, or by way of gratification or otherwise, or knowingly permit any other person to demand or receive on his behalf any sum or any consideration whatever over and above what he is legally entitled to demand or receive under the provisions of this Act or of any other law for the time being in force.

32. Subject to rules or orders made under section 214, all revenue officers may be fined, reduced, suspended, or dismissed for any such offence as is described in the last preceding section, or for any breach of departmental rules or discipline, or for carelessness, unfitness, neglect of duty, or other misconduct by the authority by whom such officer is appointed; or by any authority superior to such authority; and this power may be delegated by such first-mentioned authority, in whole or in part, to any subordinate officer on the same condition that the power of appointment may be delegated under section 21:

Provided that, excepting Mamlatdars, no revenue officer, whose monthly salary exceeds Rs. 250, shall be fined, suspended, reduced, or dismissed except by order of the Governor in Council.

iv.—22

33. When any revenue officer passes an order for fining, reducing, suspending, or dismissing any subordinate officer, he shall record such order or cause the same to be recorded, together with the reasons therefor, in writing under his signature in the language of the district or in English.

34. No fine inflicted under the foregoing provisions shall in any case exceed the amount of two months' pay of the office held by the offender at the time of the commission of the offence.

All fines inflicted under this chapter may be recovered from the officer's pay or, if necessary, may be realized in the same way as arrears of land revenue are recoverable under this Act.

35. If the Collector or Superintendent of Survey, whether of his own motion, or on appeal from a subordinate officer's order, pass an order for fining, reducing, suspending, or dismissing any revenue officer subordinate to him whose monthly salary does not exceed thirty-five rupees, or

if any authority superior to the Collector or Superintendent of Survey pass any such order against a revenue officer whose monthly salary does not exceed ninety-nine rupees, no appeal shall lie against such order, except and provided always that at least one appeal shall lie against every order made, of his own motion, by any authority other than Government, for dismissing an officer whose monthly salary exceeds thirty-five rupees.

And no appeal shall lie against any order for inflicting a fine not exceeding one rupee.

36. Nothing in this chapter shall affect any officer's liability to a criminal prosecution for any offence with which he may be charged.

Any officer subjected to such prosecution may be suspended pending the trial, and at its close may, upon a consideration of the circumstances brought to light during its course, be suspended, reduced or dismissed by any competent authority, whether he have been found guilty or not.

CHAPTER V.

OF LAND AND LAND REVENUE.

Land.

37. All public roads, lanes and paths, the bridges, ditches, dikes, and fences, on, or, beside the same, the bed of the sea and of harbours and creeks below high-water-mark, and of rivers, streams, nullas, lakes, and tanks, and all canals, and water-courses and all standing and flowing water, and all lands wherever situated, which are not the property of

individuals, or of aggregates of persons legally capable of holding property, and except in so far as any rights of such persons may be established in or over, the same, and except as may be otherwise provided in any law for the time being in force, are and are hereby declared to be, with all rights in or over the same, or appertaining thereto, the property of Government; and it shall be lawful for the Collector, subject to the orders of the Commissioner, to dispose of them in such manner as he may deem fit, or as may be authorized by general rules sanctioned by Government, subject always to the rights of way, and all other rights of the public, or of individuals legally subsisting.

Explanation.—In this section “high-water-mark” means the highest point reached by ordinary spring-tides at any season of the year.

38. Subject to the general orders of Government, it shall be lawful for survey officers whilst survey operations are proceeding under Chapter VIII. of this Act, and at any other time for the Commissioner, to set apart lands the property of Government and not in the lawful occupation of any person or aggregate of persons in unalienated villages or unalienated portions of villages for free pasturage for the village cattle, for forest reserves, or for any other public or municipal purpose; and lands assigned specially for any such purpose shall not be otherwise appropriated or assigned without the sanction of the Commissioner; and in the disposal of land under section 37 due regard shall be had to all such special assignments.

39. The right of grazing on free pasturage lands shall extend only to the cattle of the village or villages to which such lands belong or have been assigned, and shall be regulated by rules to be from time to time, either generally or in any particular instance, prescribed by the Collector with the sanction of the Commissioner. The Collector's decision in any case of dispute as to the said right of grazing shall be conclusive.

Trees.

40. In villages, or portions of villages of which the original survey settlement has been completed before the passing of this Act, the right of Government to all trees in unalienated land, except trees reserved by Government, or by any survey officer, whether by express order made at, or about the time of such settlement, or under any rule, or general order in force at the time of such settlement, or by notification made and published at, or at any time after such settlement, shall be deemed to have been conceded to the occupant. But in the case of settlements completed before the passing of Bombay Act I. of 1865, this provision shall not apply to teak, blackwood or sandalwood trees. The right of Government to such trees shall not be deemed to have been conceded, except by clear and express words to that effect.

In the case of villages or portions of villages of which the original survey settlement shall be completed after the passing of this Act, the right of Government to all trees in unalienated land shall be deemed to be conceded to the occupant of such land except in so far as any such rights may be reserved by Government, or by any survey officer on behalf of Government, either expressly at or about the time of such settlement, or generally by notification made and published at any time previous to the completion of the survey settlement of the district in which such village or portion of a village is situate.

When permission to occupy land has been, or shall hereafter be granted after the completion of the survey settlement of the village or portion of a village in which such land is situate, the said permission shall be deemed to include the concession of the right of Government to all trees growing on that land which may not have been or which shall not hereafter be expressly reserved at the time of granting such permission, or which may not have been reserved, under any of the foregoing provisions of this section, at or about the time of the original survey settlement of the said village or portion of a village.

41. The right to all trees specially reserved under the provision of the last preceding section, and to all trees, brushwood, jungle, or other natural product, growing on land set apart for forest reserves under section 32 of Bombay Act I. of 1865, or section 38 of this Act, and to all trees, brushwood, jungle, or other natural product, wherever growing, except in so far as the same may be the property of individuals or of aggregates of individuals capable of holding property, vests in Government; and such trees, brushwood, jungle, or other natural product, shall be preserved or disposed of in such manner as Government may from time to time direct.

42. All road-side trees which have been planted and reared by, or under the orders of, or at the expense of Government, or at the expense of Local Funds, vest in Government. But in the event of such trees dying, or being blown down, or being cut down by order of the Collector, the timber shall become the property of the holder of the land in which they were growing; and the usufruct, including the loppings of such trees, shall also vest in the said holder; provided that the trees shall not be lopped except under the orders of the Collector.

If the holder of any land in which such trees are growing shall so desire and shall make an application to the Collector for the purpose at any time within two years from the date on which this Act shall come into operation; the Collector shall deduct the strip of land covered by the said trees from his holding and remit thenceforward the proportionate amount of land revenue due upon the strip so deducted. Any strip of land so deducted shall, with the trees upon it, vest thereafter in Government.

43. Any person who shall unauthorizably fell and appropriate any tree or any portion thereof or remove any other natural product which is the property of Government, shall be liable to Government for the value thereof, which shall be recoverable from him as an arrear of land revenue, in addition to any penalty to which he may be liable under the provisions of this Act for the occupation of the land, or otherwise; and notwithstanding any criminal proceedings which may be instituted against him in respect of his said appropriation of Government property.

The decision of the Collector as to the value of any such tree, or portion thereof, or other natural product, shall be conclusive.

44. In villages or lands in which the rights of Government to the trees have been reserved under section 40 subject to certain privileges of the villagers or of certain classes or persons to cut firewood or timber for domestic or other purposes, and in lands which have been set apart under section 38 for forest reserves subject to such privileges, and in all other cases in which such privileges exist in respect of any alienated land, the exercise of the said privileges shall be regulated by rules to be from time to time, either generally or in any particular instance, prescribed by the Collector or by such other officer as Government may direct. In any case of dispute as to the mode or time of exercising any such privileges the decision of the Collector or of such other officer shall be conclusive.

Land Revenue.

45. All land, whether applied to agricultural or other purposes, and wherever situate, is liable to the payment of land revenue to Government according to the rules hereinafter enacted except such as may be wholly exempted under the provisions of any special contract with Government or any law for the time being in force.

But nothing in this Act shall be deemed to affect the power of the Legislature to direct the levy of revenue on all lands under whatever title they may be held whenever and so long as the exigencies of the State may render such levy necessary.

46. All alluvial lands, newly-formed islands, or abandoned river beds which vest, under any law for the time being in force, in any holder of alienated land shall be subject in respect of liability to the payment of land revenue to the same privileges, conditions, or restrictions as are applicable to the original holding in virtue of which such lands, islands, or river beds so vest in the said holder, but no revenue shall be leviable in respect of any such lands, islands, or river beds until or unless the area of the same exceeds half an acre and also exceeds one-tenth of the area of the said original holding.

47. Every holder of land paying revenue in respect thereof shall be entitled, subject to such rules as may be made in this behalf by the Governor in Council, to a decrease of assessment if any portion thereof, not being less than half an acre in extent, nor less than one-tenth of the holding, is lost by diluvion.

The word "holding" in this section shall be deemed to mean a survey number or any division of land on which a distinct or aggregate assessment has been fixed.

48. The land revenue leviable under the provisions of this Act shall be chargeable:

- (a.) upon land appropriated for purpose of agriculture;
- (b.) upon land from which any other profit or advantage than that ordinarily acquired by agriculture is derived.
- (c.) upon land appropriated for building sites.

And the assessment fixed under the provisions of this Act upon any land appropriated for any one of the above purposes shall be liable to be altered and fixed at a different rate when such land is appropriated for any other purpose, notwithstanding that the term, if any, for which such assessment was fixed may not have expired. And any land allowed by Government to be held free of assessment on condition of its being appropriated to one purpose shall become liable to assessment if at any time it is devoted to any other purpose.

Land held rent-free for one purpose shall be liable to assessment if used for another purpose.

It shall also be lawful for the Collector or for a survey officer, subject to rules or orders made in this behalf under section 214 to prohibit the appropriation of any unalienated land liable to the payment of land revenue for certain purposes, and to summarily evict any holder who may appropriate, or attempt to appropriate, the same to such prohibited purposes.

49. When it has been customary to levy any special or extra cess, fine, or tax, however designated, from any holder of land, which though nominally, wholly or partially exempt from the payment of land revenue, has by the exaction of such cess, fine, or tax been indirectly taxed to the State,

or when any land ordinarily, or under certain circumstances, wholly or partially exempt from assessment, is subject occasionally, or under particular circumstances, to the payment of assessment, or of any cess or tax however designated,

the said assessment, cess, fine, or tax may be commuted into an annual assessment on the land to be paid under all circumstances, but such commuted assessment shall not exceed such amount as the Commissioner shall deem to be a fair equivalent of the assessment, cess, fine, or tax for which it is substituted, and shall not be in excess of the assessment to which the land would be ordinarily subject, if no right to exemption existed in respect thereof.

50. Whenever any such cess, fine, or tax hitherto payable by an inferior holder shall be made leviable from the superior holder, it shall be lawful for such superior holder to recover from such inferior holder the amount of the commuted assessment fixed in lieu of such cess, fine or tax.

Superior holder may recover commuted assessment from inferior holder.

51. When it has been customary to levy a larger revenue under the name of "veta" or any other designation, upon any portion of land than such portion would ordinarily be liable to in consideration of other land being held with it which is wholly or partially exempt from payment of revenue, the excess of revenue payable on the said portion of land may be charged upon the land hitherto held wholly or partially exempt.

Excess of assessment may be laid on land inadequately assessed held with it.

52. On all lands not wholly exempt from payment of land revenue, and not within the local operation of an order made under section 95, the assessment of the amount to be paid as land revenue shall be fixed at the discretion of the Collector, subject to rules or orders made in this behalf under section 214, and the amounts due according to such assessment shall be levied on all such lands:

Assessment by whom to be fixed.

Provided that in the case of lands partially exempt from land revenue, or the liability of which to payment of land revenue is subject to special conditions or restrictions, respect shall be had in the fixing of the assessment and the levy of the revenue to all rights legally subsisting, according to the nature of the said rights.

Proviso.

53. A Register shall be kept by the Collector in such form as may from time to time be prescribed by the Governor in Council of all lands, the alienation of which has been established or recognized under the provisions of any law for the time being in force; and when it shall be shown to the satisfaction of the Collector that any sanad granted in relation to any such alienated lands has been permanently lost or destroyed, he may, subject to the rules and the payment of the fees prescribed by the Governor in Council under section 213, grant to any person whom he may deem entitled to the same a certified extract from the said Registrar, which shall be endorsed by the Collector, to the effect that it has been issued in lieu of the sanad said to have been lost or destroyed, and shall be deemed to be as valid a proof of title as the said sanad.

Register of alienated lands.

54. The settlement of the assessment of each portion of land, or survey number, to the land revenue, shall be made with the person who, under section 136, is primarily responsible to Government for the same.

Settlement of assessment to be made with the holder directly from Government.

If the said person be absent, and have left no known authorized agent in the district, so that the settlement of the assessment cannot be concluded with him, such settlement may be made with the person holding under him, or in occupation of the land.

Or if he is absent and have left no agent with the next holder.

55. The Governor in Council may authorize the Collector or the officer in charge of a survey or such other officer as he deems fit to fix such rates as he may from time to time deem fit to sanction, for the use, by landholders and other persons, of water, the right to which vests in Government, or which has been made available in consequence of the construction, improvement, or repair of any irrigational or other work by or at the instance of Government. Such rates shall be liable to revision at such periods as Government shall from time to time determine, and shall be recoverable as land revenue.

Rates for the use of water.

56. Arrears of land revenue due on account of land by any landholder shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the occupancy or alienated holding, together with all rights of the occupant or holder over all trees, crops, buildings and things attached to the land, or permanently fastened to anything attached to the land, liable to forfeiture, whereupon the Collector may levy all sums in arrear by sale of the occupancy or alienated holding, freed from all tenures, incumbrances and rights created by the occupant or holder or any of his predecessors in title, or in anywise subsisting as against such occupant, or holder, or may otherwise dispose of such occupancy or alienated holding under rules or orders made in this behalf under section 214.

Land revenue to be a paramount charge on the land.

57. It shall be lawful for the Collector, in the event of the forfeiture of a holding through any default in payment or other failure occasioning such forfeiture under the last section or any law for the time being in force, to take immediate possession of the land embraced within such holding and to dispose of the same by placing it in the possession of the purchaser or other person entitled to hold it according to the provisions of this Act or any other law for the time being in force.

Forfeited holdings may be taken possession of and otherwise disposed.

58. Every revenue officer receiving a payment of land revenue shall give a written receipt for the same.

Receipts to be granted by revenue officers for payments of land revenue.

And every superior holder of an alienated village, or of an alienated share of a village, shall give a written receipt for every payment of rent or land revenue made to him by an inferior holder,

And by certain superior holders for payments of rent or revenue.

and every such receipt shall be countersigned by the village accountant, if there be any.

59. Any person convicted of a breach of the provisions of the last preceding section after summary inquiry before the Collector shall be liable to a fine not exceeding three times the amount received for which a receipt was not duly granted, and one-half of the fine may, at the discretion of the Collector, be paid to the informer, if any. Such inquiry may at any time be instituted by the Collector of his own motion without any complaint being preferred to him.

CHAPTER VI.

OF THE OCCUPATION OF UNALIENATED LAND AND THE RIGHTS OF OCCUPANTS.

Occupation.

60. Any person desirous of taking up unoccupied land which has not been alienated must, previously to entering upon occupation, obtain the permission in writing of the Mámlatdár or Mahálkari.

61. Any person who shall unauthorizedly occupy any land set apart for any special purpose, or any unoccupied land which has not been alienated, shall,

if the land which he unauthorizedly occupies forms part of an assessed survey number, pay the assessment of the entire number for the whole period of his occupation, and

if the land so occupied by him has not been assessed, such amount of assessment as would be leviable for the said period in the same village on the same extent of similar land appropriated to the same purpose ;

and shall also be liable, at the discretion of the Collector, to a fine not exceeding five rupees, or a sum equal to ten times the amount of assessment payable by him for one year, if such sum be in excess of five rupees, if he have taken up the land for purposes of cultivation, and not exceeding such limit as may be fixed in rules or orders made in this behalf under section 214, if he have appropriated it to any non-agricultural purpose.

The Collector's decision as to the amount of assessment payable for the land unauthorizedly occupied shall be conclusive, and in determining its amount occupation for an incomplete portion of a year shall be counted as for a whole year.

The person unauthorizedly occupying any such land may be summarily evicted by the Collector, and any crop he may have raised on the land shall be liable to forfeiture, and any building or other construction he may have erected thereon shall also, if not removed by him after such written notice as the Collector may deem reasonable, be liable to forfeiture.

Forfeitures under this section shall be adjudged by the Collector, and any property so forfeited shall be disposed of as the Collector may direct.

62. It shall be competent to the Collector, subject to such orders as may from time to time be made by the Governor in Council, to require the payment of a certain price for the occupancy, or to sell that right by auction, and to annex such conditions to the occupancy as may seem fit, before permission to occupy is granted under section 60.

The price of an occupancy shall include the price of the Government right to all trees not specially reserved under the provisions of section 40, and shall be recoverable as an arrear of land revenue.

63. When it appears to the Collector that the occupancy of any alluvial land which vests in Government, may, with due regard to the interests of the public revenue, be disposed of in perpetuity, he shall offer the prior right of occupancy thereof to the occupant, if any, of the bank or shore on which such alluvial land has formed.

The price of an occupancy so offered shall not exceed three times the annual assessment of the land of which the occupancy is offered.

If the said occupant shall refuse such occupancy, the Collector may dispose of the same under the last preceding section without any restrictions as to the price thereof.

64. When alluvial land forms on any bank or shore, the occupant, if any, of such bank or shore shall be entitled to the temporary use and occupation thereof, unless or until the area of the same exceeds half an acre, and also exceeds one-tenth of the area of his holding. When the area of the alluvial land exceeds the said extent, it shall be at the disposal of the Collector, subject to the provisions of the last preceding section.

The word "holding" in this section shall be deemed to mean a survey number, or any division of land on which a distinct or aggregate assessment has been fixed.

Occupants' Rights.

65. An occupant of land appropriated for purposes of agriculture is entitled by himself, his servants, tenants, agents, or other legal representatives, to erect farm-buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient occupation for the purposes aforesaid.

But if any occupant wishes to appropriate his holding or any part thereof to any other purpose, the Collector's permission shall in the first place be applied for by the registered occupant. The

Procedure if the occupant wishes to apply his land to any other purpose.

Collector on receipt of such application shall at once furnish the applicant with a written acknowledgment of its receipt, and after inquiry may either grant or refuse the same; but if the applicant receive no answer within three months from the date of the said acknowledgment, the Collector's permission may be deemed to have been granted. Unless the Collector shall in particular instances otherwise direct, no such application shall be recognized except it be made by the registered occupant.

When any such land is thus appropriated to any purpose unconnected with agriculture, it shall be lawful for the Collector, subject to the general orders of Government, to require the payment of a fine in addition to any new assessment which may be leviable under the provisions of section 48.

66. If any such land be so appropriated without the permission of the Collector being first obtained, or before the expiry of three months from the date of the aforesaid acknowledgment, the occupant and any tenant, or other person holding under or through him, shall be liable to be summarily evicted by the Collector from the land so appropriated, and from the entire field or survey number of which it may form a part, and the registered occupant shall also be liable to pay, in addition to the new assessment which may be leviable under the provisions of section 48 for the period during which the said land has been so appropriated, such fine as the Collector may, subject to the general orders of Government, direct.

Any co-occupant or any tenant of any occupant or any other person holding under or through an occupant, who shall without the registered occupant's consent appropriate any such land to any such purpose, and thereby render the said registered occupant liable to the penalties aforesaid, shall be responsible to the said registered occupant in damages.

67. Nothing in the last two preceding sections shall prevent the granting of the permission aforesaid in special cases on such terms as may be agreed on between Government and the registered occupant.

68. An occupant is entitled to the use and occupation of his land for the period, if any, to which his occupancy is limited, or if the period is unlimited, or a survey settlement has been extended to the land, in perpetuity conditionally on the payment of the amounts due on account of the land revenue for the same, according to the provisions of this Act, or of any rules made under this Act, or of any other law for the time being in force, and on the fulfilment of any other terms lawfully annexed to his occupancy.

69. The right of Government to mines and mineral products in all unalienated land is and is hereby declared to be expressly reserved:

Reservation of right of Government to mines.

Provided that nothing in this section shall be deemed to affect any subsisting rights of any occupant of such land in respect of such mines or mineral products.

Proviso.

70. If by a decree or order of a competent Court it shall be adjudged that the occupant is an inferior holder under another person, or that the occupancy is vested in another person, or if in the execution of such a decree or order the interest of the occupant in the land have been transferred by sale or otherwise to another person, such other person shall, on producing a certified copy of the decree or order, or the Court's certificate of the sale, or other transfer, be deemed to be the occupant and be dealt with accordingly, and on written application being made to the Collector for the purpose, such change shall be made in the entry of the registered occupant's name as the circumstances require.

71. On the death of a registered occupant, the Collector shall cause the name of his eldest son, or other person appearing to be his heir, or the principal of his heirs, to be registered in his stead, and the said heir shall thereafter be deemed the registered occupant, and, subject to the provisions of the last preceding section, shall be dealt with accordingly.

But if at any time any person shall, by production of a certificate of heirship, or of a decree or order of a competent Court, satisfy the Collector that he is entitled to be the registered occupant in preference to the person whose name the Collector has ordered to be registered, the Collector shall cause the entry in the Government records to be amended accordingly.

72. If an occupant who is either a Hindu, a Muhamadan or a Buddhist, dies intestate and without known heirs, the Collector shall dispose of his occupancy by sale, subject to the provisions of this Act or of any other law at the time in force for the sale of forfeited occupancies in realization of the land-revenue, and the law at the time in force concerning property left by Hindus, Muhamadans or Buddhists, dying intestate and without known heirs shall not be deemed to apply to the said occupancy, but only to the proceeds of such sale after deducting all arrears of land revenue due by the deceased to Government and all expenses of the said sale.

73. The right of occupancy shall be deemed an heritable and transferable property subject to the provisions contained in section 56 or otherwise prescribed by law, and shall immediately pass to the person

Right of occupancy to be transferable and heritable.

whose agreement to become occupant shall have been accepted by the Collector.

Relinquishment of Occupancy.

74. An occupant may, by giving written notice to the Mámíatdár or Mahálkari, relinquish his occupancy, either absolutely or in favour of a specified person, provided that such relinquishment apply to the entire occupancy or to whole survey numbers, or recognized shares of survey numbers. An absolute relinquishment shall be deemed to have effect from the close of the current year, and notice thereof must be given before the 31st March in such year, or before such other date as may be from time to time prescribed in this behalf for each district by the Governor in Council. A relinquishment in favour of a specified person may be made at any time.

When there are more occupants than one, the notice of relinquishment must be given by the registered occupant; and the person, if any, in whose favour an occupancy is relinquished, or if such occupancy is relinquished in favour of more persons than one, the principal of such persons must enter into a written agreement to become the registered occupant, and his name shall thereupon be substituted in the records for that of the previous registered occupant.

75. When a lump assessment is fixed upon several fields or survey numbers in the aggregate it shall not be lawful for the occupant to relinquish as aforesaid any one or more of such fields or survey numbers except with the previous consent of the Collector. If shall be competent to the Collector to grant or refuse his consent; if he grants it, the occupancy shall be divided, and the Collector shall determine the proportional amount of land revenue to be paid by each portion of it, and the original occupant; and the person, if any, in whose favour he relinquishes a portion of his occupancy, shall be held liable for the revenue severally assessed on their portions.

76. The provisions of the two last sections shall apply, as far as may be, to the holders of alienated land: provided that,

(a) it shall not be lawful to relinquish, as aforesaid, any portion of any land held wholly or partially exempt under the circumstances described in the first paragraph of section 49 until the commuted assessment, payable in respect of such portion of land, has been determined under the provisions of the said section; and that

(b) if any person relinquish land on which, under the circumstances described in section 51, a larger revenue is levied than would ordinarily be leviable on such land, he shall be deemed to have relinquished also the land held with it which is wholly or partially exempt from payment of revenue.

77. If any person relinquishes land, the way to which lies through other land which he retains, the right of way through the land so retained shall continue to the future holder of the land relinquished.

Nothing in sections 75 and 76 in certain cases shall affect:

(a) the responsibility of any share in a village for the land revenue of which the sharers are all, according to law or the custom of the village, jointly responsible, or

(b) the validity of the terms or conditions of any lease or other express instrument under which land is, or may hereafter be, held from Government.

79. The registered occupant or the holder of alienated land shall continue liable for all demands until the occupancy or holding is duly relinquished or transferred. Nothing in section 78 shall affect: (a) the responsibility of any share in a village for the land revenue of which the sharers are all, according to law or the custom of the village, jointly responsible, or (b) the validity of the terms or conditions of any lease or other express instrument under which land is, or may hereafter be, held from Government.

79. The registered occupant or the holder of alienated land shall continue liable for the land revenue due on the occupancy or alienated holding and for all other lawful demands of Government in respect of the same, until such time as the occupancy or alienated holding is relinquished, or transferred, under any of the provisions of this Act, to the name of any other person; and the Collector shall not be bound in any case to recognize any person to whom any interest in any portion of an occupancy or alienated holding has been assigned, unless the transfer has been recorded in the revenue records in accordance with the foregoing provisions.

Remedies against Forfeiture of Occupancies.

80. In order to prevent the forfeiture of an occupancy under the provisions of section 56, or of any other law for the time being in force, through non-payment by the registered occupant of the land revenue due on account thereof, it shall be lawful for any co-occupant, tenant, mortgagagee, or other person interested in the continuance of the occupancy to pay on behalf of such registered occupant all sums due on account of land revenue, and for the Collector to receive the same. And in any such case the Collector may give to the person who has paid the land revenue as aforesaid such aid for the recovery of the proportional amounts which he may consider to be properly payable by other persons in occupation of parts of a field or survey number as he might legally have given had the persons so paying been the registered occupants:

Provided that nothing authorized or done under the provisions of this section shall affect the rights of the parties interested as the same may be established in any suit between such parties in a Court of competent jurisdiction.

81. If it shall appear to the Collector that a registered occupant has failed to pay land revenue, and has thus incurred forfeiture with a view to injure or defraud his co-occupants,

Collector may in certain cases make co-occupant or other person the registered occupant instead of selling occupancy for realization of land revenue.

or other persons interested in the continuance of the occupancy, or that a sale of the occupancy will operate unfairly to the prejudice of such co-occupants, or other persons, it shall be lawful for him, instead of selling the occupancy, to forfeit only the said registered occupant's interest in the same and to substitute the name of any such co-occupant or other person as registered occupant thereof in the revenue records, on his payment of all sums due on account of land revenue for the occupancy; and such person so becoming the registered occupant shall have the rights and remedies with respect to all other persons in occupation provided for by section 86.

Suspension of certain Provisions of this Chapter.

82. It shall be lawful for the Governor in Council by notification

Governor in Council empowered to suspend operation of section 60 or 74. in the *Bombay Government Gazette* from time to time:

(a) to suspend the operation of section 60 or 74, or of both, within any prescribed local area, either generally, or in respect of cultivators or occupants of a particular class or classes, and

(b) to cancel any such notification.

During the period for which any notification under the above clause (a) is in force within any local area, such rules shall be substituted for the provisions of which the operation is suspended as the Commissioner shall from time to time direct.

CHAPTER VII.

OF SUPERIOR AND INFERIOR HOLDERS.

Tenants' Rights.

83. A person placed, as tenant, in possession of land by another, or, in that capacity, holding, taking, or retaining possession of land permissively from or by sufferance of another, shall be regarded as holding the same at the rent, or for the services agreed upon between them; or in the absence of satisfactory evidence of such agreement, at the rent payable or services renderable by the usage of the locality, or if there be no such agreement or usage, shall be presumed to hold at such rent as, having regard to all of the circumstances of the case, shall be just and reasonable.

And where by reason of the antiquity of a tenancy, no satisfactory evidence of its commencement is forthcoming, and there is not any such evidence of the period of its intended duration, if any, agreed upon between the landlord and tenant, or those under whom they respectively claim title, or any usage of the locality as to duration of such tenancy, it shall, as against the immediate landlord of the tenant, be presumed to be co-extensive with the duration of the tenure of such landlord and of those who derive title under him.

And where there is no satisfactory evidence of the capacity in which a person in possession of land in respect of which he renders service or pays rent to the landlord, received, holds or retains possession of the same, it shall be presumed that he is in possession as tenant.

Nothing contained in this section shall affect the right of the landlord, (if he have the same Saving clause. either by virtue of agreement, usage, or otherwise), to enhance the rent payable, or services renderable by the tenant, or to evict the tenant for non-payment of the rent or non-rendering of the services, either respectively originally fixed or duly enhanced as aforesaid.

84. An annual tenancy shall, in the absence of proof to the contrary, be presumed to run from the end of one cultivating season to the end of the next. The cultivating season may be presumed to end on the 31st March.

An annual tenancy shall require for its termination a notice given in writing by the landlord to the tenant, or by the tenant to the landlord at least three months before the end of the year of tenancy at the end of which it is intimated that the tenancy is to cease. Such notice may be in the form of Schedule E; or to the like effect.

85. It shall be incumbent on every superior holder of an alienated village and on every superior holder of an alienated share of a village in which there exists an hereditary patel and village accountant, to receive his dues on account of rent or land revenue from the inferior holders through the said village officers.

Any such superior holder demanding or receiving payment from any inferior holder of any rent or land revenue otherwise than through the said village officers shall, on conviction in a summary inquiry before the Collector, forfeit to Government three times the amount of the sum so demanded or received.

Every such hereditary patel or accountant shall be bound to receive and account to the said superior holder for all sums paid to or recovered by him on account of the said superior holder; and on his or their failure to do the same, the superior holder shall, with the previous consent of the Collector, be entitled to recover his dues direct from the inferior holders.

Recovery of Superior Holders' dues.

86. Superior holders shall, upon written application to the Collector, be entitled to assistance, by the use of precautionary and other measures, for the recovery of rent or land revenue payable to them by inferior holders, or by co-sharers in their holdings under the same rules, except that contained in section 137, and in the same manner as prescribed in Chapter XI. of this Act for the realization of land revenue by Government.

Provided that such application be made within the revenue year or within the year of tenancy in which the said rent or land revenue became payable.

But application must be made within the revenue year or within the year of tenancy.

87. On application being made under section 86 to the Collector, he shall cause a written notice thereof to be served on the inferior holder or co-sharer fixing a day for inquiry into the case.

The Collector how to proceed on such application being made.

On the day so fixed he shall hold a summary inquiry, and shall pass an order for rendering assistance to the superior holder for the recovery of such amount, if any, of rent or land revenue as appears to him upon the evidence before him to be lawfully due.

But, if it appears to the Collector that the question at issue between the parties is of a complicated or difficult nature, he may in his discretion either refuse the assistance asked for, or, if the land to which the dispute relates, has been assessed under the provisions of Chapter VIII. of this Act or at any survey settlement confirmed by section 112, grant assistance to the extent only of the assessment so fixed upon the said land.

Assistance may be refused or granted to a limited extent only.

Nothing in this section shall prevent either party from having recourse to the Civil Courts to recover from the other such amount as he may deem to be still due to him, or to have been levied from him in excess of what was due, as the case may be.

Civil suit not to be barred.

Grant of Special Powers to Holders of Alienated Lands.

88. It shall be lawful for the Governor in Council at any time to issue a commission to any holder of alienated lands, conferring upon him all or any of the following powers in respect of the lands specified in such commission (namely):

The Governor in Council may, by commissions, confer certain powers on holders of alienated lands.

(a) to demand security for the payment of the land revenue or rent due to him, and if the same be not furnished, to take such precautions as the Collector is authorized to take, under sections 141 to 143;

(b) to attach the property of persons making default in the payment of such land revenue or rent, as aforesaid;

(c) to fix from time to time the times at which, and the instalments in which, the land revenue or rent due to him shall be payable;

(d) to exercise the powers of a Collector under sections 65 and 66;

(e) to receive notices of relinquishment under section 74, and to determine the date up to which such notices shall be received as in that section provided;

(f) to take measures for the maintenance and repair of boundary-marks in the manner provided for survey officers in section 122:

Provided that the powers contemplated in clauses (c) to (f) shall be conferred only on hold-

ers of lands to which a survey settlement has been extended under the provisions of section 216.

89. Every such commission shall be in the form of Schedule F, and shall be liable to be withdrawn at the pleasure of Government; and a commission may, if the Governor in Council see fit, be issued to one or more agents of a holder of alienated lands as well as to the holder in person.

Form of such commission.

90. If the holder of any such commission attach a defaulter's property, he shall make an immediate report to the Collector of his having done so. Should the demand on account of which the attachment has been made, appear to the Collector, after such inquiry as he may deem fit to make, to be just, he shall give orders for the sale of the property, and the sale shall be conducted agreeably to the provisions of sections 165 to 186. But if the holder of the commission is invested, under Regulation XIII. of 1830, with civil jurisdiction and with power to execute his own or his agent's decrees, the sale shall be conducted by him and not by the Collector and his subordinates.

Reference must be made by holder of commission to the Collector in certain cases.

91. All compulsory process shall cease:

When compulsory process shall cease.

on the defaulter's paying or tendering the amount demanded of him under protest,

or on his furnishing either to the holder of the commission or his agent or agents, or to the Collector, satisfactory security in the form of Schedule D, or to similar effect.

And any holder of any such commission as aforesaid, by himself or his agents, proceeding with any compulsory process after payment made, or tendered as aforesaid, or after the furnishing of such security as aforesaid, or after tender thereof, shall be liable on conviction in a summary inquiry before the Collector, to a penalty not exceeding three times the amount of the revenue sought to be recovered by such compulsory process.

Penalty for continuing compulsory process.

92. The power conferred by any such commission shall extend to the enforcement of the payment of the revenue or rent of the current year and of the year next immediately preceding, but not to that of former years.

Power under commission to extend to current and previous years arrears.

93. The holder of any such commission shall not enforce a demand for revenue or rent in excess of what any inferior holder has paid, previously to the date of such demand, or of what he may have contracted in writing to pay. In the event of a dispute the Collector shall hold a summary inquiry and decide what is just, and the holder of a commission shall not enforce a demand for more than what is so decided to be just.

Holder of commission not to enforce any unusual or excessive demand.

The person against whom any demand shall have been enforced in excess of the amount of Penalty for so doing.

which payment is lawfully enforceable shall be entitled to recover, on conviction of the holder of the commission in a summary inquiry before the Collector, three times the amount of any such excessive demand by way of damages, and the sum so due by the holder of the commission shall be leviable from him as an arrear of land-revenue.

94. Nothing in the last section shall be deemed to prevent a holder of alienated land from instituting a suit in any Court of competent jurisdiction for the purpose of establishing his claim to re-assess the lands or resettle the revenue of any inferior holder paying less than the full sum to payment of which he deems him to be justly liable, or from levying the sum ascertained to be due in accordance with the decree in any such suit in the manner hereinbefore mentioned.

But holder of commission may establish his right to enhanced rent in Civil Court.

purpose of establishing his claim to re-assess the lands or resettle the revenue of any inferior holder paying less than the full sum to payment of which he deems him to be justly liable, or from levying the sum ascertained to be due in accordance with the decree in any such suit in the manner hereinbefore mentioned.

CHAPTER VIII.

OF SURVEY SETTLEMENTS AND THE PARTITION OF ESTATES.

95. It shall be lawful for the Governor in Council, whenever it may seem expedient, to direct the survey of any land in any part of the Presidency, with a view to the settlement of the land revenue, and to the record and preservation of rights connected therewith, or for any other similar purpose, and such survey shall be called a revenue survey. Such survey may extend to the lands of any village, town, or city generally, or to such land only as the Governor in Council may direct; and subject to the orders of the Governor in Council it shall be lawful for the officers conducting any such survey to except from the survey settlement any land to which it may not seem expedient that such settlement should be applied.

Revenue survey may be introduced by Governor in Council into any part of Presidency.

settlement of the land revenue, and to the record and preservation of rights connected therewith, or for any other similar purpose, and such survey shall be called a revenue survey. Such survey may extend to the lands of any village, town, or city generally, or to such land only as the Governor in Council may direct; and subject to the orders of the Governor in Council it shall be lawful for the officers conducting any such survey to except from the survey settlement any land to which it may not seem expedient that such settlement should be applied.

The control of every such revenue survey shall vest in and be exercised by the Governor in Council.

Control of revenue survey.

96. It shall be lawful for the survey officer deputed to conduct or take part in any such survey, to require by general notice, or by summons, the attendance of holders of lands and of all persons interested therein, in person, or by legally constituted agent duly instructed and able to answer all material questions, and the presence of taluka and village officers, who in their several stations and capacities are legally, or by usage, bound to perform service in virtue of their respective offices and to require from them such assistance in the operations of the survey and such service in connection therewith, as may not be inconsistent with the position of the individual so called on.

Survey Officer may require by general notice or by summons, suitable service from holders of land, &c.

all persons interested therein, in person, or by legally constituted agent duly instructed and able to answer all material questions, and the presence of taluka and village officers, who in their several stations and capacities are legally, or by usage, bound to perform service in virtue of their respective offices and to require from them such assistance in the operations of the survey and such service in connection therewith, as may not be inconsistent with the position of the individual so called on.

97. It shall be lawful for the survey officer to call upon all holders of land and other persons interested therein to assist in the measurement or classification of the lands to which the survey extends by furnishing flag-holders; and in the event of a necessity for employing hired labour for this, or other similar object, incidental to survey operations, it shall be lawful to assess the cost thereof, with all contingent expenses on the lands surveyed, for collection as a revenue demand.

Assistance to be given by holders and others in the measurement or classification of lands.

lands to which the survey extends by furnishing flag-holders; and in the event of a necessity for employing hired labour for this, or other similar object, incidental to survey operations, it shall be lawful to assess the cost thereof, with all contingent expenses on the lands surveyed, for collection as a revenue demand.

98. Except as hereinafter provided, no survey number comprising land used for purposes of agriculture only shall be made of less extent than a minimum to be fixed from time to time for the several classes of land in each district by the Commissioner of Survey, with the sanction of Government. A record of the minima so fixed shall be kept in the Mámlatdár's office in each taluka, and shall be open to the inspection of the public at reasonable times.

Survey numbers not to be of less than a certain extent.

survey number comprising land used for purposes of agriculture only shall be made of less extent than a minimum to be fixed from time to time for the several classes of land in each district by the Commissioner of Survey, with the sanction of Government. A record of the minima so fixed shall be kept in the Mámlatdár's office in each taluka, and shall be open to the inspection of the public at reasonable times.

These provisions shall not apply to survey numbers which have already been made of less extent than the minima so fixed; or which may be so made under the authority of the Commissioner of Survey given either generally or in any particular instance, in this behalf; and any survey number separately recognized in the survey records shall be deemed to have been authorizedly made, whatever be its extent.

Exception.

than the minima so fixed; or which may be so made under the authority of the Commissioner of Survey given either generally or in any particular instance, in this behalf; and any survey number separately recognized in the survey records shall be deemed to have been authorizedly made, whatever be its extent.

99. Recognized shares of survey numbers shall be subject to the same provisions of this Act as are applicable to entire survey numbers, except:

Recognized shares of survey numbers.

(a) that it shall not be obligatory to demarcate such shares separately, and

(b) that if any such share is relinquished by the occupant absolutely under the provisions of section 74, the occupancy thereof shall be offered to the occupants of the other shares of the same survey number in order of their relative largeness of the amounts payable by them respectively on account of the assessment of their said shares, and that in the event of their all refusing the occupancy of the said share, the assessment thereon shall, until such time as the entire number is relinquished by them, be levied from them in proportion to the amounts of assessment payable by them as aforesaid.

100. Subject to rules or orders made in this behalf, under section 214, the officer in charge of a survey shall have authority to fix the assessment for land revenue at his discretion on all lands within the local operation of an order made under section 95 not wholly exempt from land revenue, and the amounts due according to such assessment shall, subject to the provisions of section 102, be levied on all such lands.

Officer in charge of a survey to fix assessments.

of a survey shall have authority to fix the assessment for land revenue at his discretion on all lands within the local operation of an order made under section 95 not wholly exempt from land revenue, and the amounts due according to such assessment shall, subject to the provisions of section 102, be levied on all such lands.

In fixing such assessment, regard shall be had to the requirements of the Proviso to section 52;

Regard to be had to Proviso to section 52.

52;

But nothing in this section shall be deemed to prevent the survey officer aforesaid from determining and registering the proper full assessment on lands wholly exempt from payment of land revenue or on lands especially excepted under section 95 from the survey settlement, or from dividing all such lands to which the survey extends into survey numbers.

101. The power to assess under the preceding section shall, in the case of lands used for purposes of agriculture alone, include power to assess, whether directly on the land, or in the form of a rate or cess upon the means of irrigation in respect of which no rate is leviable under section 55 or in any other manner whatsoever that may be sanctioned by Government.

102. The assessment fixed by the officer in charge of a survey shall not be levied without the sanction of Government. It shall be lawful for the Governor in Council to declare such assessments, with any modifications which he may deem necessary, fixed for a term of years not exceeding thirty in the case of lands used for the purposes of agriculture alone, and not exceeding ninety-nine in the case of all other lands.

103. When in the case of lands used for the purposes of agriculture alone, Government shall have sanctioned the assessments fixed by the officer in charge of the survey, it shall be the duty of the said officer or of the Collector, or Assistant or Deputy Collector publicly to announce, or to cause to be announced, the assessment fixed on each survey number.

The said officer, or the Collector, or Assistant or Deputy Collector shall, at a reasonable time beforehand, cause public notice to be given, in such manner as he shall deem fit, of the time at or about which the assessments will be announced as aforesaid.

If the holder or other person interested in any holding do not appear in person or by agent, he shall be subject, nevertheless, to the same liabilities as if he had attended.

When the assessments have been announced in the manner provided in the first clause of this section, the survey settlement shall be held to have been introduced.

104. In the year in the course of which a survey settlement, whether original or revised, may be introduced under the last preceding section, the difference between the old and new assessment of all lands on which the latter may be in excess of the former shall be remitted, and the revised assessment shall be levied only from the next following year.

In the year next following that in which any revised survey settlement has been introduced, any occupant who may be dissatisfied with the increased rate imposed by such new assessment on any of the survey numbers held by him, shall, on resigning such number in the manner prescribed by sections 74 and 76 on or before the 31st March, receive a remission of the increase so imposed.

105. The fixing of the assessment under the provisions of section 102 shall be strictly limited to the assessment of the ordinary land revenue, and shall not operate as a bar to the levy of any cess which it shall be lawful for the Governor in Council to impose under the provisions of any law for the time being in force for purposes of local improvement, such as schools, village and district roads, bridges, tanks, wells, accommodation for travellers, and the like, or of any rate for the use of water which may be imposed under the provisions of section 55.

106. It shall be lawful for the Governor in Council to direct, at any time, a fresh revenue survey or any operation subsidiary thereto, but no enhancement of assessment shall take effect till the expiration of the period previously fixed under the provisions of section 102. A revised assessment shall be fixed, not with reference to improvements made from private capital and resources during the currency of any settlement made under this Act or under Bombay Act I. of 1865, but with reference to general considerations of the value of land, whether as to soil or situation, prices of produce, or facilities of communication.

107. Nothing in the last preceding section shall be held to prevent Certain improvements may be considered in fixing a revised assessment.

(a) with reference to any improvement effected at the cost of Government, or

(b) with reference to the value of any natural advantage, when the improvement effected from private capital and resources consists only in having created the means of utilizing such advantage, or

(c) with reference to any improvement which is the result only of the ordinary operations of husbandry.

108. It shall be the duty of the survey officer, on the occasion of making or revising a settlement of land revenue to prepare a register, to be called "the Settlement Register," showing the area and assessment of each survey number, together with the name of the registered occupant, of such survey number and other records, in accordance with such orders as may from time to time be made on this behalf by Government.

109. The survey officer, or if the survey settlement have been introduced, under the provisions of section 103, by the Collector or Assistant or Deputy Collector, the Collector or Assistant or Deputy Collector shall at any time correct or cause to be corrected any clerical errors, and any errors which the parties interested admit to have been made in the Settlement Register;

he shall also receive and inquire into all applications made to him at any time within two years after the introduction of the survey settlement for the correction of any wrong entry of a registered occupant's name in the said register, and if satisfied that an error has been made, whether through fraud, collusion, oversight, or otherwise, shall correct or cause the same to be corrected, notwithstanding that all the parties interested do not admit the error; but he shall not receive any such application at any time after two years from the date of the introduction of the survey settlement, unless good cause be shown to his satisfaction for the delay in making such application, and no such correction of the said register shall be made in consequence of any application made after the said period of two years, except with the previous sanction of Government.

110. The Collector shall keep the Settlement Register, and such other records prepared by the survey officer as Government shall direct, and shall cause the village records and accounts to be prepared in accordance therewith;

he shall not make any alterations or corrections in the Settlement Register, but shall cause to be registered in the village records and accounts all changes that may take place, and anything that may affect any of the rights or interests therein recorded.

111. In the event of any alienated village or estate, coming under the temporary management of Government officers, it shall be lawful for the Collector to let out the lands thereof, at rates determined by means of a survey settlement or at such other fixed rates as he may deem to be reasonable, and to sell the occupancy of unoccupied lands by auction, and otherwise to conduct the revenue management thereof under the rules for the management of unalienated lands, so far as such rules may be applicable, and for so long as the said village or estate shall be under the management of Government officers: provided, however, that any written agreements relating to the land, made by the superior holder of such village or estate, shall not be affected by any proceedings under this section in so far as they shall not operate to the detriment of the lawful claims of Government on the land.

112. Existing survey settlements of land-revenue, made, approved, and confirmed under the authority of the Governor in Council shall be, and are hereby declared to be in force, subject to the provisions of this Act.

Partition.

113. The following rules shall be enforced at the partition of any estate paying land revenue to Government (namely):

- (1) the estate shall be divided as far as possible according to survey numbers without sub-dividing any number; but if the partition cannot be completely effected without sub-dividing a number, such sub-division may be made by the Collector, subject to the provisions of section 98;
- (2) any number, or subdivision of a number, which may remain over after the partition has been carried out, as far as possible, according to the last rule, and which is incapable of subdivision or of further subdivision owing to the provisions of section 98, shall be made over to one of the sharers in consideration of his paying to the other sharers the value in money of their shares in the same, or shall be sold and the proceeds divided amongst all the sharers, or otherwise disposed of, as the Collector thinks fit;
- (3) the expenses necessarily and properly incurred in making such partition shall be recoverable as a revenue demand in such proportions as the Collector thinks fit from the sharers at whose request it is made, or from the persons interested in such partition.

114. Whenever any one or more co-sharers in a khoti estate, into which a revenue survey has been introduced, or in a talukdári estate, consent to a partition of the said estate, it shall be lawful for the Collector, or for any other officer duly empowered by him in this behalf, subject to the rules contained in the last preceding section, to divide the said estate into shares according to the respective rights of the co-sharers, and to allot such shares to the co-sharers:

Provided that no such partition shall be made, unless:

- (a) All the co-sharers are agreed as to the extent of their respective rights in estate, and
- (b) the assessment of the share or shares of the sharer or sharers consenting to such partition exceeds one-half of the assessment of the entire estate.

In such cases the expenses of partition shall be recovered under Rule (3) of the last preceding section from all the co-sharers in the estate divided.

115. At the time of a revision of survey it shall be in the discretion of the officer in charge of the survey, subject to

Survey Officer or Collector or Assistant Collector to correct clerical and admitted errors in the Settlement Register.

and inquire into and pass orders on certain applications for mutation of names.

Rules for partition of an estate paying revenue to Government.

Partition of certain estates by the Collector on application by co-sharers.

Sub-division of numbers at time of revision of survey.

the provisions of section 98, and to any departmental rules or orders in this behalf at the time in force, to sub-divide any survey number into two or more distinct numbers, and to enter the names and liabilities of the persons whom he shall deem entitled to be recognized as registered occupants of such sub-divisions in the Settlement Register separately.

116. When any portion of cultivable land is appropriated under the provisions of section 65 or 67 for any non-agricultural purpose, the portion so appropriated may, with the sanction of the Collector, be demarcated, and made into a separate number at any time, notwithstanding the provisions of section 98.

117. Nothing in section 113, 115, or 116 shall affect the provisions of Bombay Act V. of 1862 not affected.

CHAPTER IX.

THE SETTLEMENT OF BOUNDARIES AND THE CONSTRUCTION AND MAINTENANCE OF BOUNDARY-MARKS.

118. The boundaries of villages situated in British territory shall be fixed, and all disputes relating thereto shall be determined by survey officers, or by such other officers as may be nominated by Government for the purpose, who shall be guided by the following rules:—

Rule 1.—When the patels and other village officers of any two, or more adjoining villages, and in the case of an alienated village, the holder thereof or his duly constituted agent, shall voluntarily agree to any given line of boundary as the boundary common to their respective villages, the officer determining the boundary shall require the said parties to execute an agreement to that effect, and shall then mark off the boundary in the manner agreed upon. And any village boundary fixed in this manner shall be held to be finally settled, unless it shall appear to the said officer that the agreement has been obtained by fraud, intimidation, or any other illegal means.

Rule 2.—If the patels and other village officers, and, in the case of an alienated village, the holder thereof or his duly constituted agent, do not agree to fix the boundaries of their respective villages, in the manner prescribed in the preceding rule, or if it shall appear to the said officer that the agreement has been obtained by fraud, intimidation, or any other illegal means, or if there be any pending dispute, the said officer shall make a survey and plan of the ground in dispute, exhibiting the land claimed by the contending parties, and all particulars relating thereto, and shall hold a formal inquiry into the claims of the said parties, and thereafter make an award in the case. If either of the villages concerned be alienated, an award made by a survey officer shall, unless the officer making it be the Superintendent of Survey, be

subject to his confirmation, and an award made by any other officer shall be subject to confirmation by such other officer as Government may nominate for the purpose.

119. If, at the time of a survey, the boundary of a field or holding be undisputed, and its correctness be affirmed by the village officers then present, it may be laid down as pointed out by the holder or person in occupation, and if disputed, or if the said holder or person in occupation be not present, it shall be fixed by the survey officer according to the village records, and according to occupation as ascertained from the village officers and the holders of adjoining lands, or on such other evidence or information as the survey officer may be able to procure.

If any dispute arise concerning the boundary of a field or holding which has not been surveyed, or if at any time after the survey records have been handed over to the Collector, a dispute arise concerning the boundary of any survey number, it shall be determined by the Collector, who shall be guided in the case of survey numbers by the survey records, if they afford satisfactory evidence of the boundary previously fixed, and if not, by such other evidence as he may be able to procure.

120. If the several parties concerned in a boundary dispute agree to submit the settlement thereof to an arbitration committee, and make application to that effect in writing, the officer whose duty it would otherwise be to determine the boundary shall require the said parties to nominate a committee of not less than three persons, within a specified time, and if within a period to be fixed by the said officer the committee so nominated or a majority of the members thereof arrive at a decision, such decision, when confirmed by the said officer, or if the said officer be a survey officer lower in rank than a Superintendent of Survey, by the Superintendent of Survey, shall be final:

Provided that the said officer, or the Superintendent of Survey, shall have power to remit the award, or any of the matters referred to arbitration, to the reconsideration of the same committee, for any of the causes set forth in section 520 of the Code of Civil Procedure.

If the committee appointed in the manner aforesaid fail to effect a settlement of the dispute within the time specified, it shall be the duty of the officer aforesaid, unless he or, if the said officer is a survey officer lower in rank than a Superintendent of Survey, the Superintendent of Survey, see fit to extend the time, to settle the same as otherwise provided in this Act.

121. The settlement of a boundary under any of the foregoing provisions of this chapter shall be determinative:

(a) of the proper position of the boundary-line or boundary-marks, and

(b) of the rights of the landholders on either side of the boundary fixed in respect of the land adjudged to appertain, or not to appertain, to their respective holdings.

Boundary-marks.

122. It shall be lawful for any survey officer, authorized by a Superintendent of Survey, or Settlement Officer, to cause to be constructed or repaired boundary-marks of villages or survey numbers, whether cultivated or uncultivated, and to assess all charges* incurred thereby on the holders or others having an interest therein.

Such officer may require landholders to construct or repair their boundary-marks, by a notification which shall be posted in the chauri or other public place in the village, to which the lands under survey belong, directing the holders of survey numbers to construct or repair, within a specified time, the boundary-marks of their respective survey numbers, and on their failure to comply with the requisition so made, the survey officer shall then construct or repair them, and assess all charges incurred thereby as hereinbefore provided.

A general notification, issued in the manner aforesaid, shall be held to be good and sufficient notice to each and every person having any interest in any survey numbers within the limits of the lands to which the survey extends.

The size, material, and description of boundary-marks shall be such as may be deemed necessary by the Superintendent of Survey, according to the requirements of soil and climate.

123. Every landholder shall be responsible for the maintenance and good repair of the boundary-marks of his holding, and for any charges reasonably incurred on account of the same by the revenue officers in cases of alteration, removal, or disrepair. It shall be the duty of the village officers and servants to prevent the destruction or unauthorized alteration of the village boundary-marks.

124. When the survey settlement shall have been introduced into a district, the charge of the boundary-marks shall devolve on the Collector, and it shall be his duty to take measures for their maintenance and repair, and for this purpose the powers conferred on survey officers by section 122 shall vest in him.

125. Any person convicted, after a summary inquiry before the Collector, or before a survey officer, Mámíatdár, or Mahálkari, of wilfully erasing, removing or injuring a boundary-mark, shall be liable to a fine not exceeding fifty rupees for each mark so erased, removed, or injured.

One-half of every fine imposed under this section may be awarded by the officer imposing it to the informer, if any, and the other half shall be chargeable with the cost of restoring the mark.

CHAPTER X.

OF LANDS WITHIN THE SITES OF VILLAGES, TOWNS, AND CITIES.

Fixing of Sites.

126. It shall be lawful for the Collector, or for a survey officer, acting under the general or special orders of Government, to determine what lands are included within the site of any village, town, or city, and to fix, and from time to time to vary the limits of the same, respect being had to all subsisting rights of landholders.

Exemption from Land Revenue.

127. Act XI. of 1852 and Bombay Acts II. and VII. of 1863, shall be deemed to be applicable, and to have always been applicable, in the territories to which they respectively extend, to all lands within the limits of the site of any town or city in which an inquiry into titles has been made under the provisions of Bombay Act IV. of 1868, which have been hitherto ordinarily used for agricultural purposes only; but the provisions of the said Act shall not be deemed applicable to any other lands within the limits of the site of any such town or city.

128. The existing exemption from payment of land revenue of lands other than lands which have hitherto been ordinarily used for purposes of agriculture only, situate within the sites of towns and cities in which an inquiry into titles has been made under the provisions of Bombay Act IV. of 1868, shall be continued:

1st.—If such lands are situated in any town or city where there has been in former years a survey, which Government recognize for the purpose of this section, and are shown in the maps or other records of such survey as being held wholly or partially exempt from the payment of land revenue.

2nd.—If such lands have been held wholly or partially exempt from the payment of land revenue for a period of not less than five years before the application of Bombay Act I. of 1865, or IV. of 1868 to such town or city;

* 3rd.—If such lands, for whatever period held, have been held wholly or partially exempt from payment of land revenue under a deed of grant or of confirmation issued by an officer whom Government recognize as having been competent to issue such deed.

129. Claims to exemption under the last preceding section shall be determined by the Collector after a summary inquiry, and his decision shall be final.

130. In towns and cities to which section 128 applies, the holders of any lands other than lands which have hitherto been used for purposes of agriculture only, which have been unauthorisedly occupied for a period commencing less than two years before Bombay Act I. of 1865 or IV. of 1868 was applied to the town or city in which the said lands are situate, shall be liable to pay the price of the occupancy of the said lands in addition to the land revenue assessed thereupon. The said occupancy price shall be determined according to the provisions of section 62.

Miscellaneous.

131. If the Governor in Council shall at any time deem it expedient to direct a survey of the lands other than those used ordinarily for the purposes of agriculture only within the site of any village, town, or city, under the provisions of section 95, or a fresh survey thereof under the provisions of section 106, such survey shall be conducted, and all its operations shall be regulated, according to the provisions of Chapters VIII. and IX of this Act :
 Provided that nothing contained in sections 96, 97, 101, 103, 104, or 118 thereof shall be considered applicable to any such survey in any town or city containing more than two thousand inhabitants.

132. When a survey is extended under the provisions of the last preceding section to the site of any town or city containing more than two thousand inhabitants, each holder of a building-site shall be liable to the payment of a survey-fee to be assessed by the Collector under such rules as may be prescribed in this behalf from time to time by Government, provided that the said fee shall in no case exceed rupees five for each survey number. The said survey-fee shall be payable within six months from the date of a public notice to be given in this behalf by the Collector after the completion of the survey of the site of the town or city, or of such part thereof as the notice shall refer to.

In any town or city in which Bombay Act IV. of 1868 was in force before the passing of this Act, a similar public notice shall be issued by the Collector within six months after the passing of this Act, provided that in any such town or city no survey-fee shall be leviable when a fee has already been paid by a landholder for a sanad obtained by him under section 10 of the said Act.

133. Every holder of a building-site as aforesaid shall be entitled, after payment of the said survey-fee, to receive from the Collector without extra charge one or

more sanads, in the form of Schedule H, specifying by plan and description the extent and conditions of his holding :

Provided that if such holder do not apply for such sanad or sanads at the time of payment of the survey-fee or thereafter within six months from the date of the public notice issued by the Collector under the last preceding section, the Collector may require him to pay an additional fee not exceeding one rupee for each sanad.

Every such sanad shall be executed on behalf of the Secretary of State for India in Council by such officer as may from time to time be lawfully empowered to execute the same.

134. If any land within the site of any village, town, or city, hitherto ordinarily used for agricultural purposes only, with respect to which a summary settlement has been made between Government and the holder under the provisions of any law for the time being in force, be appropriated to any other purposes, it shall be liable to payment of one-eighth of the rate fixed for unalienated land used for similar purposes in the same locality, in addition to the quit-rent payable under the terms of such summary settlement.

135. Any suit instituted in a Civil Court to set aside any order passed by the Collector under section 37 or 129, in respect of any land situate within the site of a village, town, or city, shall be dismissed, although limitation has not been set up as a defence, if it has not been instituted within one year from the date of the order.

CHAPTER XI.

OF THE REALIZATION OF THE LAND REVENUE AND OTHER REVENUE DEMANDS.

Responsibility for Land Revenue.

136. The registered occupant shall be primarily responsible to Government for the land revenue of unalienated land, and the superior holder shall be primarily responsible to Government for the land revenue of alienated land.

On failure of the person primarily responsible to Government for the land revenue to pay the same according to the rules legally prescribed in that behalf, it may be recovered from the co-occupant of unalienated land or the co-sharer of alienated land, or in either case from the inferior holder or person in actual occupation of the land.

When land revenue is recovered from any such co-occupant, co-sharer, inferior holder, or other person, he shall be allowed credit for all payments which he may have made to the registered occupant, or inferior holder, or to his landlord, at or after the prescribed or usual times of such pay-

ments, and he shall be entitled to credit in account with the registered occupant or superior holder or with his landlord for the amount recovered from him.

Priority of Government Claim for Land Revenue.

137. The claim of Government to any moneys recoverable under the provisions of this chapter shall have precedence over any other debt, demand, or claim whatsoever, whether in respect of mortgage, judgment-decree, execution, or attachment, or otherwise howsoever, against any land or the holder thereof.

138. In all cases the land revenue for the current year of land used for agricultural purposes, if not otherwise discharged, shall be recoverable, in preference to all other claims, from the crop of the land subject to the same.

Land Revenue when leviable.

139. The land revenue shall be leviable on or at any time after the first day of the revenue year for which it is due, but, except when precautionary measures are deemed necessary under the provisions of sections 140 to 144, payment will be required only on the dates to be fixed under the provisions hereinafter contained.

Precautionary Measures for the Security of the Land Revenue.

140. When the crop of any land or any portion of the same is sold, mortgaged, or otherwise disposed of, whether by order of a Civil Court or other public authority, or by private agreement, the Collector may prevent its being removed from the land until the current year's revenue of the said land has been paid, whether the date fixed for the payment of the same, under the provisions hereinafter contained, has yet arrived or not. But in no case shall a crop, or any portion of the same, which has been sold, mortgaged, or otherwise disposed of, be detained on account of more than one year's revenue.

141. It shall be lawful for the Collector, in order to secure the payment of the land revenue by enforcement of the lien of Government on the crop—

(a) to require that the crop growing on any land liable to the payment of land revenue shall not be reaped until a notice in writing has first been given to himself or to some other officer to be named by him, in this behalf, and such notice has been returned endorsed with an acknowledgment of its receipt;

(b) to direct that no such crop shall be removed from the land on which it has been

reaped, or from any place in which it may have been deposited, without the written permission of himself or of some other officer as aforesaid;

(c) to cause watchmen to be placed over any place watchmen over it. such crop to prevent the unlawful reaping or removal of the same, and to realize the amount required for the remuneration of the said watchmen, at such rate not exceeding the rate of pay received by the peons on his establishment as he may deem fit, as an arrear of land revenue due in respect of the land to which such crop belongs.

142. The Collector's orders under either clause (a) or clause (b) of the last preceding section may be issued generally to all the holders of land paying revenue to Government in a village, or to individual holders merely.

If the order be general, it shall be made known by public proclamation to be made by beat of drum in the village and by affixing a copy of the order in the chauri or some other public building in the village. If it be to individual holders, a notice thereof shall be served on each holder concerned.

Any person who shall disobey any such order after the same has been so proclaimed, or a notice thereof has been served upon him, or who shall, within the meaning of the Indian Penal Code, abet the disobedience of any such order, shall be liable, on conviction after a summary inquiry by the Collector, to a fine not exceeding double the amount of the land revenue due on the land to which the crop belongs in respect of which the offence is committed.

143. The Collector shall not defer the reaping of the crop, nor prolong its deposit unduly so as to damage the produce; and if within two months after the crop has been deposited the revenue due has not been discharged, he shall either release the crop and proceed to realize the revenue in any other manner authorized by this chapter or take such portion thereof as he may deem fit, for sale under the provisions of this chapter applicable to sales of moveable property in realization of the revenue due and of all legal costs, and release the rest.

144. If, owing to disputes amongst the sharers, or for other cause, the Collector shall deem that there is reason to apprehend that the land revenue payable in respect of any holding consisting of an entire village or of a share of a village will not be paid as it falls due, he may cause the village or share of a village to be attached and taken under the management of himself or any agent whom he appoints for that purpose.

The provisions of section 160 shall apply to any village or share of a village so attached, and all surplus profits of the land attached, beyond the cost of such attach-

ment and management, including the payments of the land revenue and the cost of the introduction of a revenue survey, if the same be introduced under the provisions of section 111, shall be kept in deposit for the eventual benefit of the person or persons entitled to the same, or paid to the said person or persons from time to time as the Collector, subject to the orders of the Commissioner, may direct.

415. The precautionary measures authorized by the last five sections shall be relinquished if the person primarily responsible for the payment of revenue or any person who would be responsible for the same if default were made by the person primarily responsible, shall pay the costs, if any, lawfully incurred by the Collector up to the time of such relinquishment, and shall furnish security satisfactory to the Collector for the payment of the revenue, at the time at which, or in the instalments, if any, in which it is payable under the provisions hereinafter contained.

Regulation of Payment of Land Revenue.

146. Land revenue, except when it is recovered under the provisions of the foregoing sections 140 to 144, shall be payable at such times, in such instalments, to such persons and at such places as may from time to time be determined by the orders of Government.

Defaulters.

147. Any sum not so paid becomes thereupon an arrear of land revenue, and the persons responsible for it, whether under the provisions of section 136 or of any other section, become defaulters.

148. If any instalment of land revenue be not fully paid within the prescribed time, it shall be lawful for the Collector to proceed to levy at once the entire balance of land revenue due by the defaulter for the current year, in addition to such charge as a penalty, or by way of interest, as may be authorized according to a scale to be fixed from time to time, under the orders of the Governor in Council.

149. A statement of account, certified by the Collector or by an Assistant or Deputy Collector, shall, for the purposes of this chapter, be conclusive evidence of the existence of the arrear of the amount of land revenue due, and of the person who is the defaulter.

On receipt of such certified statement it shall be lawful for the Collector of one district to proceed to recover the demands of the Collector of any other district under the provisions of this chapter as if the demand arose in his own district. A similar statement of account certified by the Collector of Bombay may be proceeded upon as if certified by the Collector of a district under this Act.

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Recovery of Arrears.

150. An arrear of land revenue may be recovered by the following processes:—

- (a) by serving a written notice of demand on the defaulter under section 152;
- (b) by forfeiture of the occupancy or alienated holding in respect of which the arrear is due under section 153;
- (c) by distraint and sale of the defaulter's moveable property under section 154;
- (d) by sale of the defaulter's immovable property under section 155;
- (e) by arrest and imprisonment of the defaulter under sections 157 and 158;
- (f) in the case of alienated holdings consisting of entire villages, or shares of villages, by attachment of the said villages, or shares of villages, under sections 159 to 163;

151. The said processes may be employed for the recovery of arrears of former years as well as of the current year, but the preferences given by sections 137 and 138 shall apply only to demands for the current year:

Provided that any process commenced in the current year shall be entitled to the said preferences, notwithstanding that it may not be fully executed within that year.

Notice of Demand.

152. A notice of demand may be issued on or after the day following that on which the arrear accrues.

The Commissioner may from time to time frame rules for the issue of such notices, and with the sanction of the Governor in Council shall fix the costs recoverable from the defaulter as an arrear of revenue, and direct by what officer such notices shall be issued.

Forfeiture of occupancy or alienated holding.

153. The Collector may declare the occupancy or alienated holding in respect of which an arrear of land revenue is due, to be forfeited to Government, and sell or otherwise dispose of the same under the provisions of sections 56 and 57, and credit the proceeds, if any, to the defaulter's accounts.

Sale of Defaulter's Property.

154. The Collector may also cause the defaulter's moveable property to be distrained and sold.

Such distraints shall be made by such officers or class of officers as the Commissioner under the orders of Government may from time to time direct.

155. The Collector may also cause the right, title, and interest of the defaulter in any immovable property other than the land on which the arrear is due to be sold.

156. All such property as is by the Civil Procedure Code exempted from attachment or sale in execution of a decree, shall also be exempt from distraint or sale, under either of the last two preceding sections.

The Collector's decision as to what property is so entitled to exemption, shall be conclusive.

Arrest and Imprisonment.

157. At any time after an arrear becomes due, the defaulter may be arrested and detained in custody for ten days in the office of the Collector or of a Mámlatdár or Mahálkari, unless the revenue due, together with the penalty or interest and the costs of arrest and of notice of demand, if any, have issued, and the cost of his subsistence during detention, is sooner paid.

If, on the expiry of ten days, the amount due by the defaulter is not paid, then, or if the Collector deem fit on any earlier day, he may be sent by the Collector with a warrant, in the form of Schedule C, for imprisonment in the civil jail of the district :

Provided that no defaulter shall be detained in imprisonment for a longer period than the time limited by law in the case of the execution of a decree of a civil court for a debt equal in amount to the arrear of revenue due by such defaulter.

158. The Commissioner may, with the sanction of the Governor in Council, from time to time, declare by what officers, or class of officers, the powers of arrest conferred by section 157 may be exercised, and also fix the costs of arrest and the amount of subsistence-money to be paid by Government to any defaulter under detention or imprisonment.

Attachment of Villages.

159. If the holding, in respect of which an arrear is due, consists of an entire village or of a share of a village, and the adoption of any of the other processes before specified is deemed inexpedient, the Collector may, with the previous sanction of the Commissioner, cause such village or share of a village to be attached, and taken under the management of himself or any agent whom he appoints for that purpose.

160. The lands of any village or share of a village so attached shall revert to Government unaffected by the acts of the superior holder or of any of the sharers, or by any charges or liabilities subsisting against such lands, or against such superior holder or sharers as interested therein, so far as the public revenue is concerned, but without prejudice in other respects to the rights of individuals ;

and the Collector or the agent so appointed shall be entitled to manage the lands attached, and to receive all rents and profits accruing therefrom to the exclusion of the superior holder or any of the sharers thereof, until the Collector restores the said superior holder to the management thereof.

161. All surplus profits of the lands attached, beyond the cost of such attachment and management, including the payment of the current revenue and the cost of the introduction of a revenue survey, if the same be introduced under the provisions of section 111 of this Act, shall be applied in defraying the said arrear.

162. The village or share of a village so attached shall be released from attachment, and the management thereof shall be restored to the superior holder on the said superior holder's making an application to the Collector for that purpose at any time within twelve years from the 1st of August next after the attachment :

if at the time that such application is made it shall appear that the arrear has been liquidated ;

or if the said superior holder shall be willing to pay the balance, if any, still due by him, and shall do so within such period as the Collector may prescribe in that behalf.

The Collector shall make over to the superior holder the surplus receipts, if any, which have accrued in the year in which his application for restoration of the village or share of a village is made after defraying all arrears and costs ; but such surplus receipts, if any, of previous years shall be at the disposal of Government.

163. If no application be made for the restoration of a village or portion of a village so attached within the said period of twelve years, or if, after such application has been made, the superior holder shall fail to pay the balance, if any, still due by him within the period prescribed by the Collector in this behalf, the said village or portion of a village shall thenceforward vest in Government free from all incumbrances created by the superior holder or any of the sharers or any of his or their predecessors in title, or in any wise subsisting as against such superior holder or any of the sharers, but without prejudice to the rights of the actual occupants of the soil.

Stay of Proceedings.

164. Any defaulter detained in custody, or imprisoned, shall forthwith be set at liberty, and the execution of any process shall, at any time, be stayed, on the defaulter's giving before the Collector or other person nominated by him for the purpose, or if the defaulter is in jail, before the officer in charge of such jail, security in the form of Schedule D,

satisfactory to the Collector, or to such other person or officer.

And any person against whom proceedings are taken under this chapter Or on the amount demanded being paid under protest. may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed.

Procedure in respect of Sales.

165. When any sale of either moveable or immovable property is Procedure in effecting sales. ordered under the provisions of this chapter, the

Collector shall issue a proclamation, in the vernacular language of the district, of the intended sale, specifying the time and place of sale, and in the case of moveable property, whether the sale is subject to confirmation or not, and, when land paying revenue to Government is to be sold, the revenue assessed upon it, together with any other particulars he may think necessary.

Such proclamation shall be made by beat of Proclamation of sales. drum at the headquarters of the *táluka*, and in the village in which the immovable property is situate, if the sale be of immovable property; if the sale be of moveable property the proclamation shall be made in the village in which such property was seized, and in such other places as the Collector may direct.

166. A written notice of the intended sale of immovable property, and of the time and place thereof, shall be affixed in each of the following places, viz., the office of the Collector of the district, the office of the *Mamlátdár* or *Mahálkari* of the *táluka* or *máhal* in which the immovable property is situate, the *chávdi* or some other public building in the village in which it is situate, and the defaulter's dwelling-place.

In the case of moveable property, the written notice shall be affixed in the *Mámlatdár's* or *Mahálkari's* office, and in the *chávdi* or some other public building in the village in which such property was seized.

The Collector may also cause notice of any sale, whether of moveable or immovable property, to be published in any other manner that he may deem fit.

167. Sales shall be made by auction by such Sale by whom to be made. persons as the Collector may direct.

No such sale shall take place on a Sunday or other general holiday recognized by Government Time when sale may be made. nor until after the expiration of at least thirty days in the case of immovable property, or seven days in the case of moveable property, from the latest date on which any of the said notices shall have been affixed as required by the last preceding section.

The sale may from time Postponement of sale. to time be postponed for any sufficient reason.

168. Nothing in the last three sections applies to the sale of perishable articles. Such articles shall be sold by

sale with the least possible delay, in accordance with such orders as may from time to time be made by the Collector either generally or specially in that behalf.

169. If the defaulter, or any person on his behalf, pay the arrear in respect of which the property is to be sold and all other charges legally due by him at any time before the day fixed for the sale, to the person appointed under section 146 to receive payment of the land-revenue due, or to the officer appointed to conduct the sale, or if he furnish security under section 164, the sale shall be stayed.

170. Sales of perishable articles shall be at once finally concluded by the officer conducting such sales. All other sales of moveable property shall be finally concluded by the officer conducting such sales, or shall be subject to confirmation, as may be directed in orders to be made by the Collector either generally or specially in that behalf. In the case of sales made subject to confirmation the Collector shall direct by whom such sales may be confirmed.

171. When the sale is finally concluded by the officer conducting the same, the price of every lot shall be paid for at the time of sale, or as soon after as the said officer shall direct, and in default of such payment the property shall forthwith be again put up and sold. On payment of the purchase-money the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute as against all persons whomsoever.

172. When the sale is subject to confirmation, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold. The full amount of purchase-money shall be paid by the purchaser before sunset of the day after he is informed of the sale having been confirmed, or, if the said day be a Sunday or other authorized holiday, then before sunset of the first office day after such day. On payment of such full amount of the purchase-money the purchaser shall be granted a receipt for the same, and the sale shall become absolute as against all persons whomsoever.

173. In all cases of sale of immovable property, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold.

174. The full amount of purchase-money shall be paid by the purchaser before sunset of the fifteenth day from that on which the sale of the immovable property took place, or, if the said fifteenth day be a Sunday or

other authorized holiday, then before sunset of the first office day after such fifteenth day.

175. In default of payment within the prescribed period of the full amount of purchase-

Effect of default: money, whether of moveable or immoveable property, the deposit, after defraying thereout the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

176. If the proceeds of the sale, which is eventually made, be less than the price bid by such defaulting purchaser, the difference shall be recoverable from him by the Collector as an arrear of land revenue.

Liability of purchaser for loss by re-sale. 177. Every re-sale of property in default of payment of the purchase-money, or after postponement of the first sale, shall, except when such re-sale takes place forthwith, be made after the issue of a fresh notice in the manner prescribed for original sales.

Application to set aside sale. 178. At any time within thirty days from the date of the sale of immoveable property, application may be made to the Collector to set aside the sale on the ground of some material irregularity, or mistake, or fraud, in publishing or conducting it;

but except as is otherwise provided in the next following section, no sale shall be set aside on the ground of any such irregularity, or mistake, unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof.

If the application be allowed, the Collector shall set aside the sale, and direct a fresh one.

Order confirming or setting aside sale. 179. On the expiration of thirty days from the date of the sale, if no such application as is mentioned in the last preceding section has been made, or if such application has been made and rejected, the Collector shall make an order confirming the sale: provided that, if he shall have reason to think that the sale ought to be set aside notwithstanding that no such application has been made, or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.

Refund of deposit or purchase-money when sale set aside. 180. Whenever the sale of any property is not confirmed, or is set aside, the purchaser shall be entitled to receive back his deposit or his purchase-money, as the case may be.

On confirmation of sale, purchaser to be put in possession. Certificate of purchase. 181. After a sale of any occupancy or alienated holding has been confirmed in manner aforesaid, the Collector shall put the person declared to be the purchaser into possession of the land included in such occupancy or alienated holding, and shall cause his name to

be entered in the revenue records as occupant or holder in lieu of that of the defaulter, and shall grant him a certificate to the effect that he has purchased the occupancy or alienated holding to which the certificate refers.

182. The certificate shall state the name of the person declared at the time of sale to be the actual purchaser; and any suit brought in a civil court against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed.

Application of proceeds of sale. 183. When any sale of moveable property under this chapter has become absolute, and when any sale of immoveable property has been confirmed, the proceeds of the sale shall be applied to defraying the expenses of the sale and to the payment of any arrears due by the defaulter at the date of the confirmation of such sale, and recoverable as an arrear of land revenue,

and the surplus (if any) shall be paid to the person whose property has been sold.

The expenses of the sale shall be estimated at such rates and according to such rules as may from time to time be sanctioned by the Commissioner under the orders of Government.

Surplus not to be paid to creditors, except under order of Court. 184. The said surplus shall not, except under an order of a Civil Court, be payable to any creditor of the person whose property has been sold.

Liability of purchaser for revenue. 185. The person named in the certificate of title as purchaser of any land shall be liable for all instalments of land revenue becoming due in respect of such land subsequently to the date of the sale.

Claims to attached moveable property how to be disposed of. 186. If any claim shall be set up by a third person to moveable property attached under the provisions of this chapter, the Collector shall admit or reject his claim on a summary inquiry held after reasonable notice. If the claim be admitted wholly or partly, the property shall be dealt with accordingly. Except, in so far as it is admitted, the property shall be sold and the title of the purchaser shall be good for all purposes, and the proceeds shall be disposable as herebefore directed.

Application of the Provisions of this Chapter.

What moneys leviable under the provisions of this Chapter. 187. All sums due on account of land revenue, all quit-rents, nazaranas, succession duties, transfer duties and forfeitures, and all cesses, profits from land, emoluments, fees, charges, penalties, fines, and costs payable or leviable under this Act or under any Act or Regulation hereby repealed, or under any Act for the time being in force relating to land revenue;

and all moneys due by any contractor for the farm of customs-duties, or of any other duty, or tax, or of any other item of revenue whatsoever, and all specific pecuniary penalties to which any such contractor renders himself liable under the terms of his agreement ;

and also all sums declared by this or by any other Act or Regulation at the time being in force to be leviabie as an assessment, or as a revenue demand, or as an arrear of land revenue ;

shall be levied under the foregoing provisions of this chapter.

And all persons who may have become sureties under any of the provisions of this Act or of any Act or Regulation hereby repealed, or for any such contractor as aforesaid for any sum of money shall, on failure to pay the amount or any portion thereof for which they may have become liable under the terms of their security-bond, be liable to be proceeded against under the provisions of this chapter as revenue-defaulters.

And in the event of the resumption of any such farm as is aforesaid, no person shall be entitled to credit for any payments which he may have made to the contractor in anticipation.

CHAPTER XII.

PROCEDURE OF REVENUE OFFICERS.

188. In all official acts and proceedings a revenue officer shall, in the absence of any express provision of law to the contrary, be subject as to the place, time, and manner of performing his duties to the direction and control of the officer to whom he is subordinate.

189. Every revenue officer not lower in rank than a Mámlatdár's first kárkun, or an Assistant Superintendent of Survey, in their respective departments, shall have power to summon any person whose attendance he considers necessary either to be examined as a party, or to give evidence as a witness, or to produce documents for the purposes of any inquiry which such officer is legally empowered to make. A summons to produce documents may be for the production of certain specified documents, or for the production of all documents of a certain description in the possession of the person summoned.

All persons so summoned shall be bound to attend, either in person or by an authorized agent, as such officer may direct: provided that exemptions under sections 640 and 641 of the Code of Civil Procedure shall be applicable to requisitions for attendance under this section ;

and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements,

and to produce such documents and other things as may be required.

190. Every summons shall be in writing, in duplicate, and shall state the purpose for which it is issued, and shall be signed by the officer issuing it, and if he have a seal shall also bear his seal ;

and shall be served by tendering or delivering a copy of it to the person summoned, or, if he cannot be found, by affixing a copy of it to some conspicuous part of his usual residence.

If his usual residence be in another district, the summons may be sent by post to the Collector of that district, who shall cause it to be served in accordance with the preceding clause of this section.

191. Every notice under this Act, unless it is otherwise expressly provided, shall be served either by tendering or delivering a copy thereof to the person on whom it is to be served or to his agent, if he have any ;

or by affixing a copy thereof to some conspicuous place on the land, if any, to which such notice refers.

No such notice shall be deemed void on account of any error in the name or designation of any person referred to therein, unless when such error has produced substantial injustice.

192. In any formal or summary inquiry if any party desires the attendance of witnesses, he shall follow the procedure prescribed by the Code of Civil Procedure, section 160.

Formal Inquiry.

193. In all formal inquiries the evidence shall be taken down in full, in writing, in the language in ordinary use in the district, by, or in the presence and hearing and under the personal superintendence and direction of the officer making the investigation or inquiry and shall be signed by him.

In cases in which the evidence is not taken down in full in writing by the officer making the inquiry, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness desposes; and such memorandum shall be written and signed by such officer with his own hand, and shall form part of the record.

If such officer is prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

When the evidence is given in English, such officer may take it down in that language with his own hand, and an authenticated translation of the same in the language in ordinary use in the district shall be made and shall form part of the record.

194. Every decision, after a formal inquiry, shall be written by the officer passing the same in his own hand-writing, and shall contain a full statement of the grounds on which it is passed.

Writing and explanation of decisions.

Summary Inquiry.

195. In summary inquiries the presiding officer shall himself, as any such inquiry proceeds, record a minute of the proceedings in his own hand in English or in the language of the district, embracing the material averments made by the parties interested, the material parts of the evidence, the decision, and the reasons for the same:

Provided that it shall at any time be lawful for such officer to conduct an inquiry directed by this Act to be summary under all, or any, of the rules applicable to a formal inquiry, if he deem fit.

196. A formal or summary inquiry under this Act shall be deemed to be a "judicial proceeding" within the meaning of sections 193, 219, and 228 of the Indian Penal Code, and the office of any authority holding a formal or summary inquiry shall be deemed a Civil Court for the purposes of such inquiry.

Formal and summary inquiries to be deemed judicial proceedings.

Every hearing and decision, whether in a formal or summary inquiry, shall be in public, and the parties or their authorized agents shall have due notice to attend.

Hearing and decisions. Notice to parties.

197. An inquiry which this Act does not require to be either formal or summary, or which any revenue officer may on any occasion deem to be necessary to make, in the execution of his lawful duties, shall be conducted according to such rules applicable thereto, whether general or special, as may have been prescribed by the Governor in Council, or an authority superior to the officer conducting such inquiry, and, except in so far as controlled by such rules, according to the discretion of the officer in such way as may seem best calculated for the ascertainment of all essential facts and the furtherance of the public good.

Ordinary inquiries how to be conducted.

198. In all cases in which a formal or summary inquiry is made, authenticated copies and translations of decisions, orders, and the reasons therefor, and of exhibits, shall be furnished to the parties, and original documents used as evidence shall be restored to the persons who produced them, or to persons claiming under them on due application being made for the same, subject to such charges for copying, &c., as may, from time to time, be authorized by Government.

Copies and translations, &c., how to be obtained.

199. Whenever it is provided by this Act that a defaulter, or any other person may be arrested, such arrest shall be made upon a warrant issued by any officer competent to direct such person's arrest.

Arrest of a defaulter to be made upon a warrant.

200. It shall be lawful for any revenue officer at any time, and at any time, to enter upon any lands or premises for purposes of measurement, &c. when necessary, for purposes of measuring, or in

boundaries, classification of soil, or assessing for any other purpose connected with the exercise of his office under the provisions of this Act, or of any other law for the time being in force relating to land revenue, any lands, whether belonging to Government or private individuals, and whether fully or partially or wholly exempt from the same: Provided always that no building used as a human dwelling shall be entered,

Proviso.

unless with the consent of the occupier thereof, without a notice having been served at the said building not less than seven days before such entry; and provided also that, in the cases of buildings of all descriptions, due regard shall be paid to the social and religious prejudices of the occupiers.

201. The Governor in Council may declare what shall, for the purposes of this Act, be deemed to be the language in ordinary use in any district.

The Governor in Council to determine the language of a district.

202. Whenever it is provided by this, or by any other Act for the time being in force, that the Collector may or shall evict any person wrongfully in possession of land, such eviction shall be made in the following manner, viz.:-

Collector how to proceed in order to evict any person wrongfully in possession of land.

by serving a notice on the person or persons in possession, requiring them within such time as may appear reasonable after receipt of the said notice to vacate the land, and,

if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and

if the officer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause, and that such resistance and obstruction still continue, may, without prejudice to any proceedings to which such person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, issue a warrant for the arrest of the said person, and on his appearance commit him to close custody in the office of the Collector or of any Mámlatdár or Mahálkari, or send him with a warrant, in the form of Schedule I, for imprisonment in the civil jail of the district for such period, not exceeding thirty days, as may be necessary to prevent the continuance of such obstruction or resistance.

CHAPTER XIII.

APPEALS AND REVISION.

203. In the absence of any express provision of this Act, or of any law for the time being in force to the contrary, an appeal shall lie from any order passed by a revenue officer to his superior.

Appeal to lie from any order passed by a revenue officer to his superior.

decision or order passed by a revenue officer under this Act, or any other law for the time being in force, to that officer's immediate superior, whether such decision or order may itself have been passed on appeal from a subordinate officer's decision or order or not.

204. An appeal shall lie to the Governor in Council from any decision or order passed by a Commissioner or by a Survey Commissioner, except in the case of any decision or order passed by such officer on appeal from a decision or order itself recorded in appeal by any officer subordinate to him.

Appeal when to lie to the Governor in Council.

205. No appeal shall be brought after the expiration of sixty days if the decision or order complained of have been passed by an officer inferior in rank to a Collector or a Superintendent of Survey in their respective departments; nor after the expiration of ninety days in any other case.

Periods within which appeals must be brought.

In computing the above periods, the time required to prepare a copy of the decision or order appealed against shall be excluded.

206. Any appeal under this chapter may be admitted after the period of limitation prescribed therefor, when the appellant satisfies the officer or the Governor in Council to whom he appeals, that he had sufficient cause for not presenting the appeal within such period.

Admission of appeal after period of limitation.

No appeal shall lie against an order passed under this section admitting an appeal.

207. Whenever the last day of any period provided in this chapter for the presentation of an appeals falls on a Sunday or other holiday recognized by Government, the day next following the close of the holiday shall be deemed to be such last day.

Provision where last day for appeals falls on a Sunday or holiday.

208. Every petition of appeal shall be accompanied by the decision or copy of order appealed against or by an authenticated copy of the same.

Copy of order to accompany petition of appeal.

209. The appellate authority may either annul, reverse, modify or confirm the decision or order of the subordinate officer appealed against, or he may direct the subordinate officer to make such further investigation or to take such additional evidence as he may think necessary, or he may himself take such additional evidence.

Powers of appellate authority.

210. In any case in which an appeal lies, the appellate authority may, pending decision of the appeal, direct the execution of the decision or order of the subordinate officer to be suspended.

Power to suspend execution of order of subordinate officer.

211. The Governor in Council and any revenue officer, not inferior in rank to a Collector or a Superintendent of Survey, in their respective departments, may call for and examine the records and proceedings of subordinate officers.

Power of the Governor in Council and of certain revenue officers to call for and examine the records and proceedings of subordinate officers.

of any inquiry or the proceedings of any subordinate revenue officer, for the purpose of satisfying himself as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

The following officers may in the same manner call for and examine the proceedings of any officer subordinate to them in any matter in which either a formal or a summary inquiry has been held, namely,—an Assistant or Deputy Collector, a Mámlatdár, a Mahálkari, and Assistant Superintendent of Survey, and an Assistant Settlement Officer.

If, in any case, it shall appear to the Governor in Council, or to such officer aforesaid, that any decision or order or proceedings so called for should be modified, annulled, or reversed, he may pass such order thereon as he deems fit.

212. Wherever in this Act it is declared that a decision or order shall be final, such expression shall be deemed to mean that no appeal lies from such decision or order.

Rules as to decisions or orders expressly made final.

The Governor in Council alone shall be competent to modify, annul, or reverse any such decision or order under the provisions of the last preceding section.

CHAPTER XIV.

MISCELLANEOUS.

213. Subject to such rules and the payment of such fees as the Governor in Council may from time to time prescribe in this behalf, all maps and survey records, and all village accounts and land registers shall be open to the inspection of the public at reasonable hours, and certified extracts from such maps, registers and accounts or certified copies thereof shall be given to all persons applying for the same.

Maps and land registers and village accounts, &c., open to inspection.

Extracts and copies shall be given.

214. The Governor in Council may from time to time make and from time to time vary or rescind rules or orders not inconsistent with this Act :

The Governor in Council to frame rules.

(a) determining the qualifications to be required of all members of establishments appointed under section 21 ;

(b) regulating the power of fining, reducing, suspending and dismissing revenue officers under section 32 ;

(c) prescribing the purposes to which land liable to the payment of land revenue may be appropriated under section 48 ;

(d) regulating the system, and manner of assessing land to the land revenue under sections 52 and 100 ;

(e) for the disposal of forfeited occupancies or alienated holdings under section 56 ;

(f) fixing the maximum amount of fine leviable under section 61 when land which has been unauthorizedly occupied is appropriated to any non-agricultural purpose ;

(g) for the administration of any survey settlement ;

194. Every decision, after a formal inquiry, shall be written by the officer passing the same in his own hand-writing, and shall contain a full statement of the grounds on which it is passed.

Writing and explanation of decisions.

Summary Inquiry.

195. In summary inquiries the presiding officer shall himself, as any such inquiry proceeds, record a minute of the proceedings in his own hand in English or in the language of the district, embracing the material averments made by the parties interested, the material parts of the evidence, the decision, and the reasons for the same :

Summary inquiries how to be conducted.

Provided that it shall at any time be lawful for such officer to conduct an inquiry directed by this Act to be summary under all, or any, of the rules applicable to a formal inquiry, if he deem fit.

196. A formal or summary inquiry under this Act shall be deemed to be a "judicial proceeding" within the meaning of sections 193, 219, and 228 of the Indian Penal Code, and the office of any authority holding a formal or summary inquiry shall be deemed a Civil Court for the purposes of such inquiry.

Formal and summary inquiries to be deemed judicial proceedings.

Every hearing and decision, whether in a formal or summary inquiry, shall be in public, and the parties or their authorized agents shall have due notice to attend.

Hearing and decisions. Notice to parties.

197. An inquiry which this Act does not require to be either formal or summary, or which any revenue officer may on any occasion deem to be necessary to make, in the execution of his lawful duties, shall be conducted according to such rules applicable thereto, whether general or special, as may have been prescribed by the Governor in Council, or an authority superior to the officer conducting such inquiry, and, except in so far as controlled by such rules, according to the discretion of the officer in such way as may seem best calculated for the ascertainment of all essential facts and the furtherance of the public good.

Ordinary inquiries how to be conducted.

198. In all cases in which a formal or summary inquiry is made, authenticated copies and translations of decisions, orders, and the reasons therefor, and of exhibits, shall be furnished to the parties, and original documents used as evidence shall be restored to the persons who produced them, or to persons claiming under them on due application being made for the same, subject to such charges for copying, &c., as may, from time to time, be authorized by Government.

Copies and translations, &c., how to be obtained.

199. Whenever it is provided by this Act that a defaulter, or any other person may be arrested, such arrest shall be made upon a warrant issued by any officer competent to direct such person's arrest.

Arrest of a defaulter to be made upon a warrant.

200. It shall be lawful for any revenue officer at any time, and from time to time, to enter, when necessary, for the purposes of measurement, fixing, or inspecting boundaries, classification of soil, or assessment, or for any other purpose connected with the lawful exercise of his office under the provisions of this Act, or of any other law for the time being in force relating to land revenue, any lands or premises, whether belonging to Government or to private individuals, and whether fully assessed to the land revenue or partially or wholly exempt from the same: Provided always that no building used as a human dwelling shall be entered,

Power of revenue officer to enter upon any lands or premises for purposes of measurement, &c.

unless with the consent of the occupier thereof, without a notice having been served at the said building not less than seven days before such entry; and provided also that, in the cases of buildings of all descriptions, due regard shall be paid to the social and religious prejudices of the occupiers.

Proviso.

201. The Governor in Council may declare what shall, for the purposes of this Act, be deemed to be the language in ordinary use in any district.

The Governor in Council to determine the language of a district.

202. Whenever it is provided by this, or by any other Act for the time being in force, that the Collector may or shall evict any person wrongfully in possession of land, such eviction shall be made in the following manner, viz. :-

Collector how to proceed in order to evict any person wrongfully in possession of land.

by serving a notice on the person or persons in possession, requiring them within such time as may appear reasonable after receipt of the said notice to vacate the land, and,

if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and

if the officer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause, and that such resistance and obstruction still continue, may, without prejudice to any proceedings to which such person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, issue a warrant for the arrest of the said person, and on his appearance commit him to close custody in the office of the Collector or of any Mámálatdár or Mabálkari, or send him with a warrant, in the form of Schedule I, for imprisonment in the civil jail of the district for such period, not exceeding thirty days, as may be necessary to prevent the continuance of such obstruction or resistance.

CHAPTER XIII.

APPEALS AND REVISION.

203. In the absence of any express provision of this Act, or of any law for the time being in force to the contrary, an appeal shall lie from any

Appeal to lie from any order passed by a revenue officer to his superior.

decision or order passed by a revenue officer under this Act, or any other law for the time being in force, to that officer's immediate superior, whether such decision or order may itself have been passed on appeal from a subordinate officer's decision or order or not.

204. An appeal shall lie to the Governor in Council from any decision or order passed by a Commissioner or by a Survey Commissioner, except in the case of any decision or order passed by such officer on appeal from a decision or order itself recorded in appeal by any officer subordinate to him.

205. No appeal shall be brought after the expiration of sixty days if the decision or order complained of have been passed by an officer inferior in rank to a Collector or a Superintendent of Survey in their respective departments; nor after the expiration of ninety days in any other case.

In computing the above periods, the time required to prepare a copy of the decision or order appealed against shall be excluded.

206. Any appeal under this chapter may be admitted after the period of limitation prescribed therefor, when the appellant satisfies the officer or the Governor in Council to whom he appeals, that he had sufficient cause for not presenting the appeal within such period.

No appeal shall lie against an order passed under this section admitting an appeal.

207. Whenever the last day of any period provided in this chapter for the presentation of an appeals falls on a Sunday or other holiday recognized by Government, the day next following the close of the holiday shall be deemed to be such last day.

208. Every petition of appeal shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

209. The appellate authority may either annul, reverse, modify or confirm the decision or order of the subordinate officer appealed against, or he may direct the subordinate officer to make such further investigation or to take such additional evidence as he may think necessary, or he may himself take such additional evidence.

210. In any case in which an appeal lies, the appellate authority may, pending decision of the appeal, direct the execution of the decision or order of the subordinate officer to be suspended.

211. The Governor in Council and any revenue officer, not inferior in rank to a Collector or a Superintendent of Survey, in their respective departments, may call for and examine the records and proceedings of subordinate officers.

of any inquiry or the proceedings of any subordinate revenue officer, for the purpose of satisfying himself as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

The following officers may in the same manner call for and examine the proceedings of any officer subordinate to them in any matter in which either a formal or a summary inquiry has been held, namely,—an Assistant or Deputy Collector, a Mámílatdár, a Mahálkari, and Assistant Superintendent of Survey, and an Assistant Settlement Officer.

If, in any case, it shall appear to the Governor in Council, or to such officer aforesaid, that any decision or order or proceedings so called for should be modified, annulled, or reversed, he may pass such order thereon as he deems fit.

212. Wherever in this Act it is declared that a decision or order shall be final, such expression shall be deemed to mean that no appeal lies from such decision or order.

The Governor in Council alone shall be competent to modify, annul, or reverse any such decision or order under the provisions of the last preceding section.

CHAPTER XIV. MISCELLANEOUS.

213. Subject to such rules and the payment of such fees as the Governor in Council may from time to time prescribe in this behalf, all maps and survey records, and all village accounts and land registers shall be open to the inspection of the public at reasonable hours, and certified extracts from such maps, registers and accounts or certified copies thereof shall be given to all persons applying for the same.

214. The Governor in Council may from time to time make and from time to time vary or rescind rules or orders not inconsistent with this Act :

(a) determining the qualifications to be required of all members of establishments appointed under section 21 ;

(b) regulating the power of fining, reducing, suspending and dismissing revenue officers under section 32 ;

(c) prescribing the purposes to which land liable to the payment of land revenue may be appropriated under section 48 ;

(d) regulating the system, and manner of assessing land to the land revenue under sections 52 and 100 ;

(e) for the disposal of forfeited occupancies or alienated holdings under section 56 ;

(f) fixing the maximum amount of fine leviable under section 61 when land which has been unauthorizedly occupied is appropriated to any non-agricultural purpose ;

(g) for the administration of any survey settlement ;

(h) prescribing the mode, form and manner in which appeals under Chapter XIII. of this Act shall be drawn up and presented;

(i) generally for the guidance of all persons in matters connected with the enforcement of this Act, or in cases not expressly provided for therein.

Rules or orders made under any of the above clauses (c), (d), (e), (f), or (i), may be made either generally or in any particular instance.

215. All general rules or orders made by the Governor in Council under the last preceding section shall be published, and when published shall, until cancelled or amended, have the force of law.

It shall be lawful for the Governor in Council, in making any such general rule, to attach to the breach of it, in addition to any other consequences which would ensue from such breach, a punishment, on conviction before a Magistrate, not exceeding one month's imprisonment of either description, within the meaning of the Indian Penal Code, or five hundred rupees fine, or both.

216. Save as is otherwise provided in section 111 and hereinafter in this section, the provisions of Chapters VIII to X of this Act shall not be applied to any alienated village except for the purposes of fixing the boundaries of any such village, and of determining any disputes relating thereto. But the provisions of the said chapter shall be applicable to—

(a) all unalienated lands situated within the limits of an alienated village,

(b) villages of which a definite share is alienated, but of which the remaining share is unalienated,

(c) alienated villages the holders of which are entitled to a certain amount of the revenue, but of which the excess, if any above such amount, belongs to Government.

But it shall be lawful for the Governor in Council, on an application in writing being made by the holder of any such village to that effect, to authorize the extension of all or any of the provisions of the said chapters to any such village.

217. When a survey settlement has been introduced under the provisions of the last section or of any law for the time being in force, into an alienated village, the holders of all lands to which such settlement extends shall have the same rights and be affected by the same responsibilities in respect of the lands in their occupation as occupants in unalienated villages have, or are affected by, under the provisions of this Act, and all the provisions of this Act relating to occupants and registered occupants shall be applicable, so far as may be, to them.

218. Nothing in this Act, which applies in terms to unalienated land or to the holders of unalienated land only, shall be deemed to affect alienated land, or the rights of holders of alienated land, or of Government in respect of any such land, and no presumption shall be deemed to arise either in favour, or to the prejudice, of any holder of alienated land from any provision of this Act in terms relating to unalienated land only.

SCHEDULE A.
(See Section 2.)

Number and Year.	Subject.	Extent of Repeal.
BOMBAY REGULATIONS.		
IV. of 1827 ...	Forms of proceeding of the Courts of Law ...	Clauses 2 & 3 of section 69.
XVI. of 1827.	Duties and powers of the Collector and subordinate Revenue Officers.	So much as has not already been repealed.
XVII. of 1827	Assessment and realization of the Land Revenue.	Ditto.
V. of 1830 ...	Revenue Commissioners and Sub-Collectors ...	Ditto.
XV. of 1831...	Punishment of Patels falsifying Revenue Records.	Ditto.
II. of 1832 ...	Realization of Revenue from Farmers.	Ditto.
V. of 1833 ...	Embezzlement. Hereditary District and Village Officers.	Ditto.
ACTS OF THE GOVERNOR GENERAL IN COUNCIL.		
XVIII. of 1838	Security	The whole Act.
XIII. of 1842.	Collection of Ināmdārs' Revenues	Ditto.
XVII. of 1842.	Revenue Commissioners	So much as has not already been repealed.
III. of 1846...	Boundary-marks	Ditto.
XII. of 1850.	Public Accountants	The whole Act so far as it applies to revenue officers in the Presidency of Bombay.
XXI. of 1852.	Deputy Collectors	So much as has not already been repealed.

Number and year.	Subject.	Extent of Repeal.
ACTS OF THE GOVERNOR OF BOMBAY IN COUNCIL.		
VII. of 1863	Summary Settlement	Sections 4 & 5.
I. of 1865 ...	Survey	The whole Act, except sections 37 & 38.
I. of 1866 ...	Extending Bombay Act I. of 1865 ...	The whole Act.
I. of 1868 ...	Powers and Duties of Assistant and Deputy Collectors.	Ditto.
IV. of 1868...	City Surveys	Ditto.
I. of 1875 ...	Amendment of (Bombay) Act I. of 1865 ...	Ditto.

SCHEDULE B.

FORM OF BOND TO BE REQUIRED UNDER SECTION 23.

Whereas I,
inhabitant of
have been appointed to the office of
and have been called upon to furnish security under the provisions of section 23 of the Bombay Land Revenue Code for the due discharge of the trusts of the said office, or of any other office to which I may be hereafter appointed, and for the due account of all moneys, papers and other property which shall come into my possession or control by reason of any such office, I hereby bind myself to pay to the Secretary of State for India in Council, the amount of any loss or defalcation in my accounts, and to deliver up any papers or other property within such time, and to such person as shall be demanded by the person at the head of the office to which I belong, such demand to be in writing and to be left at my office or place of residence, and in case of my making default therein I bind myself to forfeit to the Secretary of State for India in Council the sum of _____ Rupees

Dated

(Signature.)

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL.

We
hereby declare ourselves sureties for the abovesaid
that he shall do and perform all that he has above undertaken to do and perform, and in case of his making default therein we hereby bind ourselves to forfeit to the Secretary of State for India in Council such sum as shall be deemed sufficient by the _____ to cover any loss or damage which the Government may sustain by reason of such default.

Dated

(Signature.)

SCHEDULE C.

FORM OF WARRANT TO BE ISSUED BY THE COLLECTOR UNDER SECTION 25 OR 157.



To

THE OFFICER IN CHARGE OF THE CIVIL JAIL AT

Whereas *A.B.* of _____ was on the _____ day of _____ 187____,
ordered by _____ to (*here state the substance of the demand made*); and whereas the

said *A.B.* has neglected to comply with the said order, and it has therefore been directed, under the provisions of section _____ of the Bombay Land Revenue Code, that he be imprisoned in the Civil Jail until he obey the said order or until he obtain his discharge under the provisions of section 25 or 28 (or section 157 or 164 as the case may be) of the said Code; you are hereby required to receive the said *A.B.* into the Jail under your charge and to carry the aforesaid order into execution according to law.

Dated this _____ day of _____ 187 .

(Signature of Collector.)

SCHEDULE D.

FORM OF BOND TO BE REQUIRED UNDER SECTION 28 OR 164.

Whereas I, _____
 have been ordered by _____
 to (*here state the nature of the demand*) _____
 and whereas I dispute the right of the said _____ to make the said order,
 I hereby bind myself to file a suit within fifteen days from the date of this bond in the
 District Court of _____ to contest the justice of the demand, and do
 agree that in the event of a decree being passed against me I will fulfill the same and
 will pay all amounts, including costs and interests, that may be due by me, or that
 if I fail to institute a suit as aforesaid, I will, when required, pay the abovementioned
 amount of _____ Rupees (*or will deliver up the above-mentioned*
papers or property as the case may be), and in the case of my making default therein, I
 hereby bind myself to forfeit to the Secretary of State for India in Council the sum of
 _____ Rupees

Dated _____

(Signature.)

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL.

We _____
 hereby declare ourselves securities for the above said _____
 that he shall do and perform all that he has above undertaken to do and perform, and
 in case of his making default therein we hereby bind ourselves to forfeit to the Secretary
 of State for India in Council the sum of _____ Rupees.

Dated _____

(Signature.)

SCHEDULE E.

(See Section 84.)

I.—FORM OF NOTICE TO BE GIVEN BY LANDLORD TO TENANT TO QUIT.

To

A.B.

I do hereby give you notice that I do intend to enter upon, and take possession of
 the land (*here give the description*) which you now hold as tenant under me, and you are
 therefore required to quit and deliver up possession of the same at the end of this
 current year, terminating on the _____
 of _____ 187 .

Dated this _____ day of _____ 187 .

(Signed) *C.D.*

II.—FORM OF NOTICE TO BE GIVEN BY TENANT TO LANDLORD OF HIS INTENTION TO QUIT.

To

C. D.

I do hereby give you notice that I shall quit and deliver up to you, at the end of
 this current year terminating on the _____ of _____ 187 , the land (*here*
give the description) which I hold from you

Dated this _____ day of _____ 187 .

(Signed) *A. B.*

SCHEDULE F.

FORM OF COMMISSION TO BE ISSUED TO A HOLDER OF ALIENATED LANDS OR VILLAGES OR HIS AGENT, UNDER SECTION 89.



The Governor in Council of Bombay, by virtue of the powers vested in him by the Bombay Land Revenue Code, is pleased to confer on you (*Jagirdar, &c., or Agent, &c., as the case may be,*) power to _____ in (or in respect of) the villages and lands specified in this Commission, in the manner prescribed in (or in Section _____ of) the said Code.

The villages and lands over which the power thus conferred upon you extends, are as follows:—

(Here enter the description.)

The within delegated power is vested in you during the pleasure and subject to the recall of the said Governor in Council.

(Signed)

SCHEDULE H.

(See Section 133.)

FORM OF SANAD FOR BUILDING SITES.

(Royal Arms.)

THE SECRETARY OF STATE IN COUNCIL

To _____

Whereas His Excellency the Governor of Bombay in Council, with a view to the settlement of the land revenue, and the record and preservation of proprietary and other rights connected with the soil, has, under the provisions of the Bombay Land Revenue Code, directed a survey of the lands within the _____ of _____ and ordered the necessary inquiries connected therewith to be made, this Sanad is issued under section 133 of the said Code to the effect that—

There is a certain plot of ground occupied by you in the _____ division of the _____ of _____ registered No. _____ in the map marked sheet No. _____ and facing towards the _____ the road leading from _____ to _____ containing about _____ square yards, and of the _____ following shape and about the following dimensions:—

You are hereby confirmed in the occupancy of the above described ground, exempt from all land revenue (or subject to the payment of Rs. _____ per annum to the land revenue.)

The terms of your tenure are such that your occupancy is both transferable and heritable, and will be continued by the British Government, without any objection or question as to title, to whosoever shall from time to time be its lawful holder (subject only to the condition of the payment annually of the above land revenue according to the provisions of the Bombay Land Revenue Code or of any other law for the time being in force, and to the liability to have the said rate of assessment revised at the expiration of a term of _____ years reckoned from the _____ and thereafter at successive periods of _____ years in perpetuity, and to the necessity for compliance with the provisions of the law from time to time in force as to the time and manner of payment of the said assessment, and to the liability of forfeiture of the said occupancy

and of all rights and interests connected therewith in case of your failure to pay the said assessment as required by law.)

This Sanad is executed on behalf of the Secretary of State for India in Council by order of the Governor in Council of Bombay, by and under the hand and seal of this day of one thousand eight hundred and A.D.

(Signed)

SCHEDULE I.

FORM OF WARRANT TO BE ISSUED BY THE COLLECTOR UNDER SECTION 202.

Seal.

To the Officer in charge of the Civil Jail at

Whereas *A. B.* of

has resisted (or obstructed) *C.D.* in removing *E.F.* (or himself, that is the said *A. B.*) from certain land in the village of in the *táluka*, and whereas it is necessary, in order to prevent the continuance of such obstruction (or resistance), to commit the said *A. B.* to close custody; You are hereby required, under the provisions of section 202 of the Bombay Land Revenue Code, to receive the said *A. B.* into the Jail under your charge, and there to keep him in safe custody for days

Dated this day of 187 .

Signature of Collector.

By order of His Excellency the Honourable Sir, the Governor in Council,

C. G. W. MACPHERSON,
Acting Under Secretary to Government.

Poona, 12th July 1879.



Bombay Government Gazette.

Published by Authority.

THURSDAY, 31st JULY 1879.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st July 1879, and was promulgated for general information in the *Gazette of India* of 26th July 1879:—

Act No. XI. of 1879.

THE LOCAL AUTHORITIES LOAN ACT, 1879.

WHEREAS it is expedient to re-enact the Local Public Works Loan Act, 1871, with the amendments hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called "The Local Authorities Loan Act, 1879":
 Short title, 1879":
 Local extent. It extends to the whole of British India, and shall come into force upon the passing thereof.
 Commencement.
2. The Local Public Works Loan Act, 1871, is hereby repealed. But all applications, declarations, authorizations, attachments, loans and rules made under the said Act, shall be deemed to have been made under this Act.
 Repeal of Act XXIV. of 1871.
3. In this Act, "local authority" means any body corporate, municipal committee, or other persons legally entitled to the control or management of any local or municipal fund, or legally entitled to impose any cess, rate, duty or tax upon any persons within any local area; and
 "Local authority."

"funds," used with reference to any local authority, includes any local or municipal fund to the control or management of which such authority is legally entitled, and any cess, rate, duty or tax which such authority is legally entitled to impose, and any property vested in such authority.

4. Any local authority desiring to obtain a loan, on the security of its funds or any portion thereof, for the carrying out of any works which it is legally authorized to carry out may, in manner provided by the rules made by the Governor General in Council under the power hereinafter conferred, apply to the Local Government for such loan.

5. The Governor General in Council may from time to time make rules consistent with this Act as to—

- (1) the nature of the funds on the security of which loans may be made;
- (2) the works for which loans may be made;
- (3) the manner of making applications for loans;
- (4) the inquiries to be made in relation to such loans, and the manner of conducting such inquiries;
- (5) the cases and the forms in which particulars of applications and proceedings, and orders thereon, shall be published;

(6) the cases in which the Local Government may make loans without the previous sanction of the Governor General in Council, and the cases in which such previous sanction must be obtained;

(7) the manner of recording and enforcing the conditions on which such loans are to be made;

(8) the manner and time of making loans;

(9) the inspection of any works carried out by means of loans;

(10) the instalments by which loans shall be repaid, the interest to be charged on loans, and the manner and time of repaying loans and of paying the interest thereon;

(11) the sum to be charged against the funds which are to form the security for the loan, as cost in effecting the loan;

(12) the attachment of such securities, and the manner of disposing of or collecting them;

(13) the accounts to be kept in respect of loans, and as to all other matters incidental to carrying this Act into effect.

All such rules shall be published in the *Gazette of India*.

6. If any loan made under such rules, or any interest or costs due in respect thereof, is or are not repaid according to the conditions of the loan, the Local Government may attach the funds on the security of which the loan was made. After such attachment, no person except an officer appointed in this behalf by the Local Government shall in any way deal with the attached funds; but such officer may do all acts in respect thereof which the borrowers might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the loan and of all interest and costs due in respect thereof, and of all expenses caused by the attachment and subsequent proceedings:

Provided that no such attachment shall defeat or prejudice any debt for which the funds attached were previously pledged in accordance with law; but all such prior charges shall be paid out of the proceeds of the funds before any part of the proceeds is applied to the satisfaction of a liability incurred under this Act.

7. The Local Government, with the previous sanction of the Governor General in Council, may authorize any local authority which might, under the provisions

Local Government may authorize parties to borrow from private persons under this Act.

hereinbefore contained, have borrowed money for any work upon the security of its funds to borrow money from any other person for such work upon such security; and, if any such loan or the interest thereon is not duly paid, the Local Government shall, upon the application of the lender, attach such funds for his benefit in manner provided by section six.

The Governor General in Council may, in respect of loans to be taken under this section, exercise the power conferred by section five, so far as the same may be applicable to the case of such loans.

8. Except as provided by this Act and the rules made hereunder, no local authority shall for any purpose borrow money upon or otherwise charge its funds; and any contract otherwise made for that purpose after the passing of this Act shall be void:

Provided that nothing herein contained shall be deemed—

(a) to preclude the Municipality of Calcutta, Madras or Bombay, or the Trustees of the Port of Bombay, or the Commissioners for making improvements in the Port of Calcutta, or any like body hereafter created for the Port of Madras, from exercising the borrowing powers conferred on them by any special enactment now or hereafter in force; or

(b) to preclude any other local authority from exercising the borrowing power (if any) conferred on it by any such enactment with a view to raising money for any purpose other than the carrying out of works.

9. The Secretary of State in Council shall be entitled to the remedy mentioned in section six for the recovery of any money lent by him to any local authority before the fifth day of September 1871, and the interest due on such money; and the Governor General in Council or the Local Government may declare that any person, who before the said fifth day of September 1871, has lent money to any local authority shall be entitled to the said remedy for the recovery of such money, or of the interest due thereon.

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

[Published with the "Bombay Government Gazette" on the 7th August 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st July 1879, and was promulgated for general information in the *Gazette of India* of 26th July 1879:—

Act No. XI. of 1879.

THE LOCAL AUTHORITIES LOAN ACT, 1879.

WHEREAS it is expedient to re-enact the Local Public Works Loan Act, 1871, with the amendments hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called "The Local Authorities Loan Act, 1879";

It extends to the whole of British India, and shall come into force upon the passing thereof.

2. The Local Public Works Loan Act, 1871, is hereby repealed. But all applications, declarations, authorizations, attachments, loans and rules made under the said Act, shall be deemed to have been made under this Act.

3. In this Act, "local authority" means any body corporate, municipal committee, or other persons legally entitled to the control or management of any local or municipal fund, or legally entitled to impose any cess, rate, duty or tax upon any persons within any local area; and

"funds," used with reference to any local authority, includes any local or municipal fund to the control or management of which such authority is legally entitled, and any cess, rate duty or tax which such authority is legally entitled to impose, and any property vested in such authority.

4. Any local authority desiring to obtain a loan, on the security of its funds or any portion thereof, for the carrying out of any works which

it is legally authorized to carry out may, in manner provided by the rules made by the Governor General in Council under the power hereinafter conferred, apply to the Local Government for such loan.

5. The Governor General in Council may from time to time make rules consistent with this Act as to—

(1) the nature of the funds on the security of which loans may be made;

(2) the works for which loans may be made;

(3) the manner of making applications for loans;

(4) the inquiries to be made in relation to such loans, and the manner of conducting such inquiries;

(5) the cases and the forms in which particulars of applications and proceedings, and orders thereon, shall be published;

(6) the cases in which the Local Government may make loans without the previous sanction of the Governor General in Council, and the cases in which such previous sanction must be obtained;

(7) the manner of recording and enforcing the conditions on which such loans are to be made;

(8) the manner and time of making loans;

(9) the inspection of any works carried out by means of loans;

(10) the instalments by which loans shall be repaid, the interest to be charged on loans, and the manner and time of repaying loans and of paying the interest thereon;

(11) the sum to be charged against the funds which are to form the security for the loan, as cost in effecting the loan;

(12) the attachment of such securities, and the manner of disposing of or collecting them;

(13) the accounts to be kept in respect of loans, and as to all other matters incidental to carrying this Act into effect.

All such rules shall be published in the *Gazette of India*.

6. If any loan made under such rules, or any interest or costs due in respect thereof, is or are not repaid according to the conditions of the loan, the Local Government may attach the funds on the security of which

the loan was made. After such attachment, no person except an officer appointed in this behalf by the Local Government shall in any way deal with the attached funds; but such officer may do all acts in respect thereof which the borrowers might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the loan and of all interest and costs due in respect thereof, and of all expenses caused by the attachment and subsequent proceedings:

Provided that no such attachment shall defeat

Attachment not to defeat prior charges legally made.

but all such prior charges shall be paid out of the proceeds of the funds before any part of the proceeds is applied to the satisfaction of a liability incurred under this Act.

7. The Local Government, with the previous

Local Government may authorize parties to borrow from private persons under this Act.

hereinbefore contained, have borrowed money for any work upon the security of its funds to borrow money from any other person for such work upon such security; and, if any such loan or the interest thereon is not duly paid, the Local Government shall, upon the application of the lender, attach such funds for his benefit in manner provided by section six.

The Governor General in Council may, in

Power to make rules in regard to such loans.

respect of loans to be taken under this section, exercise the power conferred by section five, so far as the same may be applicable to the case of such loans.

8. Except as provided by this Act and the

rules made hereunder, no local authority shall for any purpose borrow money upon or otherwise charge its funds; and any contract otherwise made for that purpose after the passing of this Act shall be void:

Provided that nothing herein contained shall be deemed—

(a) to preclude the Municipality of Calcutta, Madras or Bombay, or the Trustees of the Port of Bombay, or the Commissioners for making improvements in the Port of Calcutta, or any like body hereafter created for the Port of Madras, from exercising the borrowing powers conferred on them by any special enactment now or hereafter in force; or

(b) to preclude any other local authority from exercising the borrowing power (if any) conferred on it by any such enactment with a view to raising money for any purpose other than the carrying out of works.

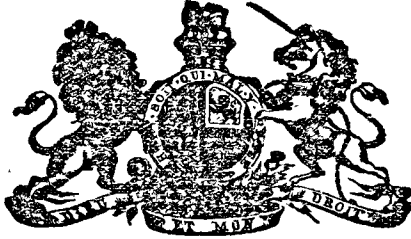
9. The Secretary of State in Council shall be

entitled to the remedy mentioned in section six for the recovery of any money lent by him to any local authority before the

fifth day of September 1871, and the interest due on such money; and the Governor General in Council or the Local Government may declare that any person, who before the said fifth day of September 1871, has lent money to any local authority shall be entitled to the said remedy for the recovery of such money, or of the interest due thereon.

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

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 29th July 1879, and was promulgated for general information in the *Gazette of India* of the 2nd August 1879.

Act No. XII. of 1879.

An Act to amend the Code of Civil Procedure, the Registration Act, 1877, and the Limitation Act, 1877.

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

1. The following portions of the said Code shall be repealed (namely):—

In section 4, the words and figures "The Panjáb Courts Act, 1865," and "The Panjáb Appeals Act, 1873":

In section 5, the third sentence:

In section 51, the words "with the permission of the Court":

In section 52, from and including the words "and when he makes it out of Court" to the end:

In section 61, the words "bill of exchange or other":

In section 64, the words "or as soon thereafter as may be practicable":

In section 80, the words "or to receive the copy of the summons":

In section 97, the words "a duly authorized":

In sections 113 and 177 the word "other":

In section 115, the second paragraph:

In section 131, the words "in whose plaint, written statement or affidavits reference is made to any document": and the words "in the presence of such officer as the Court appoints in this behalf":

In section 199, the words from and including "and in" to the end:

In section 221, the second paragraph:

In section 224, the word "therewith":

In section 230, paragraphs three and four, the words "unless the Court is satisfied that on the last preceding application due diligence was used to procure complete satisfaction of the decree; and the order of the Court granting any such subsequent application shall be conclusive evidence that due diligence was used to procure such satisfaction. And no such subsequent application shall be granted":

In section 246, clause (e) and the letters (f) and (g):

In section 259, the words "and keeping the same under attachment until the further order of the Court":

In section 339, paragraph three, the words "to the proper officer of the Court":

In section 353, the words "within three months from its publication", and "within three months from the publication of the schedule":

In section 355, paragraph two, the words "from arrest or imprisonment, as the case may be":

In sections 407 and 408, the words "upon such examination":

In section 638, the figures "261":

In the second schedule, the words and figures "section 648 (so far as relates to arrest)."

In the fourth schedule, No. 152, the words "ON SECURITIES BEING GIVEN," and "on security to the amount of Rs. decreed to the in the above suit, being given to your satisfaction."

2. In section 2, for the definitions of "judgment" and "decree," the following shall be substituted (namely):

"decree" means the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court when such adjudication, so far as regards the Court expressing it, decides the suit or appeal. An order rejecting a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in section 244 but not specified in 588, is within this definition: an order specified in section 588, is not within this definition:

"order" means the formal expression of any decision of a Civil Court which is not a decree as above defined:

"judgment" means the statement given by the Judge of the grounds of a decree or order."

In the same section, to the definition of "signed," the following words shall be added (namely), "it also includes stamped with the name of the person referred to."

3. In section 3, for the last paragraph the following shall be substituted (namely):—

"Save as provided by section 99A, nothing herein contained shall affect any proceedings prior to decree in any suit instituted or appeal presented before the first day of October 1877, or any proceedings after decree that may have been commenced and were still pending at that date."

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

Act No. XVIII. of 1878 (to amend the Code of Civil Procedure, section 4), is hereby repealed.

5. In section 5, to the first sentence, the following shall be added (namely): "and to all other Courts (other than the Courts of Small Causes in towns of Calcutta, Madras and Bombay) exercising the jurisdiction of a Court of Small Causes."

6. In section 13, for the first paragraph, the following shall be substituted (namely):—

"13. No Court shall try any suit or issue in which the matter directly and substantially in issue, having been directly and

substantially in issue in a former suit in a Court of competent jurisdiction, between the same parties, or between parties under whom they or any of them claim, litigating under the same title, has been heard and finally decided by such Court."

and in the same section, explanation I, for the word "confessed" the word "admitted" shall be substituted.

7. In section 43, paragraph one, for the words "arising out of" the words "which the plaintiff is entitled to make in respect of" shall be substituted: in the same section, paragraph two, for the word "for" (in each of the places where it occurs) the words "in respect of" shall be substituted; and in the same section, paragraph three, for the word "claim" the words "cause of action" shall be substituted;

and to the same section the following paragraph shall be added: "For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action."

8. To section 44 the following words shall be added (namely): "or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents."

9. In section 45, for paragraph one, the following shall be substituted (namely): "subject to the rules contained in chapter II and in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit":

in the same section, paragraph two, for the words "the defendant" the words "any defendant, or at any subsequent stage of the suit, if the parties agree" shall be substituted.

10. In section 50, for the word "abode" in each of the places where it occurs, the word "residence" shall be substituted.

11. To section 51 the following proviso shall be added (namely):—

"Provided that, if the plaintiff, by reason of absence or for other good cause, is unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf."

12. In sections 51, 53, 115, 346, 393 and 403, for the word "subscribed" (wherever it occurs) the word "signed" shall be substituted: in sections 115 and 346, for the word "subscribing" the word "signing" shall be substituted; and in section 403, for the word "subscription" the word "signing" shall be substituted.

13. In section 58, for the word "filed" the word "produced" shall be substituted.

14. In section 68, for the word "cognizable" the word "heard" shall be substituted.
Amendment of section 68.
15. In section 93, after the word "levied" and in section 95, after the word "paid," and in section 397, after the word "be," the words "within a time to be fixed by the Court" shall be inserted.
Amendment of sections 93, 95, and 397.
16. After section 99, the following shall be inserted (namely):—
Addition to section 99.
"99A. If, after a summons has, whether before or after the first day of October 1877, been issued to the defendant, or to one of several defendants and returned unserved, the plaintiff fails for a period of one year from such return to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may dismiss the suit as against such defendant.
Dismissal of suit where plaintiff after summons returned unserved fails for a year to apply for fresh summons.
"In such case the plaintiff may (subject to the law of limitation) bring a fresh suit."
17. In section 108, paragraph one, the words and figures "under section 100" shall be omitted; and in the same section, paragraph two, for the words "it be proved to the satisfaction of the Court that the defendant," the words "he satisfies the Court that the summons was not duly served, or that he" shall be substituted.
Amendment of section 108.
18. In section 131, paragraph one, for the word "Every" the word "Any" shall be substituted, and for the words "such document" the words "any specified document" shall be substituted.
Amendment of section 131.
19. In section 136, after the word "discovery" (in each of the places in which it occurs) the word "production" shall be inserted.
Amendment of section 136.
20. In section 139, for the words and figures "the production of which has been called for under section 138 and which has not been produced" the words and figures "which should have been, but has not been, produced in accordance with the requirements of section 138" shall be substituted.
Amendment of section 139.
21. In section 207, for the words "or numbers" to the end the following words shall be substituted (namely): "or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers."
Amendment of section 207.
22. In section 211, for the words "and or other," the words "therecovery of possession of immoveable" shall be substituted; to the same section the words "together with interest on such profits" shall be added; and in section 212, before the word "immoveable" the words "the recovery of possession of" shall be inserted.
Amendment of section 211.
23. After section 215 the following section shall be inserted (namely):—
"215A. When a suit is for an account of pecuniary transactions between a principal and agent, and in all other suits not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order directing such accounts to be taken as it thinks fit."
Addition to section 215.
24. To section 220 the following words shall be added (namely):
"Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money."
Amendment of section 220.
25. In section 223, clause (c), for the words "district within which" the words "local limits of the jurisdiction of" shall be substituted; and in the penultimate paragraph of the same section, for the words "local Court of Small Causes" the words "Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be," shall be substituted.
Amendment of section 223.
26. In section 229, for the words "Native Prince or State in India" the words "Foreign Prince or State" shall be substituted.
Amendment of section 229.
27. In section 20, clause (b), for the words "the payment of money or the delivery of property by instalments—the date of the default in paying or delivering the instalment" the following words shall be substituted (namely): "any payment of money, or the delivery of any property, to be made at a certain date—the date of the default in making the payment or delivering the property."
Amendment of section 20.
28. In the second proviso to section 232, after the word "decree" the words "for money" shall be inserted.
Amendment of section 232.
29. In section 235, for the words "in manner hereinbefore provided" the following words shall be substituted (namely), "by the applicant or by some other person proved to the satisfaction of the Court, to be acquainted with the facts of the case."
Amendment of section 235.
30. In sections 236 and 237, for the words "If the application be," the words "Whenever an application is made" shall be substituted.
Amendment of sections 236 and 237.
31. In section 244, clause (c), after the word "execution," the words "discharge or satisfaction" shall be inserted.
Amendment of section 244.

32. In section 245, for the first sentence, the following shall be substituted (namely): "The Court on receiving an application for the execution of a decree shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with; and if they have not been complied with, the Court may reject the application, or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected."

Amendment of section 245.
33. In section 246, for Explanation I, the following shall be substituted (namely):—

Explanation I.—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court."

In Explanation II, after the words "assignor as" the words "in respect of judgment-debts due" shall be inserted.

Amendment of section 252.
34. In section 252, for the words "If no such property can be found and the judgment-debtor," the words "If no such property remains in the possession of the judgment-debtor, and he" shall be substituted.

Addition to section 257.
35. After section 257 the following shall be inserted:—

"257A. Every agreement to give time for the satisfaction of a judgment-debt shall be void unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable.

Agreement for satisfaction of judgment-debt.
"Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due, or to accrue due under the decree, shall be void unless it is made with the like sanction,

"Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt; and the surplus, if any, shall be recoverable by the judgment-debtor."

Amendment of section 258.
36. For section 258 the following shall be substituted:—

Payment to decree-holder.
"258. If any money payable under a decree is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257A, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

"The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court,

why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

"No such payment or adjustment shall be recognized by any Court unless it has been certified as aforesaid."

Amendment of section 259.
37. For the second paragraph of section 259, the following shall be substituted:—

"When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree, and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist."

Amendment of section 260.
38. In section 260, in the first paragraph, after the words "the performance of," the words "or abstention from" shall be inserted; and for the second paragraph the following paragraphs shall be substituted (namely):—

"When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist."

Amendment of section 264.
39. In section 264, after the words "the same" the words "and not bound by the decree to relinquish such occupancy" shall be inserted.

Amendment of section 265.
40. To section 265 the following words shall be added (namely), "and according to the law, if any, for the time being in force for the partition, or the separate possession of shares, of such estates."

Amendment of section 268.
41. For the last paragraph of section 268, the following shall be substituted (namely):—

"In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary, to withhold every month such portion as the Court may direct, until the further orders of the Court.

"A copy of every such order shall be fixed up in a conspicuous part of the court-house, and shall be served on the officer so required.

"Every such officer may from time to time pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor."

42. For the first paragraph of section 271 the Amendment of section following shall be substituted:—

"271. No person executing any process under this Code, directing or authorizing seizure of moveable property, shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house. But when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be."

43. To section 289, paragraph one, the following Amendment of sections words shall be added 289 and 190. (namely): "and a copy thereof shall be fixed up in the court-house and, in the case of land paying revenue to Government, also in the Collector's office"; and in section 290, for the words "notification has been affixed," the words "copy of the proclamation has been fixed up" shall be substituted.

44. In section 291, for the first eight words the following shall be substituted (namely): "The Court may in its discretion adjourn any sale under this chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any such sale;" and in the same section, after the proviso, the following sentence shall be inserted, (namely): "whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it."

45. To section 294 the Amendment of section following paragraph shall be added (namely):—

"When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder."

46. In section 295, first proviso, after the words "shall not," the Amendment of section words "as such" shall be inserted. 295.

and after the second proviso the following shall be inserted:—

"Provided also that, when immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the interest and principal money due on the incumbrance;

thirdly, in discharging the interest and principal moneys due on subsequent incumbrances (if any); and

fourthly, rateably among the holders of decrees for money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree, ordering such sale for execution of such decrees and have not obtained satisfaction thereof."

47. In section 305, paragraph two, after the word "therein," the Amendment of section words and figures "and 305. notwithstanding anything contained in section 276," shall be inserted; and for the last paragraph, the following shall be substituted (namely):—

"Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court."

48. In section 314, after the word "pro- Amendment of section perty" the words "in 314. execution of a decree" shall be inserted.

49. For section 316 Amendment of section the following shall be 316. substituted (namely):—

"316. When a sale of immoveable property has become absolute in manner aforesaid, the Certificate to purchaser of immoveable property. Court shall grant a certificate stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before: provided that the decree under which the sale took place was still subsisting at that date."

50. In section 320, paragraph two, after the word "also" the words Amendment of sections "notwithstanding any 320 to 325. thing hereinbefore contained" shall be inserted; and for sections 321 to 325, both inclusive, the following shall be substituted (namely):—

"321. When the execution of a decree has been so transferred, the Collector may—

(a) proceed as the Court would proceed under section 305; or

(b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole, or any part of the property ordered to be sold; or

(c) sell the property ordered to be sold or so much thereof as may be necessary.

"322. When the execution of a decree, not

Procedure of Collector when execution of decree so transferred. being a decree ordering the sale of immovable property in pursu-

ance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immovable property, has been so transferred, the Collector, if, after such enquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immovable property, may proceed as hereinafter provided.

Notice to be given to decree-holders and to persons having claims on the property.

"322A. In the case mentioned in section 322, the Collector shall publish a notice calling upon—

(a) every person holding a decree for money against the judgment-debtor capable of execution by sale of his immovable property, and which such decree-holder desires to have so executed, and every holder of a decree for money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder.

(b) every person having any claim on the said property, to submit to the Collector a statement of such claim, and to produce the documents, if any, by which it is evidenced.

Such notice shall be in the language of the district, and shall allow a period of sixty days from the date of its publication for compliance therewith. It shall be published by being posted in the court-house of the Court which made the original order under section 304, and at such other places (if any) as the Collector thinks fit. Where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

"322B. Upon the expiration of the said period the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such enquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immovable property, and may from time to time adjourn such hearing and enquiry.

If there be no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immovable property available for that purpose.

If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the

original order under section 304, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The Collector shall then draw up a statement as above provided in accordance with such decision.

"322C. The Collector may, instead of himself issuing the notices and holding the enquiry required by sections 322A and 322B, draw up a statement specifying the circumstances of the judgment-debtor and of his immovable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by sections 322A and 322B, and transmit such statement to the Collector.

"322D. The decision by the Court of any dispute arising under section 322B or section 322C shall, as between the parties thereto, have the force of, and be appealable as, a decree.

"323. Whenever the amount to be recovered and the property available have been determined as provided in section 322B or 322C, the Collector may—

(1) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or if it appears that the amount with interest (if any) in accordance with the decree, and when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale,

(2) raise such amount and interest (notwithstanding any order under section 304);

"(a) by letting in perpetuity, or for a term, on payment of a premium the whole or any part of the said property; or

"(b) by mortgaging the whole or any part of such property: or

"(c) by selling part of such property: or

"(d) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale: or

"(e) partly by one of such modes and partly by another or others of such modes.

(3) For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

(4) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable or compound the claim of any incumbrancer whether it has

become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector purposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

In proceeding under paragraphs (2), (3) and (4) of this section, the Collector shall be subject to such rules consistent with this Act as may from time to time be made in this behalf by the Chief Controlling Revenue-Authority.

"324. If, on the expiration of the letting Recovery of balance, or management under if any, after letting or section 323, the amount management. to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

"324A. The Collector shall from time to time render to the Court Collector to render accounts to the Civil Court. which made the original order under section 304 an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this chapter, and shall hold the balance at the disposal of the Court.

Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and (if the Collector so directs) the expenses of witnesses summoned by him.

Such balance shall be Application of Balance. applied by the Court as follows:—

firstly, in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property to such amount in the case of each member as the Court thinks fit; and

secondly, where the Collector has proceeded under section 321, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or otherwise as the Court may under section 295 direct; or

thirdly, where the Collector has proceeded under section 322, in keeping down the interest on incumbrances on the property, and (when the judgment-debtor has no other sufficient means of subsistence) in providing for his subsistence to such amount as the Court thinks fit; and in

discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered;

and no other holder of a decree for money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied;

and the residue, if any, shall be paid to the judgment-debtor or such other person, if any, as the Court directs.

"325. When the Collector sells any property Sales how to be conducted. under this chapter, he shall put it up to public auction, in one or more lots as he thinks fit, and may—

(a) fix a reasonable reserved price for each lot;

(b) adjourn the sale for a reasonable time, whenever he deems the adjournment necessary for the purpose of obtaining a fair price for the property, recording his reasons for such adjournment;

(c) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

"325A. So long as the Collector can exercise Restrictions as to alienation by judgment-debtor or his representative, and prosecution of remedies by decree-holders. or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for money.

During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under section 323.

The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived.

"325B. When the property of which the sale Provision where property is in several districts, has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by sections 321 to 325 (both inclusive) shall from time to time be exercised and performed by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct.

"325C. In exercising the powers conferred Powers of Collector to compel attendance of parties and witnesses and production of documents. on him by sections 322 to 325 (both inclusive), the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents."

Amendment of section 326. 51. In section 326, for the last sentence, the following shall be substituted (namely) :—

“In such case the provisions of sections 320, paragraph two, to 325C (both inclusive) shall apply, as far as they are applicable.”

Amendment of section 331. 52. In section 331, paragraph two, for the words and figures “the Specific Relief Act, 1877, section 9,” the word and figure “Chapter V” shall be substituted; and to the same section the following paragraph shall be added (namely), “Every such order shall have the same force as a decree and shall be subject to the same conditions as to appeal or otherwise.”

Amendment of section 332. 53. In section 332, first paragraph, for the word “defendant,” the word “judgment-debtor” shall be substituted; and for the other paragraphs, the following shall be substituted (namely), “If after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute; and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.”

“If hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.”

“The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.”

Amendment of section 333. 54. For section 333 the following shall be substituted (namely) :—

“333. Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made.”

Amendment of section 335. 55. In section 335, for the first paragraph the following shall be substituted (namely) :—

“335. If the purchaser of any such property is resisted or obstructed by any person, other than the judgment-debtor, claiming in good faith a right to the present possession thereof, or, if, in delivering possession thereof, any such person is dispossessed, the Court on the complaint of the purchaser or the person so dispossessed, shall enquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit;”

and in the second paragraph of the same section, for the word “conclusive,” the word “final” shall be substituted.

Amendment of section 336. 56. In section 336, for the first proviso, the following shall be substituted :—

“Provided that for the purpose of making an arrest under this section no dwelling-house shall be entered after sunset or before sunrise, and no outer door of a dwelling-house shall be broken open :

“But when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found : provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who according to the customs of the country does not appear in public, the officer shall give notice to her that she is at liberty to withdraw; and, after allowing a reasonable time for her to withdraw and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest.”

Amendment of section 339. 57. In section 339, paragraph four, after the word “made,” the words “to the proper officer of the Court” shall be inserted; and to the same paragraph, the following words shall be added (namely), “and the subsequent payments (if any) shall be made to the officer in charge of the jail.”

Amendment of section 341. 58. In section 341, for clauses (a), (b), (c), (d) and (e) and the proviso, the following shall be substituted (namely) :—

“(a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail; or

(b) on the decree being otherwise fully satisfied; or

(c) at the request of the person on whose application he has been imprisoned; or

(d) on such person omitting to pay the allowance as hereinbefore directed; or

(e) if the judgment-debtor be declared an insolvent, as hereinafter provided; or

(f) when the term of his imprisonment, as limited by section 342, is fulfilled :

Provided that in the second, third and fifth cases mentioned in this section the judgment-debtor shall not be discharged without the order of the Court.”

Amendment of sections 344, 345, 347, 349, 350, 351, 356, 357, 358, 359 and 360. 59. For section 344, the following shall be substituted :—

“344. Any judgment-debtor arrested or imprisoned in execution of a decree for money, or against whose property an order of attachment has been made in execution of such a decree, may apply in writing to be declared an insolvent.

“Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent.

“Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgment-debtor resides or is in custody.”

In section 345, for the first line and clause (a), the following shall be substituted (namely) :—

Contents of application. "345. The application, when made by the judgment-debtor, shall set forth—

"(a) the fact of his arrest or imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and, where he has been arrested or imprisoned, the place in which he is in custody."

And to the same section the following paragraph shall be added:—

"The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody."

In section 347, for the first paragraph, the following shall be inserted (namely):—

"347. The Court shall fix a day for hearing the application, and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be stuck up in Court and served at the applicant's expense—

"where the applicant is the judgment-debtor on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder, and on the other creditors (if any) mentioned in the application:

"where the applicant is the decree-holder on the judgment-debtor or his pleader."

44. To section 349 the following words shall be added (namely), "or release him on his furnishing sufficient security that he will appear when called upon."

In sections 349, 350 and 351, for the word "applicant" wherever it occurs, the word "judgment-debtor" shall be substituted.

"In section 351, clause (b), after the word "imprisoned" the words "or the order of attachment was made" shall be inserted.

In section 356 for clause (d), the following clauses shall be substituted:—

"(d) to discharge according to their respective priorities all debts secured by mortgage of the insolvent's property:

(e) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference."

And to the same section the following shall be added (namely):—

"Provided that in any local area in which a declaration has been made under section 320, and is in force, no sale of immovable property paying revenue to Government or held or let for agricultural purposes shall be made by the Receiver; but after he has sold the other property of the insolvent, the Court shall ascertain (a) the amount required to satisfy the claims of the scheduled creditors after deducting the monies already received, (b) the immovable property of the

insolvent remaining unsold, and (c) the incumbrances, if any, existing thereon; and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 both inclusive, as he thinks fit, and subject to the provisions of those sections so far as they may be applicable; and shall hold at the disposal of the Court all sums that may come to his hands by such exercise."

In section 357, for the figures "355," the figures and word "351 or 355" shall be substituted.

And for the words "decrees against him held by the scheduled creditors are fully satisfied or become capable of being executed," the following shall be substituted (namely): "debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 351 or 355."

For section 358 the following shall be substituted:—

"358. If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts."

In section 359, after the words "sentence him" the words "by order in writing" shall be inserted.

To section 360 the following paragraph shall be added (namely):—

"Nothing in this chapter shall apply to any Court having jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein where the property of the judgment-debtor exceeds in value two thousand five hundred rupees, or the amount of the pecuniary claims against him exceeds five thousand rupees, or such property or any part thereof is situate outside British Burma."

60. In sections 361, 362, 363, 365 and 368,

for the words "cause of action" wherever they occur, the words "right to sue" shall be substituted; and to section 368 the following clause shall be added (namely): "When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate."

61. In section 364, paragraph one, and section 366, paragraph one,

after the word "If," the words "within the time limited by law" shall be inserted; and in the latter section, paragraph one, before the word "award" the words "shall, on the application of the defendant," shall be inserted.

62. In section 371, paragraph two, after the word "deceased" the

word "or" shall be inserted.

63. In section 373, paragraph one, for the words "for the part," the words "in respect of the part" shall be substituted; and to paragraph two, the words "or in respect of the same part" shall be added.

Amendment of section 373.

64. In section 375, after the word "adjusted" the words "wholly or in part" shall be inserted: after the words "respect to," the words "the whole or any part of" shall be inserted; and to the same section shall be added the words "so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise or satisfaction."

Amendment of section 375.

65. In section 377, for the first seven words, the following shall be substituted (namely): "Notice in writing of the deposit shall be given through the Court."

Amendment of section 377.

66. In sections 384, 477 and 483, after the word "affidavit," the words "or otherwise" shall be inserted.

Amendment of sections 384, 477 and 483.

67. In section 386, for the second paragraph and the two provisoes the following shall be substituted (namely): "Such commission may be issued to any Court, not being a High Court or the Court of the Recorder of Rangoon, within the local limits of whose jurisdiction such person resides, or to any pleader of a High Court whom the Court issuing the commission thinks fit to appoint."

Amendment of section 386.

68. In section 406, for the word "shall" the words "may, if he thinks fit," shall be substituted.

Amendment of section 406.

69. In section 412, after the word "disappeared" the words and figures "or if the suit is dismissed under section 97 or 98" shall be inserted.

Amendment of section 412.

70. In section 413, for the word "Refusal" the words and figures "An order of refusal made under section 409" shall be substituted.

Amendment of section 413.

71. In section 424, after the words "against a public officer" the words "in respect of an act purporting to be done by him in his official capacity" shall be inserted; and in sections 428 and 429, after the words "public officer" the words "in respect of such act as aforesaid" shall be inserted.

Amendment of sections 424, 428 and 429.

72. In section 437, for the first sentence, the following shall be substituted (namely): "In all suits concerning property vested in a trustee, executor or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit."

Amendment of section 437.

73. In section 456, for the words "in the name of the minor" the words "in the name and on behalf of the minor or by the plaintiff" shall be substituted; and to the same section the following paragraph shall be added (namely): "Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian; provided that he has no interest adverse to that of the minor."

Amendment of section 456.

74. In section 469, after the word "arrest" and after the word "warrant" (in each of the places where it occurs) the words "or other process" shall be inserted; and in the second paragraph, after the words "signature, and" the words "in the case of a warrant of arrest" shall be inserted.

Amendment of section 469.

75. To section 473, the words "and shall adjudicate on such claim" shall be added.

Amendment of section 473.

76. In the last paragraph of section 478, for the words "an order for bringing the defendant" the words "a warrant to arrest the defendant and bring him" shall be substituted.

Amendment of section 478.

77. To section 481, the following words shall be added (namely): "provided that no person shall be detained in prison under this section after he has complied with such order."

Amendment of section 481.

78. In section 483, after the words "portion of his property" the words "within the jurisdiction of the Court" shall be inserted.

Amendment of section 483.

79. In section 484, after the word "suit" the words "or that he has with such intent quitted the jurisdiction of the Court, leaving therein property belonging to him" shall be inserted.

Amendment of section 484.

80. In section 497, clause one, for the words "the injunction," the words "an injunction which it has granted" shall be substituted.

Amendment of section 497.

81. In section 523, paragraph three, for the words "any of" the word "all" shall be substituted.

Amendment of section 523.

82. In the last clause of section 539, for the words "(where there is no Advocate General), be exercised by the Government Advocate, or (where there is no Government Advocate)" the following words shall be substituted (namely): "outside the Presidency-towns be exercised also by the Collector or."

Amendment of section 539.

83. In section 544, for the words "decree and," the words "decree, and thereupon" shall be substituted.

Amendment of section 544.

84. For section 555 the following shall be substituted (namely):—

Amendment of section 555.

555. On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply."

85. In section 560, for the words "it be proved that the respondent," the words "he satisfies the Court that the notice was not duly served, or that he" shall be substituted.

86. In section 561, for the words "given to the appellant or his pleader seven days' notice of such objection," the words "filed a notice or such objection not less than seven days before the date fixed for the hearing of the appeal" shall be substituted.

87. In section 566, paragraph two, for the word "issue," the word "issues" shall be substituted.

88. For the first paragraph of section 582, the following shall be substituted (namely) :—

"582. The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under chapter V; and in sections 363 and 365, the word 'plaintiff' shall be held to include an appellant."

89. In section 584, clause (c), after the word "may" the word "possibly" shall be inserted.

90. In section 588, for clauses (a) to (w), the following shall be substituted (namely) :—

(1) orders under section 20, staying proceeding in a suit;

(2) orders under section 32, striking out or adding the name of any person as plaintiff or defendant;

(3) orders under section 36 or section 66, directing that a party shall appear in person;

(4) orders under section 44, adding a cause of action;

(5) orders under section 47, excluding a cause of action;

(6) orders returning plaints for amendment or to be presented to the proper Court;

(7) orders under section 111, setting-off, or refusing to set-off, one debt against another;

(8) orders rejecting applications under section 103 (in cases open to appeal) for an order to set aside the dismissal of a suit;

(9) orders rejecting applications under section 108 for an order to set aside a decree *ex parte*;

(10) orders under sections 113, 120 and 177;

(11) orders under section 116 or section 245, rejecting, or returning for amendment, written statements or applications for execution of decrees

(12) orders under sections 143 and 145, directing anything to be impounded;

(13) orders under section 162 for the attachment and sale of moveable property;

(14) orders under section 168 for attachment of property, and orders under section 170 for the sale of attached property;

(15) orders under section 261 as to objections to draft conveyances or draft endorsements;

(16) orders under section 294, the first paragraph of section 312, or section 313, for confirming, or setting aside, or refusing to set aside, a sale of immovable property;

(17) orders in insolvency-matters, under section 351, 352, 353 or 357;

(18) orders under section 366, paragraph two, section 367 or 368;

(19) orders rejecting applications under section 370 for dismissal of a suit;

(20) orders under section 371, refusing to set aside the abatement or dismissal of a suit;

(21) orders disallowing objections, under section 372;

(22) orders under section 454, 455 or 458, directing a next friend or guardian for the suit to pay costs;

(23) orders in interpleader suits under section 473, clause (a), (b) or (d), section 475 or section 476;

(24) orders under section 479, 480, 485, 492, 493, 496, 497, 502 or 503;

(25) orders under section 514, superseding an arbitration;

(26) orders under section 518, modifying an award;

(27) orders of refusal under section 558 to re-admit, or under section 560 to re-hear, an appeal;

(28) orders under section 562, remanding a case;

(29) orders under any of the provisions of this Code, imposing fines, or for the arrest or imprisonment of any person, except when such imprisonment is in execution of a decree."

91. For the first paragraph of section 589 the following shall be substituted :—

"589. An appeal from any order specified in section 588, clauses (15), (16) and (17), shall lie to the High Court."

92. In section 622, after the words "so vested," the words "or to have acted in the exercise of its jurisdiction illegally or with material irregularity" shall be inserted.

93. In section 638, for the figures and word "16 and 17" the figures "16, 17 and 19" shall be substituted; and in the last paragraph, after the word "any" the words "Judge of a" shall be inserted; and the word "its" shall be omitted.

94. In section 642, for the second paragraph the following shall be substituted (namely) :—

"And except as provided in sections 256 and 643, where any matter is

pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, Mukhtyars, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under this Code while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal."

Amendment of section 648. 95. For section 648, the following shall be substituted (namely) :—

" 648. Where any Court desires that any person shall be arrested or any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

Procedure when person to be arrested or property to be attached is outside the district.

"The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment ;

"and the Court making any arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he furnishes sufficient security for his appearance before that Court, or (where the case is one under chapter XXXIV) for satisfying any decree that may be passed against him by such Court, in either of which cases the Court making the arrest shall release him."

Amendment of section 649. 96. To section 649 the following paragraph shall be added (namely) :—

"In the same chapter, the expression ' Court which passed a decree ' or words to that effect, shall, unless there be something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist, or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit."

97. After section 650 the following shall be inserted (namely) :—

" 650A. Summonses issued by any Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts : provided that the Courts issuing such summonses have been established by the authority

of the Governor General in Council, or that the Governor General in Council has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts."

98. In section 652, after the words " connected with," the words " its own procedure or " shall be inserted.

Amendment of section 652.

99. In the first schedule, column third, opposite " XI of 1865," for the figures and word " 11, paragraph 2," the figures and words " 11, the last nineteen words of section 13, section 19," shall be substituted ; and opposite " V. of 1866," after the word " inclusive," the words " and the schedule " shall be inserted.

Amendment of schedule II. 100. In the second schedule—

for the figures " 230," the figures " 223 " shall be substituted :

before the word and figures " Chapter XXI " the words and figures " Chapter XX. section 360 —Power to invest certain Courts with insolvency-jurisdiction " shall be inserted :

after the words and figures " Chapter XXXIV—Of arrest and attachment before judgment," the words and figures " except as regards immovable property, Chapter XXXVI—Appointment of receivers " shall be inserted

for the figures " 522 " the figures " 526 " shall be substituted.

101. In the fourth schedule, to the note to form No. 145 the following Amendments of schedule IV. words shall be added (namely) : " and as fairly and accurately as possible the other particulars required by section 287 to be specified " ; in form No. 149, for the word " thirty " the word " sixty " shall be substituted ; and in form No. 172, for the word " seven " in each of the places where it occurs, the word " ten " shall be substituted.

102. Every appeal now pending which would have lain if this Act had been in force on the date of its institution shall be heard and determined as if the Act had been in force on such date ; and every order heretofore passed purporting to transfer a case to a Collector under section 320 and every notification heretofore published purporting to be issued under section 360, shall be deemed to have been respectively passed and issued in accordance with law.

103. In the preceding sections of this Act, the Interpretation-clause. words " section " and " schedule " respectively mean section of, and schedule annexed to, the said Code.

AND whereas it is also expedient to amend the Indian Registration Act, 1877, in manner hereinafter appearing ; It is hereby further enacted as follows :—

104. In section 35 of the same Act, after the words "person appears," the words "to the registering officer" shall be inserted; and after the words "refuse to register the document," the words "as to the person so denying, appearing or dead" shall be inserted.

105. In section 51 of the same Act, for the figures "87," the figures "89" shall be substituted.

106. In section 83 of the same Act, for the words "Subordinate Magistrate of the first" the words "Magistrate of the second" shall be substituted.

107. In section 89 of the same Act, for the words "the certificate," the words "the copy" shall be substituted, and to the same section the following paragraph shall be added (namely) :—

"Every Court granting a certificate under section 316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1."

AND whereas it is also expedient to amend the Indian Limitation Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows :—

108. In the second schedule to the said Indian Limitation Act, 1877,—

Amendment of Act XV. of 1877, Schedule II.

for No. 161, the following shall be substituted, namely :—

"161.—For the issue of a notice under section 258 of the same Code to show cause why the payment or adjustment therein mentioned should not be recorded as certified.	Twenty days.	When the payment or adjustment is made."
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to No. 166, column one, the following words shall be added (namely) : "or on the ground that the decree-holder has purchased without the permission of the Court";

to No. 171, column one, the words "or appellant" shall be added; and in column three, after the word "plaintiff's," the words "or appellant's" shall be inserted;

after No. 171, the following shall be inserted, (namely) :—

"171A.—Under section 366 of the same Code, by the defendant.	Sixty days...	The date of the plaintiff's death.
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"171B.—Under section 368 of the same Code, to have the representative of a deceased defendant made a defendant.	Ditto ...	The date of the defendant's death.
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"171C.—Under section 371 of the same Code, for an order to set aside an order for abatement or dismissal.	Ditto ...	The date of the order for abatement or dismissal."
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and in No. 179, column three, paragraph 6, for the words "specified date) the date so specified" the words "certain date) such date" shall be substituted.

D. FITZPATRICK,

Secy. to the Govt. of India,
Legislative Department.

[Published with the "Bombay Government Gazette" on the 14th August 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st July 1879, and was promulgated for general information in the *Gazette of India* of 26th July 1879:—

Act No. XI. of 1879.

THE LOCAL AUTHORITIES LOAN ACT, 1879.

WHEREAS it is expedient to re-enact the Local Public Works Loan Act, 1871, with the amendments hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called "The Local Authorities Loan Act, 1879";
 Short title.

It extends to the whole of British India, and shall come into force upon the passing thereof.

Local extent.

Commencement.
2. The Local Public Works Loan Act, 1871, is hereby repealed. But all applications, declarations, authorizations, attachments, loans and rules made under the said Act, shall be deemed to have been made under this Act.
 Repeal of Act XXIV. of 1871.
3. In this Act, "local authority" means any body corporate, municipal committee, or other persons legally entitled to the control or management of any local or municipal fund, or legally entitled to impose any cess, rate, duty or tax upon any persons within any local area; and "funds," used with reference to any local authority, includes any local or municipal fund to the control or management of which such authority is legally entitled, and any cess, rate, duty or tax which such authority is legally entitled to impose, and any property vested in such authority.
 "Funds."
4. Any local authority desiring to obtain a loan, on the security of its funds or any portion thereof, for the carrying out of any works which
 Loans for works may be granted on security of funds.

it is legally authorized to carry out may, in manner provided by the rules made by the Governor General in Council under the power hereinafter conferred, apply to the Local Government for such loan.

5. The Governor General in Council may from time to time make rules consistent with this Act as to—

- (1) the nature of the funds on the security of which loans may be made;
- (2) the works for which loans may be made;
- (3) the manner of making applications for loans;
- (4) the inquiries to be made in relation to such loans, and the manner of conducting such inquiries;
- (5) the cases and the forms in which particulars of applications and proceedings, and orders thereon, shall be published;
- (6) the cases in which the Local Government may make loans without the previous sanction of the Governor General in Council, and the cases in which such previous sanction must be obtained;
- (7) the manner of recording and enforcing the conditions on which such loans are to be made;
- (8) the manner and time of making loans;
- (9) the inspection of any works carried out by means of loans;
- (10) the instalments by which loans shall be repaid, the interest to be charged on loans, and the manner and time of repaying loans and of paying the interest thereon;
- (11) the sum to be charged against the funds which are to form the security for the loan, as cost in effecting the loan;
- (12) the attachment of such securities, and the manner of disposing of or collecting them;
- (13) the accounts to be kept in respect of loans, and as to all other matters incidental to carrying this Act into effect.

All such rules shall be published in the *Gazette of India*.

6. If any loan made under such rules, or any interest or costs due in respect thereof, is or are not repaid according to the conditions of the loan, the Local Government may attach the funds on the security of which

the loan was made. After such attachment, no person except an officer appointed in this behalf by the Local Government shall in any way deal with the attached funds; but such officer may do all acts in respect thereof which the borrowers might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the loan and of all interest and costs due in respect thereof, and of all expenses caused by the attachment and subsequent proceedings:

Provided that no such attachment shall defeat or prejudice any debt for which the funds attached were previously pledged in accordance with law; but all such prior charges shall be paid out of the proceeds of the funds before any part of the proceeds is applied to the satisfaction of a liability incurred under this Act.

7. The Local Government, with the previous sanction of the Governor General in Council, may authorize any local authority which might, under the provisions hereinbefore contained, have borrowed money for any work upon the security of its funds to borrow money from any other person for such work upon such security; and, if any such loan or the interest thereon is not duly paid, the Local Government shall, upon the application of the lender, attach such funds for his benefit in manner provided by section six.

The Governor General in Council may, in respect of loans to be taken under this section, exercise the power conferred by section five, so far as the same may be applicable to the case of such loans.

8. Except as provided by this Act and the rules made hereunder, no local authority shall for any purpose borrow money upon or otherwise charge its funds; and any contract otherwise made for that purpose after the passing of this Act shall be void:

Provided that nothing herein contained shall be deemed—

(a) to preclude the Municipality of Calcutta, Madras or Bombay, or the Trustees of the Port of Bombay, or the Commissioners for making improvements in the Port of Calcutta, or any like body hereafter created for the Port of Madras, from exercising the borrowing powers conferred on them by any special enactment now or hereafter in force; or

(b) to preclude any other local authority from exercising the borrowing power (if any) conferred on it by any such enactment with a view to raising money for any purpose other than the carrying out of works.

9. The Secretary of State in Council shall be entitled to the remedy mentioned in section six for the recovery of any money lent by him to any local authority before the fifth day of September 1871, and the interest due on such money; and the Governor General in Council or the Local Government may declare that any person, who before the said fifth day of September 1871, has lent money to any local authority, shall be entitled to the said remedy for the recovery of such money, or of the interest due thereon.

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

[Published with the "Bombay Government Gazette" on the 21st August 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 29th July 1879, and was promulgated for general information in the *Gazette of India* of the 2nd August 1879:—

Act No. XII. of 1879.

An Act to amend the Code of Civil Procedure, the Registration Act, 1877, and the Limitation Act, 1877.

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

1. The following portions of the said Code shall be repealed (namely):—

Repeal of certain portions of Act X. of 1877. shall be repealed (namely):—

In section 4, the words and figures "The Panjáb Courts Act, 1865," and "The Panjáb Appeals Act, 1873":

In section 5, the third sentence:

In section 51, the words "with the permission of the Court":

In section 52, from and including the words "and when he makes it out of Court" to the end:

In section 61, the words "bill of exchange or other":

In section 64, the words "or as soon thereafter as may be practicable":

In section 80, the words "or to receive the copy of the summons":

In section 97, the words "a duly authorized":

In sections 113 and 177 the word "other":

In section 115, the second paragraph:

In section 131, the words "in whose plaint, written statement or affidavits reference is made to any document"; and the words "in the presence of such officer as the Court appoints in this behalf":

In section 199, the words from and including "and in" to the end:

In section 221, the second paragraph:

In section 224, the word "therewith":

In section 230, paragraphs three and four, the words "unless the Court is satisfied that on the last preceding application due diligence was used to procure complete satisfaction of the decree; and the order of the Court granting any such subsequent application shall be conclusive evidence that due diligence was used to procure such satisfaction. And no such subsequent application shall be granted":

In section 246, clause (e) and the letters (f) and (g):

In section 259, the words "and keeping the same under attachment until the further order of the Court":

In section 339, paragraph three, the words "to the proper officer of the Court":

In section 353, the words "within three months from its publication", and "within three months from the publication of the schedule":

In section 355, paragraph two, the words "from arrest or imprisonment, as the case may be":

In sections 407 and 408, the words "upon such examination":

In section 638, the figures "261":

In the second schedule, the words and figures "section 648 (so far as relates to arrest)."

In the fourth schedule, No. 152, the words "ON SECURITIES BEING GIVEN," and "on security to the amount of Rs. decreed to the in the above suit, being given to your satisfaction."

2. In section 2, for the definitions of "judgment" and "decree," the following shall be substituted (namely):

"decree" means the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court when such adjudication, so far as regards the Court expressing it, decides the suit or appeal. An order rejecting a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in section 244 but not specified in section 588, is within this definition: an order specified in section 588, is not within this definition:

'order' means the formal expression of any decision of a Civil Court which is not a decree as above defined:

'judgment' means the statement given by the Judge of the grounds of a decree or order."

In the same section, to the definition of "signed," the following words shall be added (namely), "it also includes stamped with the name of the person referred to."

3. In section 3, for the last paragraph the following shall be substituted (namely):—

"Save as provided by section 99A, nothing herein contained shall affect any proceedings prior to decree in any suit instituted or appeal presented before the first day of October 1877, or any proceedings after decree that may have been commenced and were still pending at that date."

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

Act No. XVIII. of 1878 (to amend the Code of Civil-Procedure, section 4), is hereby repealed.

5. In section 5, to the first sentence, the following shall be added (namely): "and to all other Courts (other than the Courts of Small Causes in the towns of Calcutta, Madras and Bombay) exercising the jurisdiction of a Court of Small Causes,"

6. In section 13, for the first paragraph, the following shall be substituted (namely):—

"13. No Court shall try any suit or issue in which the matter directly and substantially in issue, having been directly and substantially in issue in a former suit in a Court of competent jurisdiction, between the same parties, or between parties under whom they or any of them claim, litigating under the same title, has been heard and finally decided by such Court."

and in the same section, explanation I, for the word "confessed" the word "admitted" shall be substituted.

7. In section 43, paragraph one, for the words "arising out of" the words "which the plaintiff is entitled to make in respect of" shall be substituted: in the same section, paragraph two, for the word "for" (in each of the places where it occurs) the words "in respect of" shall be substituted; and in the same section, paragraph three, for the word "claim" the words "cause of action" shall be substituted;

and to the same section the following paragraph shall be added: "For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action."

8. To section 44 the following words shall be added (namely): "or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents."

9. In section 45, for paragraph one, the following shall be substituted (namely): "subject to the rules contained in chapter II and in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit":

in the same section, paragraph two, for the words "the defendant" the words "any defendant, or at any subsequent stage of the suit, if the parties agree" shall be substituted.

10. In section 50, for the word "abode" in each of the places where it occurs, the word "residence" shall be substituted.

11. To section 51 the following proviso shall be added (namely):—

"Provided that, if the plaintiff, by reason of absence or for other good cause, is unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf."

12. In sections 51, 53, 115, 346, 393 and 403, for the word "subscribed" (wherever it occurs) the word "signed" shall be substituted: in sections 115 and 346, for the word "subscribing" the word "signing" shall be substituted; and in section 403, for the word "subscription" the word "signing" shall be substituted.

13. In section 58, for the word "filed" the word "produced" shall be substituted.

14. In section 68, for the word "cognizable" the word "heard" shall be substituted.

15. In section 93, after the word "levied" and in section 95, after the word "paid," and in section 397, after the word "be," the words "within a time to be fixed by the Court" shall be inserted.

16. After section 99, the following shall be inserted (namely):—

"99A. If, after a summons has, whether before or after the first day of October 1877, been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from such return to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that

such defendant is avoiding service of process, the Court may dismiss the suit as against such defendant.

"In such case the plaintiff may (subject to the law of limitation) bring a fresh suit."

17. In section 108, paragraph one, the words and figures "under section 100" shall be omitted; and in the same section, paragraph two, for the words "it be proved to the satisfaction of the Court that the defendant," the words "he satisfies the Court that the summons was not duly served, or that he" shall be substituted.

18. In section 131, paragraph one, for the word "Every" the word "Any" shall be substituted, and for the words "such document" the words "any specified document" shall be substituted.

19. In section 136, after the word "discovery" (in each of the places in which it occurs) the word "production" shall be inserted.

20. In section 139, for the words and figures "the production of which has been called for under section 138 and which has not been produced" the words and figures "which should have been, but has not been, produced in accordance with the requirements of section 138" shall be substituted.

21. In section 207, for the words "or numbers" to the end the following words shall be substituted (namely): "or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers."

22. In section 211, for the words "land or other," the words "the recovery of possession of immovable" shall be substituted: to the same section the words "together with interest on such profits" shall be added; and in section 212, before the word "immovable" the words "the recovery of possession of" shall be inserted.

23. After section 215 the following section shall be inserted (namely):—

"215A. When a suit is for an account of pecuniary transactions between a principal and agent, and in all other suits not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order directing such accounts to be taken as it thinks fit."

24. To section 220 the following words shall be added (namely): "Every order relating to costs made under this

Code and not forming part of a decree may be executed as if it were a decree for money."

25. In section 223, clause (c), for the words "district within which" the words "local limits of the jurisdiction of" shall be substituted; and in the penultimate paragraph of the same section, for the words "local Court of Small Causes" the words "Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be," shall be substituted.

26. In section 229, for the words "Native Prince or State in India" the words "Foreign Prince or State" shall be substituted.

27. In section 20, clause (b), for the words "the payment of money or the delivery of property by instalments—the date of the default in paying or delivering the instalment" the following words shall be substituted (namely): "any payment of money, or the delivery of any property, to be made at a certain date—the date of the default in making the payment or delivering the property."

28. In the second proviso to section 232, after the word "decree" the words "for money" shall be inserted.

29. In section 235, for the words "in manner hereinbefore provided for the verification of plaints," the following words shall be substituted (namely): "by the applicant or by some other person proved to the satisfaction of the Court, to be acquainted with the facts of the case."

30. In sections 236 and 237, for the words "If the application be," the words "Whenever an application is made" shall be substituted.

31. In section 244, clause (c), after the word "execution," the words "discharge or satisfaction" shall be inserted.

32. In section 245, for the first sentence, the following shall be substituted (namely): "The Court on receiving an application for the execution of a decree shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with; and if they have not been complied with, the Court may reject the application, or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected."

33. In section 246, for Explanation I, the following shall be substituted (namely):—

"Explanation I.—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court."

In Explanation II, after the words "assignor as" the words "in respect of judgment-debts due" shall be inserted.

34. In section 252, for the words "If no such property can be found and the judgment-debtor," the words "If no such property remains in the possession of the judgment-debtor, and he" shall be substituted.

Amendment of section 252.
35. After section 257 the following shall be inserted:—

"257A. Every agreement to give time for the satisfaction of a judgment-debt shall be void unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable.

Agreement to give time to judgment-debtor.
"Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due, or to accrue due under the decree, shall be void unless it is made with the like sanction.

Agreement for satisfaction of judgment-debt.
"Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt; and the surplus, if any, shall be recoverable by the judgment-debtor."

Amendment of section 258.
36. For section 258 the following shall be substituted:—

"258. If any money payable under a decree is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257A, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

"The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

"No such payment or adjustment shall be recognized by any Court unless it has been certified as aforesaid."

37. For the second paragraph of section 259, the following shall be substituted:—

Amendment of section 259.
"When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree, and the decree-

holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist."

38. In section 260, in the first paragraph, after the words "the performance of," the words "or abstention from" shall be inserted; and for the second paragraph the following paragraphs shall be substituted (namely):—

"When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist."

39. In section 264, after the words "the same" the words "and not bound by the decree to relinquish such occupancy" shall be inserted.

40. To section 265 the following words shall be added (namely), "and according to the law, if any, for the time being in force for the partition, or the separate possession of shares, of such estates."

41. For the last paragraph of section 268, the following shall be substituted (namely):—

Amendment of section 268.
"In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the further orders of the Court.

"A copy of every such order shall be fixed up in a conspicuous part of the court-house, and shall be served on the officer so required.

"Every such officer may from time to time pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor."

42. For the first paragraph of section 271 the following shall be substituted :—

Amendment of section 271.
 "271. No person executing any process under this Code, directing or authorizing seizure of moveable property, shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house. But when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be."

43. To section 289, paragraph one, the following words shall be added (namely): "and a copy thereof shall be fixed up in the court-house and, in the case of land paying revenue to Government, also in the Collector's office"; and in section 290, for the words "notification has been affixed," the words "copy of the proclamation has been fixed up" shall be substituted.

44. In section 291, for the first eight words the following shall be substituted (namely):
 Amendment of section 291.
 "The Court may in its discretion adjourn any sale under this chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any such sale;" and in the same section, after the proviso, the following sentence shall be inserted, (namely): "whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it."

45. To section 294 the following paragraph shall be added (namely):—

"When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder."

46. In section 295, first proviso, after the words "shall not," the words "as such" shall be inserted.

and after the second proviso the following shall be inserted :—

"Provided also that, when immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;
secondly, in discharging the interest and principal money due on the incumbrance;
thirdly, in discharging the interest and principal moneys due on subsequent incumbrances (if any); and

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fourthly, rateably among the holders of decrees for money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree, ordering such sale for execution of such decrees and have not obtained satisfaction thereof."

47. In section 305, paragraph two, after the word "therein," the words and figures "and notwithstanding anything contained in section 276," shall be inserted; and for the last paragraph, the following shall be substituted (namely):—

"Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court."

48. In section 314, after the word "pro-
 Amendment of section 314.
 perty" the words "in execution of a decree" shall be inserted.

49. For section 316 the following shall be substituted (namely):—

"316. When a sale of immovable property has become absolute in manner aforesaid, the Court shall grant a certificate stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before: provided that the decree under which the sale took place was still subsisting at that date."

50. In section 320, paragraph two, after the word "also" the words "notwithstanding anything hereinbefore contained" shall be inserted; and for sections 321 to 325, both inclusive, the following shall be substituted (namely):—

"321. When the execution of a decree has been so transferred, the Collector may—

(a) proceed as the Court would proceed under section 305; or

(b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold; or

(c) sell the property ordered to be sold or so much thereof as may be necessary.

"322. When the execution of a decree, not being a decree ordering the sale of immovable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immovable property, has been so transferred, the Collec-

tor, if, after such enquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

Notice to be given to decree-holders and to persons having claims on the property.

“322A. In the case mentioned in section 322, the Collector shall publish a notice calling upon—

(a) every person holding a decree for money against the judgment-debtor capable of execution by sale of his immoveable property, and which such decree-holder desires to have so executed, and every holder of a decree for money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder.

(b) every person having any claim on the said property, to submit to the Collector a statement of such claim, and to produce the documents, if any, by which it is evidenced.

Such notice shall be in the language of the district, and shall allow a period of sixty days from the date of its publication for compliance therewith. It shall be published by being posted in the court-house of the Court which made the original order under section 304, and at such other places (if any) as the Collector thinks fit. Where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

“322B. Upon the expiration of the said period the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such enquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may from time to time adjourn such hearing and enquiry.

If there be no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order under section 304, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The Collector

shall then draw up a statement as above provided in accordance with such decision.

“322C. The Collector may, instead of himself issuing the notices and holding the enquiry required by sections 322A and 322B, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by sections 322A and 322B, and transmit such statement to the Collector.

“322D. The decision by the Court of any dispute arising under section 322B or section 322C shall, as between the parties thereto, have the force of, and be appealable as, a decree.

“323. Whenever the amount to be recovered and the property available have been determined as provided in section 322B or 322C, the Collector may—

(1) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or if it appears that the amount with interest (if any) in accordance with the decree, and when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale,

(2) raise such amount and interest (notwithstanding any order under section 304);

“(a) by letting in perpetuity, or for a term, on payment of a premium the whole or any part of the said property; or

“(b) by mortgaging the whole or any part of such property: or

“(c) by selling part of such property: or

“(d) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale: or

“(e) partly by one of such modes and partly by another or others of such modes.

(3) For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

(4) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incum-

branch with which the Collector purposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

In proceeding under paragraphs (2), (3) and (4) of this section, the Collector shall be subject to such rules consistent with this Act as may from time to time be made in this behalf by the Chief Controlling Revenue-Authority.

“324. If, on the expiration of the letting Recovery of balance, or management under if any, after letting or management. section 323, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

“324A. The Collector shall from time to time Collector to render ac- counts to the Civil Court. render to the Court which made the original order under section 304 an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this chapter, and shall hold the balance at the disposal of the Court.

Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and (if the Collector so directs) the expenses of witnesses summoned by him.

Application of Balance. Such balance shall be applied by the Court as follows :—

firstly, in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property to such amount in the case of each member as the Court thinks fit; and

secondly, where the Collector has proceeded under section 321, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or otherwise as the Court may under section 295 direct; or

thirdly, where the Collector has proceeded under section 322, in keeping down the interest on incumbrances on the property, and (when the judgment-debtor has no other sufficient means of subsistence) in providing for his subsistence to such amount as the Court thinks fit; and in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose

claims were included in the amount ordered to be recovered;

and no other holder of a decree for money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied;

and the residue, if any, shall be paid to the judgment-debtor or such other person, if any, as the Court directs.

“325. When the Collector sells any property under this chapter, he shall put it up to public auction, in one or more lots as he thinks fit, and may—

(a) fix a reasonable reserved price for each lot;

(b) adjourn the sale for a reasonable time, whenever he deems the adjournment necessary for the purpose of obtaining a fair price for the property, recording his reasons for such adjournment;

(c) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

“325A. So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for money.

During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under section 323.

The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived.

“325B. When the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by sections 321 to 325 (both inclusive) shall from time to time be exercised and performed by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct.

“325C. In exercising the powers conferred on him by sections 322 to 325 (both inclusive), the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.”

Amendment of section 326. 51. In section 326, for the last sentence, the following shall be substituted (namely) :—

“In such case the provisions of sections 320, paragraph two, to 325C (both inclusive) shall apply, as far as they are applicable.”

Amendment of section 331. 52. In section 331, paragraph two, for the words and figures “the Specific Relief Act, 1877, section 9,” the word and figure “Chapter V” shall be substituted; and to the same section the following paragraph shall be added (namely), “Every such order shall have the same force as a decree and shall be subject to the same conditions as to appeal or otherwise.”

Amendment of section 332. 53. In section 332, first paragraph, for the word “defendant,” the word “judgment-debtor” shall be substituted; and for the other paragraphs, the following shall be substituted (namely), “If after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute; and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.”

“In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified,

“The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.”

Amendment of section 333. 54. For section 333 the following shall be substituted (namely) :—

“333. Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made.”

Amendment of section 335. 55. In section 335, for the first paragraph the following shall be substituted (namely) :—

“335. If the purchaser of any such property is resisted or obstructed by any person, other than the judgment-debtor, claiming in good faith a right to the present possession thereof, or, if, in delivering possession thereof, any such person is dispossessed, the Court on the complaint of the purchaser or the person so dispossessed, shall enquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit;”

and in the second paragraph of the same section, for the word “conclusive,” the word “final” shall be substituted.

Amendment of section 336. 56. In section 336, for the first proviso, the following shall be substituted :—

“Provided that for the purpose of making an arrest under this section no dwelling-house shall be entered after sunset or before sunrise, and no outer door of a dwelling-house shall be broken open :

“But when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found : provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who according to the customs of the country does not appear in public, the officer shall give notice to her that she is at liberty to withdraw; and, after allowing a reasonable time for her to withdraw and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest.”

Amendment of section 339. 57. In section 339, paragraph four, after the word “made,” the words “to the proper officer of the Court” shall be inserted; and to the same paragraph, the following words shall be added (namely), “and the subsequent payments (if any) shall be made to the officer in charge of the jail.”

Amendment of section 341. 58. In section 341, for clauses (a), (b), (c), (d) and (e) and the proviso, the following shall be substituted (namely) :—

“(a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail; or

(b) on the decree being otherwise fully satisfied; or

(c) at the request of the person on whose application he has been imprisoned; or

(d) on such person omitting to pay the allowance as hereinbefore directed; or

(e) if the judgment-debtor be declared an insolvent, as hereinafter provided; or

(f) when the term of his imprisonment, as limited by section 342, is fulfilled :

Provided that in the second, third and fifth cases mentioned in this section the judgment-debtor shall not be discharged without the order of the Court.”

Amendment of sections 344, 345, 347, 349, 350, 351, 356, 357, 358, 359 and 360. 59. For section 344, the following shall be substituted :—

“344. Any judgment-debtor arrested or imprisoned, in execution of a decree for money, or against whose property an order of attachment has been made in execution of such a decree, may apply in writing to be declared an insolvent.

“Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent.

“Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgment-debtor resides or is in custody.”

In section 345, for the first line and clause (a), the following shall be substituted (namely) :—

Contents of application. " 345. The application, when made by the judgment-debtor, shall set forth—

"(a) the fact of his arrest or imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and, where he has been arrested or imprisoned, the place in which he is in custody."

And to the same section the following paragraph shall be added:—

"The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody."

In section 347, for the first paragraph, the following shall be inserted (namely):—

"347. The Court shall fix a day for hearing the application, and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be stuck up in Court and served at the applicant's expense—

"where the applicant is the judgment-debtor on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder, and on the other creditors (if any) mentioned in the application:

"where the applicant is the decree-holder on the judgment-debtor or his pleader."

44. To section 349 the following words shall be added (namely), "or release him on his furnishing sufficient security that he will appear when called upon."

In sections 349, 350 and 351, for the word "applicant" wherever it occurs, the word "judgment-debtor" shall be substituted.

In section 351, clause (b), after the word "imprisoned" the words "or the order of attachment was made" shall be inserted.

In section 356 for clause (d), the following clauses shall be substituted:—

"(d) to discharge according to their respective priorities all debts secured by mortgage of the insolvent's property:

(e) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference."

And to the same section the following shall be added (namely):—

"Provided that in any local area in which a declaration has been made under section 320, and is in force, no sale of immovable property paying revenue to Government or held or let for agricultural purposes shall be made by the Receiver; but after he has sold the other property of the insolvent, the Court shall ascertain (a) the amount required to satisfy the claims of the scheduled creditors after deducting the monies already received, (b) the immovable property of the

insolvent remaining unsold, and (c) the incumbrances, if any, existing thereon; and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 both inclusive, as he thinks fit, and subject to the provisions of those sections so far as they may be applicable; and shall hold at the disposal of the Court all sums that may come to his hands by such exercise."

In section 357, for the figures "355," the figures and word "351 or 355" shall be substituted.

And for the words "decrees against him held by the scheduled creditors are fully satisfied or become capable of being executed," the following shall be substituted (namely): "debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 351 or 355."

For section 358 the following shall be substituted:—

"358. If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts."

In section 359, after the words "sentence him" the words "by order in writing" shall be inserted.

To section 360 the following paragraph shall be added (namely):—

"Nothing in this chapter shall apply to any Court having jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein where the property of the judgment-debtor exceeds in value two thousand five hundred rupees, or the amount of the pecuniary claims against him exceeds five thousand rupees, or such property or any part thereof is situate outside British Burma."

60. In sections 361, 362, 363, 365 and 368, for the words "cause of action" wherever they occur, the words "right to sue" shall be substituted; and to section 368 the following clause shall be added (namely): "When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate."

61. In section 364, paragraph one, and section 366, paragraph one, after the word "If," the words "within the time limited by law" shall be inserted; and in the latter section, paragraph one, before the word "award" the words "shall, on the application of the defendant," shall be inserted.

62. In section 371, paragraph two, after the word "deceased" the word "or" shall be inserted.

63. In section 373, paragraph one, for the words "for the part," the words "in respect of the part" shall be substituted; and to paragraph two, the words "or in respect of the same part" shall be added.

64. In section 375, after the word "adjusted" the words "wholly or in part" shall be inserted: after the words "respect to," the words "the whole or any part of" shall be inserted; and to the same section shall be added the words "so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise or satisfaction."

65. In section 377, for the first seven words, the following shall be substituted (namely): "Notice in writing of the deposit shall be given through the Court."

66. In sections 384, 477 and 483, after the word "affidavit," the words "or otherwise" shall be inserted.

67. In section 386, for the second paragraph and the two provisoes the following shall be substituted (namely): "Such commission may be issued to any Court, not being a High Court or the Court of the Recorder of Rangoon, within the local limits of whose jurisdiction such person resides, or to any pleader of a High Court whom the Court issuing the commission thinks fit to appoint."

68. In section 406, for the word "shall" the words "may, if he thinks fit," shall be substituted.

69. In section 412, after the word "dispaupered" the words and figures "or if the suit is dismissed under section 97 or 98" shall be inserted.

70. In section 413, for the word "Refusal" the words and figures "An order of refusal made under section 409" shall be substituted.

71. In section 424, after the words "against a public officer" the words "in respect of an act purporting to be done by him in his official capacity" shall be inserted; and in sections 428 and 429, after the words "public officer" the words "in respect of such act as aforesaid" shall be inserted.

72. In section 437, for the first sentence, the following shall be substituted (namely): "In all suits concerning property vested in a trustee, executor or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit."

73. In section 456, for the words "in the name of the minor" the words "in the name and on behalf of the minor or by the plaintiff" shall be substituted; and to the same section the following paragraph shall be added (namely): "Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian; provided that he has no interest adverse to that of the minor."

74. In section 469, after the word "arrest" and after the word "warrant" (in each of the places where it occurs) the words "or other process" shall be inserted; and in the second paragraph, after the words "signature, and" the words "in the case of a warrant of arrest" shall be inserted.

75. To section 473, the words "and shall adjudicate on such claim" shall be added.

76. In the last paragraph of section 478, for the words "an order for bringing the defendant" the words "a warrant to arrest the defendant and bring him" shall be substituted.

77. To section 481, the following words shall be added (namely): "provided that no person shall be detained in prison under this section after he has complied with such order."

78. In section 483, after the words "portion of his property" the words "within the jurisdiction of the Court" shall be inserted.

79. In section 484, after the word "suit" the words "or that he has with such intent quitted the jurisdiction of the Court, leaving therein property belonging to him" shall be inserted.

80. In section 497, clause one, for the words "the injunction," the words "an injunction which it has granted" shall be substituted.

81. In section 523, paragraph three, for the words "any of" the word "all" shall be substituted.

82. In the last clause of section 539, for the words "(where there is no Advocate General), be exercised by the Government Advocate, or (where there is no Government Advocate)" the following words shall be substituted (namely): "outside the Presidency-towns be exercised also by the Collector or."

83. In section 544, for the words "decree and," the words "decree, and thereupon" shall be substituted.

84. For section 555 the following shall be substituted (namely):—

"555. On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply."

Right to begin.

85. In section 560, for the words "it be proved that the respondent," the words "he satisfies the Court that the notice was not duly served, or that he" shall be substituted.

Amendment of section 560.

86. In section 561, for the words "given to the appellant or his pleader seven days' notice of such objection," the words "filed a notice of such objection not less than seven days before the date fixed for the hearing of the appeal" shall be substituted.

Amendment of section 561.

87. In section 566, paragraph two, for the word "issue," the word "issues" shall be substituted.

Amendment of section 566.

88. For the first paragraph of section 582, the following shall be substituted (namely):—

Amendment of section 582.

"582. The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under chapter V; and in sections 363 and 365, the word 'plaintiff' shall be held to include an appellant."

Appellate Courts to have same powers as Courts of original jurisdiction.

89. In section 584, clause (c), after the word "may" the word "possibly" shall be inserted.

Amendment of section 584.

90. In section 588, for clauses (a) to (w), the following shall be substituted (namely):—

Amendment of section 588.

- (1) orders under section 20, staying proceeding in a suit;
- (2) orders under section 32, striking out or adding the name of any person as plaintiff or defendant;
- (3) orders under section 36 or section 66, directing that a party shall appear in person;
- (4) orders under section 44, adding a cause of action;
- (5) orders under section 47, excluding a cause of action;
- (6) orders returning plaints for amendment or to be presented to the proper Court;
- (7) orders under section 111, setting-off, or refusing to set-off, one debt against another;
- (8) orders rejecting applications under section 103 (in cases open to appeal) for an order to set aside the dismissal of a suit;
- (9) orders rejecting applications under section 108 for an order to set aside a decree *ex parte*;
- (10) orders under sections 113, 120 and 177;
- (11) orders under section 116 or section 245, rejecting, or returning for amendment, written statements or applications for execution of decrees;

(12) orders under sections 143 and 145, directing anything to be impounded;

(13) orders under section 162 for the attachment and sale of moveable property;

(14) orders under section 163 for attachment of property, and orders under section 170 for the sale of attached property;

(15) orders under section 261 as to objections to draft conveyances or draft endorsements;

(16) orders under section 294, the first paragraph of section 312, or section 313, for confirming, or setting aside, or refusing to set aside, a sale of immoveable property;

(17) orders in insolvency-matters, under section 351, 352, 353 or 357;

(18) orders under section 366, paragraph two, section 367 or 368;

(19) orders rejecting applications under section 370 for dismissal of a suit;

(20) orders under section 371, refusing to set aside the abatement or dismissal of a suit;

(21) orders disallowing objections, under section 372;

(22) orders under section 454, 455 or 458, directing a next friend or guardian for the suit to pay costs;

(23) orders in interpleader suits under section 473, clause (a), (b) or (d), section 475 or section 476;

(24) orders under section 479, 480, 485, 492, 493, 496, 497, 502 or 503;

(25) orders under section 514, superseding an arbitration;

(26) orders under section 518, modifying an award;

(27) orders of refusal under section 558 to re-admit, or under section 560 to re-hear, an appeal;

(28) orders under section 562, remanding a case;

(29) orders under any of the provisions of this Code, imposing fines, or for the arrest or imprisonment of any person, except when such imprisonment is in execution of a decree."

91. For the first paragraph of section 589 the following shall be substituted:—

Amendment of section 589.

"589. An appeal from any order specified in section 588, clauses (15), (16) and (17), shall lie to the High Court."

What Courts to hear appeals.

92. In section 622, after the words "so vested," the words "or to have acted in the exercise of its jurisdiction illegally or with material irregularity" shall be inserted.

Amendment of section 622.

93. In section 638, for the figures and word "16 and 17" the figures and word "16, 17 and 19" shall be substituted; and in the last paragraph, after the word "any" the words "Judge of a" shall be inserted; and the word "its" shall be omitted.

Amendment of section 638.

94. In section 642, for the second paragraph the following shall be substituted (namely):—

Amendment of section 642.

"And except as provided in sections 256 and 643, where any matter is

pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, Mukhtyárs, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under this Code while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal."

Amendment of section 648. 95. For section 648, the following shall be substituted (namely):—

"648. Where any Court desires that any person shall be arrested or any property shall be attached under any provision of this Code not relating to the execution

Procedure when person to be arrested or property to be attached is outside the district.

of decrees, and such person resides or property is situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

"The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment;

"and the Court making any arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he furnishes sufficient security for his appearance before that Court, or (where the case is one under chapter XXXIV) for satisfying any decree that may be passed against him by such Court, in either of which cases the Court making the arrest shall release him."

Amendment of section 649. 96. To section 649 the following paragraph shall be added (namely):—

"In the same chapter, the expression 'Court which passed a decree' or words to that effect, shall, unless there be something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist, or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit."

97. After section 650 the following shall be added (namely):—

"650A. Summonses issued by any Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts; provided that the Courts issuing such summonses have been established by the authority

of the Governor General in Council, or that the Governor General in Council has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts."

98. In section 652, after the words "connected with," the words "its own procedure or" shall be inserted.

Amendment of section 652.

99. In the first schedule, column third, opposite "XI of 1865," for the figures and word "11, paragraph 2," the figures and words "11, the last nineteen words of section 13, section 19," shall be substituted; and opposite "V. of 1866," after the word "inclusive," the words "and the schedule" shall be inserted.

Amendment of schedule II.

100. In the second schedule—

for the figures "230," the figures "223" shall be substituted:

before the word and figures "Chapter XXI" the words and figures "Chapter XX. section 360—Power to invest certain Courts with insolvency-jurisdiction" shall be inserted:

after the words and figures "Chapter XXXIV—Of arrest and attachment before judgment," the words and figures "except as regards immoveable property, Chapter XXXVI—Appointment of receivers" shall be inserted: and

for the figures "522" the figures "526" shall be substituted.

101. In the fourth schedule, to the note to form No. 145 the following words shall be added (namely): "and as fairly and accurately as possible the other particulars required by section 287 to be specified"; in form No. 149, for the word "thirty" the word "sixty" shall be substituted; and in form No. 172, for the word "seven" in each of the places where it occurs, the word "ten" shall be substituted.

102. Every appeal now pending which would have lain if this Act had been in force on the date of its institution shall be heard and determined as if the Act had been in force on such date; and every order heretofore passed purporting to transfer a case to a Collector under section 320 and every notification heretofore published purporting to be issued under section 360, shall be deemed to have been respectively passed and issued in accordance with law.

103. In the preceding sections of this Act, the words "section" and "schedule" respectively mean section of, and schedule annexed to, the said Code.

AND whereas it is also expedient to amend the Indian Registration Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows:—

104. In section 35 of the same Act, after the words "person appears," the words "to the registering officer" shall be inserted; and after the words "refuse to register the document," the words "as to the person so denying, appearing or dead" shall be inserted.

105. In section 51 of the same Act, for the figures "87," the figures "89" shall be substituted.

106. In section 83 of the same Act, for the words "Subordinate Magistrate of the first" the words "Magistrate of the second" shall be substituted.

107. In section 89 of the same Act, for the words "the certificate," the words "the copy" shall be substituted, and to the same section the following paragraph shall be added (namely):—

"Every Court granting a certificate under section 316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1."

AND whereas it is also expedient to amend the Indian Limitation Act, 1877, in manner herein-after appearing; It is hereby further enacted as follows:—

Amendment of Act XV. of 1877, Schedule II.

108. In the second schedule to the said Indian Limitation Act, 1877,—

for No. 161, the following shall be substituted, namely:—

"161.—For the issue of a notice under section 258 of the same Code to show cause why the payment or adjustment therein mentioned should not be recorded as certified.	Twenty days.	When the payment or adjustment is made."
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to No. 166, column one, the following words shall be added (namely): "or on the ground that the decree-holder has purchased without the permission of the Court";

to No. 171, column one, the words "or appellant" shall be added; and in column three, after the word "plaintiff's," the words "or appellant's" shall be inserted;

after No. 171, the following shall be inserted, (namely):—

"171A.—Under section 366 of the same Code, by the defendant.	Sixty days...	The date of the plaintiff's death.
"171B.—Under section 368 of the same Code, to have the representative of a deceased defendant made a defendant.	Ditto ...	The date of the defendant's death.
"171C.—Under section 371 of the same Code, for an order to set aside an order for abatement or dismissal.	Ditto ...	The date of the order for abatement or dismissal."

and in No. 179, column three, paragraph 6, for the words "specified date) the date so specified" the words "certain date) such date" shall be substituted.

D. FITZPATRICK,

Secy. to the Govt. of India,
Legislative Department.

[Published with the "Bombay Government Gazette" on the 28th August 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 29th July 1879, and was promulgated for general information in the *Gazette of India* of the 2nd August 1879:—

Act No. XII. of 1879.

An Act to amend the Code of Civil Procedure, the Registration Act, 1877, and the Limitation Act, 1877.

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

1. The following portions of the said Code shall be repealed (namely):—

Repeal of certain portions of Act X. of 1877. In section 4, the words and figures "The Panjáb Courts Act, 1865," and "The Panjáb Appeals Act, 1873":

In section 5, the third sentence:

In section 51, the words "with the permission of the Court":

In section 52, from and including the words "and when he makes it out of Court" to the end:

In section 61, the words "bill of exchange or other":

In section 64, the words "or as soon thereafter as may be practicable":

In section 80, the words "or to receive the copy of the summons":

In section 97, the words "a duly authorized":

In sections 113 and 177 the word "other":

In section 115, the second paragraph:

In section 131, the words "in whose plaint, written statement or affidavits reference is made to any document": and the words "in the presence of such officer as the Court appoints in this behalf":

In section 199, the words from and including "and in" to the end:

In section 221, the second paragraph:

In section 224, the word "therewith":

In section 230, paragraphs three and four, the words "unless the Court is satisfied that on the last preceding application due diligence was used to procure complete satisfaction of the decree; and the order of the Court granting any such subsequent application shall be conclusive evidence that due diligence was used to procure such satisfaction. And no such subsequent application shall be granted":

In section 246, clause (e) and the letters (f) and (g):

In section 259, the words "and keeping the same under attachment until the further order of the Court":

In section 339, paragraph three, the words "to the proper officer of the Court":

In section 353, the words "within three months from its publication", and "within three months from the publication of the schedule":

In section 355, paragraph two, the words "from arrest or imprisonment, as the case may be":

In sections 407 and 408, the words "upon such examination":

In section 638, the figures "261":

In the second schedule, the words and figures "section 648 (so far as relates to arrest)."

In the fourth schedule, No. 152, the words "ON SECURITIES BEING GIVEN," and "on security to the amount of Rs. decreed to the in the above suit, being given to your satisfaction."

2. In section 2, for the definitions of "judgment" and "decree," the following shall be substituted (namely):

"decree" means the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court when such adjudication, so far as regards the Court expressing it, decides the suit or appeal. An order rejecting a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in section 244 but not specified in section 588, is within this definition: an order specified in section 588, is not within this definition:

'order' means the formal expression of any decision of a Civil Court which is not a decree as above defined:

'judgment' means the statement given by the Judge of the grounds of a decree or order."

In the same section, to the definition of "signed," the following words shall be added (namely), "it also includes stamped with the name of the person referred to."

3. In section 3, for the last paragraph the following shall be substituted (namely):—

"Save as provided by section 99A, nothing herein contained shall affect any proceedings prior to decree in any suit instituted or appeal presented before the first day of October 1877, or any proceedings after decree that may have been commenced and were still pending at that date."

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

Act No. XVIII. of 1878 (to amend the Code of Civil Procedure, section 4), is hereby repealed.

5. In section 5, to the first sentence, the following shall be added (namely): "and to all other Courts (other than the Courts of Small Causes in the towns of Calcutta, Madras and Bombay) exercising the jurisdiction of a Court of Small Causes."

6. In section 13, for the first paragraph, the following shall be substituted (namely):—

"13. No Court shall try any suit or issue in which the matter directly and substantially in issue, having been directly and substantially in issue in a former suit in a Court of competent jurisdiction, between the same parties, or between parties under whom they or any of them claim, litigating under the same title, has been heard and finally decided by such Court,"

and in the same section, explanation I, for the word "confessed" the word "admitted" shall be substituted.

7. In section 43, paragraph one, for the words "arising out of" the words "which the plaintiff is entitled to make in respect of" shall be substituted; in the same section, paragraph two, for the word "for" (in each of the places where it occurs) the words "in respect of" shall be substituted; and in the same section, paragraph three, for the word "claim" the words "cause of action" shall be substituted;

and to the same section the following paragraph shall be added: "For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action."

8. To section 44 the following words shall be added (namely): "or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents."

9. In section 45, for paragraph one, the following shall be substituted (namely): "subject to the rules contained in chapter

II and in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit":

in the same section, paragraph two, for the words "the defendant" the words "any defendant, or at any subsequent stage of the suit, if the parties agree" shall be substituted.

10. In section 50, for the word "abode" in each of the places where it occurs, the word "residence" shall be substituted.

11. To section 51 the following proviso shall be added (namely):—

"Provided that, if the plaintiff, by reason of absence or for other good cause, is unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf."

12. In sections 51, 53, 115, 346, 393 and 403, for the word "subscribed" (wherever it occurs) the word "signed" shall be substituted: in sections 115 and 346, for the word "subscribing" the word "signing" shall be substituted; and in section 403, for the word "subscription" the word "signing" shall be substituted.

13. In section 58, for the word "filed" the word "produced" shall be substituted.

14. In section 68, for the word "cognizable" the word "heard" shall be substituted.

15. In section 93, after the word "levied" and in section 95, after the word "paid," and in section 397, after the word "be," the words "within a time to be fixed by the Court" shall be inserted.

16. After section 99, the following shall be inserted (namely):—

"99A. If, after a summons has, whether before or after the first day of October 1877, been issued to the defendant, or to one of several defendants and returned unserved, the plaintiff fails for a period of one year from such return to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that

Dismissal of suit where plaintiff after summons returned unserved fails for a year to apply for fresh summons.

such defendant is avoiding service of process, the Court may dismiss the suit as against such defendant.

"In such case the plaintiff may (subject to the law of limitation) bring a fresh suit."

17. In section 108, paragraph one, the words and figures "under section 100" shall be omitted; and in the same section, paragraph two, for the words "it be proved to the satisfaction of the Court that the defendant," the words "he satisfies the Court that the summons was not duly served, or that he" shall be substituted.

18. In section 131, paragraph one, for the word "Every" the word "Any" shall be substituted, and for the words "such document" the words "any specified document" shall be substituted.

19. In section 136, after the word "discovery" (in each of the places in which it occurs) the word "production" shall be inserted.

20. In section 139, for the words and figures "the production of which has been called for under section 138 and which has not been produced" the words and figures "which should have been, but has not been, produced in accordance with the requirements of section 138" shall be substituted.

21. In section 207, for the words "or numbers" to the end the following words shall be substituted (namely): "or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers."

22. In section 211, for the words "land or other," the words "the recovery of possession of immoveable" shall be substituted: to the same section the words "together with interest on such profits" shall be added; and in section 212, before the word "immoveable" the words "the recovery of possession of" shall be inserted.

23. After section 215 the following section shall be inserted (namely):—

"215A. When a suit is for an account of pecuniary transactions between a principal and agent, and in all other suits not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order directing such accounts to be taken as it thinks fit."

24. To section 220 the following words shall be added (namely): "Every order relating to costs made under this

Code and not forming part of a decree may be executed as if it were a decree for money."

25. In section 223, clause (c), for the words "district within which" the words "local limits of the jurisdiction of" shall be substituted; and in the penultimate paragraph of the same section, for the words "local Court of Small Causes" the words "Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be," shall be substituted.

26. In section 229, for the words "Native Prince or State in India" the words "Foreign Prince or State" shall be substituted.

27. In section 230, clause (b), for the words "the payment of money or the delivery of property by instalments—the date of the default in paying or delivering the instalment" the following words shall be substituted (namely): "any payment of money, or the delivery of any property, to be made at a certain date—the date of the default in making the payment or delivering the property."

28. In the second proviso to section 232, after the word "decree" the words "for money" shall be inserted.

29. In section 235, for the words "in manner hereinbefore provided for the verification of plaints," the following words shall be substituted (namely), "by the applicant or by some other person proved to the satisfaction of the Court, to be acquainted with the facts of the case."

30. In sections 236 and 237, for the words "If the application be," the words "Whenever an application is made" shall be substituted.

31. In section 244, clause (c), after the word "execution," the words "discharge or satisfaction" shall be inserted.

32. In section 245, for the first sentence, the following shall be substituted (namely): "The Court on receiving an application for the execution of a decree shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with; and if they have not been complied with, the Court may reject the application, or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected."

33. In section 246, for Explanation I, the following shall be substituted (namely):—

"Explanation I.—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court."

In Explanation II, after the words "assignor as" the words "in respect of judgment-debts due" shall be inserted.

34. In section 252, for the words "If no such property can be found and the judgment-debtor," the words "If no such property remains in the possession of the judgment-debtor, and he" shall be substituted.

Amendment of section 252.
35. After section 257 the following shall be inserted:—

"257A. Every agreement to give time for the satisfaction of a judgment-debt shall be void unless it is made for consideration and with the sanction of the Court which passed the decree; and such Court deems the consideration to be under the circumstances reasonable.

Agreement to give time to judgment-debtor.
"Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due, or to accrue due under the decree, shall be void unless it is made with the like sanction.

Agreement for satisfaction of judgment-debt.
"Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt; and the surplus, if any, shall be recoverable by the judgment-debtor."

Amendment of section 258.
36. For section 258 the following shall be substituted:—

"258. If any money payable under a decree is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257A, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

"The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

"No such payment or adjustment shall be recognized by any Court unless it has been certified as aforesaid."

37. For the second paragraph of section 259, the following shall be substituted:—

Amendment of section 259.
"When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree, and the decree-

holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist."

38. In section 260, in the first paragraph, after the words "the performance of," the words "or abstention from" shall be inserted; and for the second paragraph the following paragraphs shall be substituted (namely):—

Amendment of section 260.
"When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist."

39. In section 264, after the words "the same" the words "and not bound by the decree to relinquish such occupancy" shall be inserted.

40. To section 265 the following words shall be added (namely), "and according to the law, if any, for the time being in force for the partition, or the separate possession of shares, of such estates."

Amendment of section 268.
41. For the last paragraph of section 268, the following shall be substituted (namely):—

"In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the further orders of the Court.

"A copy of every such order shall be fixed up in a conspicuous part of the court-house, and shall be served on the officer so required.

"Every such officer may from time to time pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor."

42. For the first paragraph of section 271 the following shall be substituted :—

Amendment of section 271.
 "271. No person executing any process under this Code, directing or authorizing seizure of moveable property, shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house. But when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be."

43. To section 289, paragraph one, the following words shall be added (namely): "and a copy thereof shall be fixed up in the court-house and, in the case of land paying revenue to Government, also in the Collector's office"; and in section 290, for the words "notification has been affixed," the words "copy of the proclamation has been fixed up" shall be substituted.

44. In section 291, for the first eight words the following shall be substituted (namely):
 Amendment of section 291.
 "The Court may in its discretion adjourn any sale under this chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any such sale;" and in the same section, after the proviso, the following sentence shall be inserted, (namely): "whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it."

45. To section 294 the following paragraph shall be added (namely):—

Amendment of section 294.
 "When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder."

46. In section 295, first proviso, after the words "shall not," the words "as such" shall be inserted.

and after the second proviso the following shall be inserted :—

"Provided also that, when immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;
secondly, in discharging the interest and principal money due on the incumbrance;
thirdly, in discharging the interest and principal moneys due on subsequent incumbrances (if any); and

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fourthly, rateably among the holders of decrees for money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree, ordering such sale for execution of such decrees and have not obtained satisfaction thereof."

47. In section 305, paragraph two, after the word "therein," the words and figures "and notwithstanding anything contained in section 276," shall be inserted; and for the last paragraph, the following shall be substituted (namely):—

"Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court."

48. In section 314, after the word "property" the words "in execution of a decree" shall be inserted.

49. For section 316 the following shall be substituted (namely):—

Amendment of section 316.
 "316. When a sale of immoveable property has become absolute in manner aforesaid, the Court shall grant a certificate stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before: provided that the decree under which the sale took place was still subsisting at that date."

50. In section 320, paragraph two, after the word "also" the words "notwithstanding anything hereinbefore contained" shall be inserted; and for sections 321 to 325, both inclusive, the following shall be substituted (namely):—

"321. When the execution of a decree has been so transferred, the Collector may—

(a) proceed as the Court would proceed under section 305; or

(b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold; or

(c) sell the property ordered to be sold or so much thereof as may be necessary.

322. When the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collec-

tor, if, after such enquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

Notice to be given to decree-holders and to persons having claims on the property.

"322A. In the case mentioned in section 322, the Collector shall publish a notice calling upon—

(a) every person holding a decree for money against the judgment-debtor capable of execution by sale of his immoveable property, and which such decree-holder desires to have so executed, and every holder of a decree for money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder.

(b) every person having any claim on the said property, to submit to the Collector a statement of such claim, and to produce the documents, if any, by which it is evidenced.

Such notice shall be in the language of the district, and shall allow a period of sixty days from the date of its publication for compliance therewith. It shall be published by being posted in the court-house of the Court which made the original order under section 304, and at such other places (if any) as the Collector thinks fit. Where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

"322B. Upon the expiration of the said period the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such enquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may from time to time adjourn such hearing and enquiry.

If there be no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order under section 304, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The Collector

shall then draw up a statement as above provided in accordance with such decision.

"322C. The Collector may, instead of himself issuing the notices and holding the enquiry required by sections 322A and 322B, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by sections 322A and 322B, and transmit such statement to the Collector.

"322D. The decision by the Court of any dispute arising under section 322B or section 322C shall, as between the parties thereto, have the force of, and be appealable as, a decree.

"323. Whenever the amount to be recovered and the property available have been determined as provided in section 322B or 322C, the Collector may—

(1) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or if it appears that the amount with interest (if any) in accordance with the decree, and when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale,

(2) raise such amount and interest (notwithstanding any order under section 304);

"(a) by letting in perpetuity, or for a term, on payment of a premium the whole or any part of the said property; or

"(b) by mortgaging the whole or any part of such property: or

"(c) by selling part of such property: or

"(d) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale: or

"(e) partly by one of such modes and partly by another or others of such modes.

(3) For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

(4) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incum-

brance with which the Collector purposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

In proceeding under paragraphs (2), (3) and (4) of this section, the Collector shall be subject to such rules consistent with this Act as may from time to time be made in this behalf by the Chief Controlling Revenue-Authority.

"324. If, on the expiration of the letting Recovery of balance, or management under if any, after letting or section 323, the amount management. to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

"324A. The Collector shall from time to time Collector to render accounts to the Civil Court. render to the Court which made the original order under section 304 an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this chapter, and shall hold the balance at the disposal of the Court.

Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and (if the Collector so directs) the expenses of witnesses summoned by him.

Such balance shall be Application of Balance, applied by the Court as follows:—

firstly, in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property to such amount in the case of each member as the Court thinks fit; and

secondly, where the Collector has proceeded under section 321, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or otherwise as the Court may under section 295 direct; or

thirdly, where the Collector has proceeded under section 322, in keeping down the interest on incumbrances on the property, and (when the judgment-debtor has no other sufficient means of subsistence) in providing for his subsistence to such amount as the Court thinks fit; and in discharging rateably the claims of the original decree-holder and any other-decree-holders who have complied with the said notice, and whose

claims were included in the amount ordered to be recovered;

and no other holder of a decree for money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied;

and the residue, if any, shall be paid to the judgment-debtor or such other person, if any, as the Court directs.

"325. When the Collector sells any property Sales how to be conducted. under this chapter, he shall put it up to public auction, in one or more lots as he thinks fit, and may—

(a) fix a reasonable reserved price for each lot;

(b) adjourn the sale for a reasonable time, whenever he deems the adjournment necessary for the purpose of obtaining a fair price for the property, recording his reasons for such adjournment;

(c) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

"325A. So long as the Collector can exercise Restrictions as to alienation by judgment-debtor or his representative, and prosecution of remedies by decree-holders, or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for money.

During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under section 323.

The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived.

"325B. When the property of which the sale Provision where property is in several districts, has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by sections 321 to 325 (both inclusive) shall from time to time be exercised and performed by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct.

"325C. In exercising the powers conferred Powers of Collector to compel attendance of parties and witnesses and production of documents. on him by sections 322 to 325 (both inclusive), the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents."

Amendment of section 326. 51. In section 326, for the last sentence, the following shall be substituted (namely) :—

“In such case the provisions of sections 320, paragraph two, to 325C (both inclusive) shall apply, as far as they are applicable.”

Amendment of section 331. 52. In section 331, paragraph two, for the words and figures “the Specific Relief Act, 1877, section 9,” the word and figure “Chapter V” shall be substituted; and to the same section the following paragraph shall be added (namely), “Every such order shall have the same force as a decree and shall be subject to the same conditions as to appeal or otherwise.”

Amendment of section 332. 53. In section 332, first paragraph, for the word “defendant,” the word “judgment-debtor” shall be substituted; and for the other paragraphs, the following shall be substituted (namely), “If after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute; and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.”

“In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

“The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.”

Amendment of section 333. 54. For section 333 the following shall be substituted (namely) :—

“333. Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made.”

Amendment of section 335. 55. In section 335, for the first paragraph the following shall be substituted (namely) :—

“335. If the purchaser of any such property is resisted or obstructed by any person, other than the judgment-debtor, claiming in good faith a right to the present possession thereof, or, if, in delivering possession thereof, any such person is dispossessed, the Court on the complaint of the purchaser or the person so dispossessed, shall enquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit;”

and in the second paragraph of the same section, for the word “conclusive,” the word “final” shall be substituted.

Amendment of section 336. 56. In section 336, for the first proviso, the following shall be substituted :—

“Provided that for the purpose of making an arrest under this section no dwelling-house shall be entered after sunset or before sunrise, and no outer door of a dwelling-house shall be broken open :

“But when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found : provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who according to the customs of the country does not appear in public, the officer shall give notice to her that she is at liberty to withdraw; and, after allowing a reasonable time for her to withdraw and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest.”

Amendment of section 339. 57. In section 339, paragraph four, after the word “made,” the words “to the proper officer of the Court” shall be inserted; and to the same paragraph, the following words shall be added (namely), “and the subsequent payments (if any) shall be made to the officer in charge of the jail.”

Amendment of section 341. 58. In section 341, for clauses (a), (b), (c), (d) and (e) and the proviso, the following shall be substituted (namely) :—

“(a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail; or

(b) on the decree being otherwise fully satisfied; or

(c) at the request of the person on whose application he has been imprisoned; or

(d) on such person omitting to pay the allowance as hereinbefore directed; or

(e) if the judgment-debtor be declared an insolvent, as hereinafter provided; or

(f) when the term of his imprisonment, as limited by section 342, is fulfilled :

Provided that in the second, third and fifth cases mentioned in this section the judgment-debtor shall not be discharged without the order of the Court.”

Amendment of sections 344, 345, 347, 349, 350, 351, 356, 357, 358, 359 and 360. 59. For section 344, the following shall be substituted :—

“344. Any judgment-debtor arrested or imprisoned in execution of a decree for money, or against whose property an order of attachment has been made in execution of such a decree, may apply in writing to be declared an insolvent.

“Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent.

“Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgment-debtor resides or is in custody.”

In section 345, for the first line and clause (a), the following shall be substituted (namely) :—

Contents of application. "345. The application, when made by the judgment-debtor, shall set forth—

"(a) the fact of his arrest or imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and, where he has been arrested or imprisoned, the place in which he is in custody."

And to the same section the following paragraph shall be added:—

"The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody."

In section 347, for the first paragraph, the following shall be inserted (namely):—

"347. The Court shall fix a day for hearing the application, and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be stuck up in Court and served at the applicant's expense—

"where the applicant is the judgment-debtor on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder, and on the other creditors (if any) mentioned in the application:

"where the applicant is the decree-holder on the judgment-debtor or his pleader."

44. To section 349 the following words shall be added (namely), "or release him on his furnishing sufficient security that he will appear when called upon."

In sections 349, 350 and 351, for the word "applicant" wherever it occurs, the word "judgment-debtor" shall be substituted.

In section 351, clause (b), after the word "imprisoned" the words "or the order of attachment was made" shall be inserted.

In section 356 for clause (d), the following clauses shall be substituted:—

"(d) to discharge according to their respective priorities all debts secured by mortgage of the insolvent's property:

(e) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference."

And to the same section the following shall be added (namely):—

"Provided that in any local area in which a declaration has been made under section 320, and is in force, no sale of immoveable property paying revenue to Government or held or let for agricultural purposes shall be made by the Receiver; but after he has sold the other property of the insolvent, the Court shall ascertain (a) the amount required to satisfy the claims of the scheduled creditors after deducting the monies already received, (b) the immoveable property of the

insolvent remaining unsold, and (c) the incumbrances, if any, existing thereon; and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 both inclusive, as he thinks fit, and subject to the provisions of those sections so far as they may be applicable; and shall hold at the disposal of the Court all sums that may come to his hands by such exercise."

In section 357, for the figures "355," the figures and word "351 or 355" shall be substituted.

And for the words "decrees against him held by the scheduled creditors are fully satisfied or become capable of being executed," the following shall be substituted (namely): "debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 351 or 355."

For section 358 the following shall be substituted:—

"358. If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts."

In section 359, after the words "sentence him" the words "by order in writing" shall be inserted.

To section 360 the following paragraph shall be added (namely):—

"Nothing in this chapter shall apply to any Court having jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein where the property of the judgment-debtor exceeds in value two thousand five hundred rupees, or the amount of the pecuniary claims against him exceeds five thousand rupees, or such property or any part thereof is situate outside British Burma."

60. In sections 361, 362, 363, 365 and 368, for the words "cause of action" wherever they occur, the words "right to sue" shall be substituted; and to section 368 the following clause shall be added (namely): "When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate."

61. In section 364, paragraph one, and section 366, paragraph one, after the word "If," the words "within the time limited by law" shall be inserted; and in the latter section, paragraph one, before the word "award" the words "shall, on the application of the defendant," shall be inserted.

62. In section 371, paragraph two, after the word "deceased" the word "or" shall be inserted.

63. In section 373, paragraph one, for the words "for the part," the words "in respect of the part" shall be substituted; and to paragraph two, the words "or in respect of the same part" shall be added.

Amendment of section 373.

64. In section 375, after the word "adjusted" the words "wholly or in part" shall be inserted; after the words "respect to," the words "the whole or any part of" shall be inserted; and to the same section shall be added the words "so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise or satisfaction."

Amendment of section 377.

65. In section 377, for the first seven words, the following shall be substituted (namely): "Notice in writing of the deposit shall be given through the Court."

Amendment of sections 384, 477 and 483.

66. In sections 384, 477 and 483, after the word "affidavit," the words "or otherwise" shall be inserted.

Amendment of section 386.

67. In section 386, for the second paragraph and the two provisoes, the following shall be substituted (namely): "Such commission may be issued to any Court, not being a High Court or the Court of the Recorder of Rangoon, within the local limits of whose jurisdiction such person resides, or to any pleader of a High Court whom the Court issuing the commission thinks fit to appoint."

Amendment of section 406.

68. In section 406, for the word "shall" the words "may, if he thinks fit," shall be substituted.

Amendment of section 412.

69. In section 412, after the word "dispaupered" the words and figures "or if the suit is dismissed under section 97 or 98" shall be inserted.

Amendment of section 413.

70. In section 413, for the word "Refusal" the words and figures "An order of refusal made under section 409" shall be substituted.

Amendment of sections 424, 428 and 429.

71. In section 424, after the words "against a public officer" the words "in respect of an act purporting to be done by him in his official capacity" shall be inserted; and in sections 428 and 429, after the words "public officer" the words "in respect of such act as aforesaid" shall be inserted.

Amendment of section 437.

72. In section 437, for the first sentence, the following shall be substituted (namely): "In all suits concerning property vested in a trustee, executor or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit."

Amendment of section 456.

73. In section 456, for the words "in the name of the minor" the words "in the name and on behalf of the minor or by the plaintiff" shall be substituted; and to the same section the following paragraph shall be added (namely): "Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian; provided that he has no interest adverse to that of the minor."

Amendment of section 469.

74. In section 469, after the word "arrest" and after the word "warrant" (in each of the places where it occurs) the words "or other process" shall be inserted; and in the second paragraph, after the words "signature, and" the words "in the case of a warrant of arrest" shall be inserted.

Amendment of section 473.

75. To section 473, the words "and shall adjudicate on such claim" shall be added.

Amendment of section 478.

76. In the last paragraph of section 478, for the words "an order for bringing the defendant" the words "a warrant to arrest the defendant and bring him" shall be substituted.

Amendment of section 481.

77. To section 481, the following words shall be added (namely): "provided that no person shall be detained in prison under this section after he has complied with such order."

Amendment of section 483.

78. In section 483, after the words "portion of his property" the words "within the jurisdiction of the Court" shall be inserted.

Amendment of section 484.

79. In section 484, after the word "suit" the words "or that he has with such intent quitted the jurisdiction of the Court, leaving therein property belonging to him" shall be inserted.

Amendment of section 497.

80. In section 497, clause one, for the words "the injunction," the words "an injunction which it has granted" shall be substituted.

Amendment of section 523.

81. In section 523, paragraph three, for the words "any of" the word "all" shall be substituted.

Amendment of section 539.

82. In the last clause of section 539, for the words "(where there is no Advocate General), be exercised by the Government Advocate, or (where there is no Government Advocate)" the following words shall be substituted (namely): "outside the Presidency-towns be exercised also by the Collector or."

Amendment of section 544.

83. In section 544, for the words "decree and," the words "decree, and thereupon" shall be substituted.

Amendment of section 555.

84. For section 555 the following shall be substituted (namely):—

"555. On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply."

85. In section 560, for the words "it be proved that the respondent," the words "he satisfies the Court that the notice was not duly served, or that he" shall be substituted.

86. In section 561, for the words "given to the appellant or his pleader seven days' notice of such objection," the words "filed a notice of such objection not less than seven days before the date fixed for the hearing of the appeal" shall be substituted.

87. In section 566, paragraph two, for the word "issue," the word "issues" shall be substituted.

88. For the first paragraph of section 582, the following shall be substituted (namely):—

"582. The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under chapter V; and in sections 363 and 365, the word 'plaintiff' shall be held to include an appellant."

89. In section 584, clause (c), after the word "may" the word "possibly" shall be inserted.

90. In section 588, for clauses (a) to (w), the following shall be substituted (namely):—

- (1) orders under section 20, staying proceeding in a suit;
- (2) orders under section 32, striking out or adding the name of any person as plaintiff or defendant;
- (3) orders under section 36 or section 66, directing that a party shall appear in person;
- (4) orders under section 44, adding a cause of action;
- (5) orders under section 47, excluding a cause of action;
- (6) orders returning plaints for amendment or to be presented to the proper Court;
- (7) orders under section 111, setting-off, or refusing to set-off, one debt against another;
- (8) orders rejecting applications under section 103 (in cases open to appeal) for an order to set aside the dismissal of a suit;
- (9) orders rejecting applications under section 108 for an order to set aside a decree *ex parte*;
- (10) orders under sections 113, 120 and 177;
- (11) orders under section 116 or section 245, rejecting, or returning for amendment, written statements or applications for execution of decrees;

(12) orders under sections 143 and 145, directing anything to be impounded;

(13) orders under section 162 for the attachment and sale of moveable property;

(14) orders under section 168 for attachment of property, and orders under section 170 for the sale of attached property;

(15) orders under section 261 as to objections to draft conveyances or draft endorsements;

(16) orders under section 294, the first paragraph of section 312, or section 313, for confirming, or setting aside, or refusing to set aside, a sale of immoveable property;

(17) orders in insolvency-matters, under section 351, 352, 353 or 357;

(18) orders under section 366, paragraph two, section 367 or 368;

(19) orders rejecting applications under section 370 for dismissal of a suit;

(20) orders under section 371, refusing to set aside the abatement or dismissal of a suit;

(21) orders disallowing objections, under section 372;

(22) orders under section 454, 455 or 458, directing a next friend or guardian for the suit to pay costs;

(23) orders in interpleader suits under section 473, clause (a), (b) or (d), section 475 or section 476;

(24) orders under section 479, 480, 485, 492, 493, 496, 497, 502 or 503;

(25) orders under section 514, superseding an arbitration;

(26) orders under section 518, modifying an award;

(27) orders of refusal under section 558 to re-admit, or under section 560 to re-hear, an appeal;

(28) orders under section 562, remanding a case;

(29) orders under any of the provisions of this Code, imposing fines, or for the arrest or imprisonment of any person, except when such imprisonment is in execution of a decree."

91. For the first paragraph of section 589 the following shall be substituted:—

"589. An appeal from any order specified in section 588, clauses (15), (16) and (17), shall lie to the High Court."

92. In section 622, after the words "so vested," the words "or to have acted in the exercise of its jurisdiction illegally or with material irregularity" shall be inserted.

93. In section 638, for the figures and word "16 and 17" the figures and word "16, 17 and 19" shall be substituted;

and in the last paragraph, after the word "any" the words "Judge of a" shall be inserted; and the word "its" shall be omitted.

94. In section 642, for the second paragraph the following shall be substituted (namely):—

"And except as provided in sections 256 and 643, where any matter is

pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, Mukhtyars, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under this Code while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal."

Amendment of section 648. 95. For section 648, the following shall be substituted (namely) :—

"648. Where any Court desires that any person shall be arrested or any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

Procedures when person to be arrested or property to be attached is outside the district.

"The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment;

"and the Court making any arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he furnishes sufficient security for his appearance before that Court, or (where the case is one under chapter XXXIV) for satisfying any decree that may be passed against him by such Court, in either of which cases the Court making the arrest shall release him."

Amendment of section 649. 96. To section 649 the following paragraph shall be added (namely) :—

"In the same chapter, the expression 'Court which passed a decree' or words to that effect, shall, unless there be something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist, or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit."

97. After section 650 the following shall be inserted (namely) :—

"650A. Summonses issued by any Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts; provided that the Courts issuing such summonses have been established by the authority

of the Governor General in Council, or that the Governor General in Council has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts."

98. In section 652, after the words "connected with," the words "its own procedure or" shall be inserted.

Amendment of section 652.

99. In the first schedule, column third, opposite "XI of 1865," for the figures and word "11, paragraph 2," the figures and words "11, the last nineteen words of section 13, section 19," shall be substituted; and opposite "V. of 1866," after the word "inclusive," the words "and the schedule" shall be inserted.

Amendment of schedule I.

100. In the second schedule—

for the figures "230," the figures "223" shall be substituted :

before the word and figures "Chapter XXI" the words and figures "Chapter XX. section 360—Power to invest certain Courts with insolvency-jurisdiction" shall be inserted :

after the words and figures "Chapter XXXIV—Of arrest and attachment before judgment," the words and figures "except as regards immovable property, Chapter XXXVI—Appointment of receivers" shall be inserted : and

for the figures "522" the figures "526" shall be substituted.

101. In the fourth schedule, to the note to form No. 145 the following words shall be added (namely) : "and as fairly and accurately as possible the other particulars required by section 287 to be specified"; in form No. 149, for the word "thirty" the word "sixty" shall be substituted; and in form No. 172, for the word "seven" in each of the places where it occurs, the word "ten" shall be substituted.

102. Every appeal now pending which would have lain if this Act had been in force on the date of its institution shall be heard and determined as if the Act had been in force on such date; and every order heretofore passed purporting to transfer a case to a Collector under section 320 and every notification heretofore published purporting to be issued under section 360, shall be deemed to have been respectively passed and issued in accordance with law.

103. In the preceding sections of this Act, the words "section" and "schedule" respectively mean section of, and schedule annexed to, the said Code.

AND whereas it is also expedient to amend the Indian Registration Act, 1877, in manner herein-after appearing; It is hereby further enacted as follows :—

104. In section 35 of the same Act, after the words "person appears," the words "to the registering officer" shall be inserted; and after the words "refuse to register the document," the words "as to the person so denying, appearing or dead" shall be inserted.

105. In section 51 of the same Act, for the figures "87," the figures "89" shall be substituted.

106. In section 83 of the same Act, for the words "Subordinate Magistrate of the first," the words "Magistrate of the second" shall be substituted.

107. In section 89 of the same Act, for the words "the certificate," the words "the copy" shall be substituted, and to the same section the following paragraph shall be added (namely):—

"Every Court granting a certificate under section 316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1."

AND whereas it is also expedient to amend the Indian Limitation Act, 1877, in manner herein-after appearing; It is hereby further enacted as follows:—

Amendment of Act XV. of 1877, Schedule II.

108. In the second schedule to the said Indian Limitation Act, 1877,—

for No. 161, the following shall be substituted, namely:—

"161.—For the issue of a notice under section 253 of the same Code to show cause why the payment or adjustment therein mentioned should not be recorded as certified.	Twenty days.	When the payment or adjustment is made."
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to No. 166, column one, the following words shall be added (namely): "or on the ground that the decree-holder has purchased without the permission of the Court";

to No. 171, column one, the words "or appellant" shall be added; and in column three, after the word "plaintiff's," the words "or appellant's" shall be inserted;

after No. 171, the following shall be inserted, (namely):—

"171A.—Under section 366 of the same Code, by the defendant.	Sixty days	The date of the plaintiff's death.
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"171B.—Under section 368 of the same Code, to have the representative of a deceased defendant made a defendant.	Ditto	The date of the defendant's death.
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"171C.—Under section 371 of the same Code, for an order to set aside an order for abatement or dismissal.	Ditto	The date of the order for abatement or dismissal.
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and in No. 179, column three, paragraph 6, for the words "specified date) the date so specified" the words "certain date) such date" shall be substituted.

D. FITZPATRICK,

Secy. to the Govt. of India,
Legislative Department.



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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 31st July 1879, and the assent of His Excellency the Viceroy and Governor General on the 27th August 1879, and is published for general information:—

Bombay Act No. VI. of 1879.

An Act to consolidate the immoveable and other property vesting in the Trustees of the Port of Bombay and certain other property on, or connected with, the foreshore of the Island of Bombay into one estate, and to vest the control and management of the same in one Public Trust; and for other purposes.

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An Act to consolidate the immoveable and other property vesting in the Trustees of the Port of Bombay and certain other property on, or connected with, the foreshore of the Island of Bombay into one estate, and to vest the control and management of the same in one Public Trust; and for other purposes.

WHEREAS it is expedient that the immoveable and other property vesting in the Trustees of the Port of Bombay should be consolidated with certain other property on, or connected with, the foreshore of the Island of Bombay into one estate, and that such consolidated estate should, together with the rights and powers now exercisable by the said Trustees, be vested, subject to the provisions hereinafter appearing, in a new Trust; It is enacted as follows:—

I.—PRELIMINARY.

1. This Act may be called "The Bombay Port Trust Act, 1879."
Short title.
2. From the date which shall be notified by the Governor in Council under Section 8, Bombay Act I. of 1873 (The Bombay Port Trust Act, 1873,) shall be repealed;
Repeal of Bombay Act I. of 1873.

Provided that all debts and obligations incurred, all contracts entered into, and all matters and things engaged to be done by, with or for the Trustees appointed under the said Act, shall be deemed to have been incurred, entered into, or engaged to be done by, with or for the Board constituted by this Act;

and all rates and sums of money due to the said Trustees shall be deemed to be due to the said Board;

and all suits or other legal proceedings, civil or criminal, instituted, or which might, but for the passing of this Act, have been instituted by or against the said Trustees, may be continued or instituted by or against the said Board.

3. In this Act, unless there be something repugnant in the subject or context,
Interpretation Section.

- (1) the word "rates" includes any toll, due, rent, rate, or charge, leviable under section 43 ;
- "Rates."
- (2) "Port" means the Port of Bombay within such limits as may from time to time be defined by Government for the purposes of this Act by notification in the *Bombay Government Gazette*, and until a notification is so issued, within such limits as may have been defined by Government under section 73 of the *Bombay Port Trust Act, 1873*, for the purposes of that Act ;
- "Port."
- (3) "Vessel" denotes any thing made for the conveyance by water of human beings or of property ;
- "Vessel."
- (4) "Master," when used in relation to any vessel, means any person having for the time being the charge or control of such vessel ;
- "Master."
- (5) "Owner," when used in relation to goods, includes any consignor, consignee, shipper or agent for the sale or custody of such goods; and when used in relation to any vessel, includes any part owner, charterer, consignee, or mortgagee in possession thereof ;
- "Owner."
- (6) "Land" includes the bed of the sea below high-water mark ;
- "Land."
- (7) "Wharf" includes a bandar and any part of the foreshore used for loading or unloading goods, and any wall enclosing or adjoining the same ;
- "Wharf."
- (8) "Dock" includes basins, locks, cuts, entrances, graving docks, graving blocks, inclined planes, patent slips, grid-irons, quays, warehouses, and other works and things appertaining to any dock ;
- "Dock."
- (9) "Pier" includes any stage, stairs, landing-place, hard, jetty, landing-stage, floating barge, or pontoon, and any bridges or other works connected therewith ;
- "Pier."
- (10) the word "Goods" includes wares and merchandise of every description ;
- "Goods."
- (11) "Immoveable Property" includes wharfage-rights and all other
- "Immoveable Property."

rights exerciseable on, over, or in respect of any land, wharf, dock or pier ;

(12) the words "Public Securities" mean securities of the Government of India, *Bombay Municipal Debentures* and securities and debentures issued under sections 30 and 41, respectively, of this Act.

II.—OF THE BOARD OF TRUSTEES.

Constitution of Board.

4. The duty of carrying out the provisions of this Act shall, subject to such conditions and limitations as are hereinafter contained, be vested in a Board, to be called "the Trustees of the Port of Bombay"; and such Board, hereinafter referred to as "the Board," shall be a body corporate and have perpetual succession and a common seal, and shall sue and be sued by the name first aforesaid.
- Act to be carried out by Trustees.
5. The Board shall consist of thirteen members, that is to say, of
- Constitution of Board.
- five Elective Trustees,
seven Nominee Trustees, and
a Chairman ;
- and not less than three of the Trustees shall be natives of India residing in the City of Bombay.
6. The elective Trustees shall be elected by the members for the time being of the Bombay Chamber of Commerce in such manner as shall from time to time be determined at a meeting of the members of the said Chamber convened in accordance with the rules at the time in force in this behalf. The Secretary to the said Chamber shall make a return to the Government of the name of every person so elected by the Chamber, and his return shall be published in the *Bombay Government Gazette*.
- Elective Trustees to be elected by the Bombay Chamber of Commerce ;
- In the event of default being made by the Chamber in electing any Trustee under the foregoing provisions within the period hereinafter prescribed in this behalf, it shall be lawful for Government by notification in the *Bombay Government Gazette* to nominate a person, and the person so nominated shall be deemed to be a Trustee as if he had been duly elected by the Chamber.
- or in default of such election shall be nominated by Government.

7. The nominee Trustees and the Chairman shall be appointed by Government by notification in the *Bombay Government Gazette*.

Nominee Trustees and the Chairman to be appointed by Government.

8. The term of office of the first nominee and elective Trustees shall commence on such date as shall be notified in this behalf by the Governor in Council.

Term of office of first Trustees when to commence.

9. Three of the first nominee Trustees and three of the first elective Trustees shall, unless they become in the meantime disqualified, hold office up to and inclusive of the 31st day of March next succeeding the date on which their term of office shall commence, the selection of the said six Trustees being made by lot at such time and in such manner as the Chairman shall determine. The remaining four of the first nominee Trustees and the remaining two of the first elective Trustees shall hold office until and inclusive of the 31st day of March next following the 31st day of March aforesaid.

Nominee and elective Trustees to retire from office by rotation.

In every other case the nominee and elective Trustees shall, unless they become in the meantime disqualified, hold office for a term of two years.

10. The first elective Trustees shall be elected on some day not later than a fortnight previous to the date which shall be notified by the Governor in Council under section 8, and the first nominee Trustees shall be appointed on some day during the said fortnight; in every other case elective Trustees shall be elected on some day not earlier than the first and not later than the fifteenth day of the month of March next preceding the 1st of April from which their term of office is to commence; and nominee Trustees shall be appointed on some day in the remainder of the said month of March.

Election and appointment of first Trustees.

Trustees to be appointed and elected in the month of March.

11. The Chairman shall hold office during the pleasure of Government, provided that he does not in the meantime cease, through disqualification, to be a Trustee,

Chairman to be appointed during pleasure of Government.

12. Any person on ceasing to be a Trustee, shall, unless disqualified under section 14, be re-eligible.

Trustees re-eligible.

13. Any casual vacancy in the office of a Trustee other than the Chairman occasioned by the death, resignation, or disqualification of such Trustee shall be filled up within one month by Government, if the office vacated was that of a nominee Trustee, or by the Chamber of Commerce, if it was that of an elective Trustee, in the same manner and subject, so far as may be, to the same provisions as are applicable in the case of original appointments and elections of Trustees: Provided that the Trustee so chosen shall retain his office so long only as the vacating Trustee would have retained the same, if such vacancy had not occurred.

Casual vacancies.

If a Trustee departs from Bombay with an intention of being absent for a longer period than three months, or if a Trustee shall have been absent for such period, a person shall be elected or appointed as aforesaid to act for such Trustee during his absence or until he shall cease to be a Trustee, and the person so acting shall be deemed for all the purposes of this Act to be a Trustee.

Acting Trustees.

Disqualifications of Trustees.

14. No person shall be qualified to be a Trustee during such time as he

Disqualifications for a Trustee during such office of Trustee.

(a) is an uncertificated bankrupt or insolvent, or

(b) holds any office or place of profit under the Board, or

(c) has, directly or indirectly, any share or interest in any work done by order of the Board, or in any contract, or employment with, by, or on behalf of, the Board;

and any Trustee who

(d) becomes disqualified to cease to be a Trustee, or becomes disqualified for any of the aforesaid reasons, or

(e) is absent from the meetings of the Board for a period exceeding twelve consecutive months, or, without the permission of the Board, from six consecutive meetings of the Board, or

(f) is sentenced to imprisonment,

shall cease to be a Trustee, and his office shall thereupon become vacant:

Provided always that no Trustee shall vacate his office by reason only of his

Proviso.

(g) having a share in any Joint Stock Company which shall contract with or be employed by, or on behalf of, the Board, or

(h) having a share or interest in any newspaper in which any advertisement relating to the affairs of the Board may be inserted, or

(i) being interested in any loan of money to the Board.

Salaries of Trustees.

15. The Chairman shall receive such salary as Government shall from time to time determine.

Every Trustee other than the Chairman shall be entitled to a fee of thirty rupees for each meeting of the Board at which a quorum is present and business is transacted and which he attends from the beginning to the end thereof: Provided that if more than one such meeting is held in any one week, no more than thirty rupees shall be paid to any Trustee for his attendance at all such meetings during that one week.

Proceedings of Board.

16. The following provisions shall be observed with respect to the proceedings of the Board (namely):—

(1) During any vacancy in the Board the continuing Trustees may act as if no vacancy had occurred.

(2) The Board shall meet together and shall from time to time make such arrangements, not inconsistent with this Act, with respect to the place, day, hour, notice, management, and adjournment of such meetings, and generally with respect to the transaction of business, as they think fit, subject to the following conditions (namely):—

(a) that a meeting shall be held once at least in every fortnight, or

(b) that the Chairman may, whenever necessary upon an emergency, and whenever necessary upon an emergency, and ever he thinks fit, and shall, upon the written request of not less than three Trustees, call a special meeting;

(c) that no business shall be transacted at any meeting unless at least five Trustees are present from the beginning to the end of such meeting;

(d) that every meeting shall be presided over by the Chairman, if he is present at the time appointed for holding the same, and if he is absent, by such one of the Trustees present as may be chosen by the meeting;

(e) that all questions shall be decided by a majority of votes of the Trustees present, the president having a second or casting vote in all cases of equality of votes;

(f) that if a poll be demanded, the names of the Trustees voting and the nature of their votes shall be recorded by the president;

(g) that minutes shall be kept of the names of the Trustees present and of the proceedings at each meeting in a book to be provided for this purpose, which shall be signed, as soon as practicable, by the president of such meeting, and shall be open to inspection by any Trustee during office hours;

(3) The Board may delegate any of their powers to committees consisting of such Trustees as they think fit; any committee so formed shall conform to any instructions that may from time to time be given to them by the Board, and the Board may at any time discontinue or alter the constitution of any committee so formed;

(4) A committee may elect a chairman of their meetings, and if no such chairman is selected, or, if he is not present at the time appointed for holding the same, the

members present shall choose one of their number to be chairman of such meeting ;

(5) Committees may meet and adjourn as they think proper, but the Chairman of the Board may, whenever he thinks fit and shall, upon the written request of not less than two members of a committee, call a special meeting of such committee ;

(6) Questions at any meeting of a committee shall be decided by a majority of votes of the members present, and in case of an equal division of votes the chairman of the meeting shall have a second or casting vote, but no business shall be transacted at any such meeting unless at least two-thirds of the members of the committee are present from the beginning to the end thereof ;

(7) No act of the Board, or of any Committee, or of any person acting as Trustee, shall be deemed to be invalid by reason only of some defect in the appointment of such Board, Committee or Trustee or on the ground that they, or any of them, were disqualified for the office of Trustee.

17. The Chairman may, on behalf of the Board, enter into any contract or agreement, whereof the value or amount shall not exceed one thousand rupees, in such manner and form as, according to the law for the time being in force, would bind him if such contract or agreement were on his own behalf ; but every other contract and agreement, on behalf of the Board, shall be in writing, and shall be signed by the Chairman, and by two other Trustees, and shall be sealed with the common seal of the Board. No contract or agreement not executed as is in this section provided shall be binding on the Board.

18. The Board may compound or compromise for, or in respect of, any claim or demand arising out of any contract entered into by them under this Act, or in respect of any action or suit instituted by or against them, for such sum of money, or other compensation, as they shall deem sufficient.

The Chairman.

19. The Chairman shall :

(1) attend every meeting of the Board unless prevented by sickness or other reasonable cause ;

(2) exercise supervision and control over the acts and proceedings of all officers and servants of the Board in matters of executive administration, and in matters concerning the accounts and records of the Board ; and, subject to the regulations at the time being in force framed by the Board under section 22, dispose of all questions relating to the service of the said officers and servants, and their pay, privileges, and allowances ;

(3) furnish to the Government a copy of the minutes of any of the Board's proceedings, and any returns or other information which Government may from time to time call for ;

20. Government may from time to time grant to the Chairman such leave of absence as they may deem fit, and any person whom Government appoint to act for the Chairman during any such absence on leave shall, while so acting, be deemed for all the purposes of this Act to be the Chairman.

The allowance, if any, which Government direct to be paid to the Chairman during his absence on leave, and the salary which Government direct to be paid to the person appointed to act for him, shall be a charge on the General Account of the Board.

III.—OF THE OFFICERS AND SERVANTS OF THE BOARD.

Strength of Staff.

21. The Board shall from time to time prepare and sanction a schedule of the staff of officers and servants whom they shall deem it necessary and proper to maintain for the purposes of this Act. Such schedule shall also set forth the amount and nature of the salaries, fees, and allowances which the Board sanctions for each such officer or servant.

Until a schedule is prepared and sanctioned under this section, the schedule in force under section 23 of the Bombay

Port Trust Act, 1873, on the day previous to the date notified by the Governor in Council under section 8, shall be deemed to be the schedule prepared and sanctioned by the Board under the foregoing provisions :

Provided always that artisans, porters and labourers, and muccadums of porters shall not be deemed to be officers or servants within the meaning of this section or of section 22 or 23 of this Act.

22. The Board shall from time to time frame regulations :

(1) for regulating the grant of leave to the officers and servants of the Board ;

(2) for authorizing the payment of allowances to the said officers and servants, or to certain of them, whilst absent on leave ;

(3) for determining the remuneration to be paid to the persons appointed to act for any such officers or servants during their absence on leave ;

(4) for regulating the period of service of all such officers and servants ;

(5) for determining the conditions under which such officers and servants or any of them shall on retirement receive pensions, gratuities, or compassionate allowances, and the amount of such pensions, gratuities, or compassionate allowances ;

(6) for authorizing the payment of contributions at certain prescribed rates and subject to certain prescribed conditions to any Provident Fund which may, with their approval, be established by the officers and servants appointed under this Act :

Provided that officers and servants who were appointed by Government previous to the passing of the Bombay Port Trust Act, 1873, and whose salaries were paid from the fund known as "The Bombay Port Fund," and who have continued

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in the service of the Trustees appointed under the Bombay Port Trust Act, 1873, and of the Trust constituted by this Act, shall be entitled to retiring pensions, gratuities, or compassionate allowances at the same rates and subject to the same conditions as may from time to time be applicable to the servants of Government of similar standing and status, and that in the event of any question arising as to the right of any such officer or servant to a retiring pension, gratuity, or compassionate allowance, or as to the amount of retiring pension, gratuity, or compassionate allowance to which he is entitled, it shall be determined by Government.

Powers of Appointment, &c.

23. Subject to the provisions of the said regulations and of the schedule for the time being in force framed by the Board under section 22, the power of appointing, promoting, suspending, dismissing, fining, reducing or granting leave to the officers and servants of the Board shall be exercised by the Chairman in the case of officers and servants whose monthly salary does not exceed three hundred rupees, and in every other case by the Board.

The power of dispensing with the services of any officer or servant of the Board, otherwise than by reason of such officer's or servant's own misconduct, or of permitting any such officer or servant to retire on a pension, gratuity, or compassionate allowance, shall, subject to the aforesaid provisions, be exercised by the Board alone.

24. Every order or regulation made by the Board under any of the three last preceding sections shall, so far as the same relates to the Secretary, Engineer, Traffic Manager, or Chief Accountant of the Board, be subject to the previous sanction of Government.

In this section the word "Engineer" means the engineer of highest grade on the Board's ordinary staff, and also any superior officer who may from time to time be employed in the capacity of Consulting Engineer to the Board.

Continuance of Present Officers and Servants.

25. All officers and servants holding any office on the day previous to the date notified by the Governor in Council under section 8 under

Officers and servants of the late Trustees to be continued under the Board.

the Trustees appointed under the Bombay Port Trust Act, 1873, shall be deemed to have been appointed under this Act, and shall continue to hold the same office and to receive the same remuneration under the Board until an order to the contrary is passed by competent authority under this Act.

IV.—OF THE PROPERTY AND LIABILITIES OF THE BOARD.

General Powers as to Property.

26. The Board shall, for the purposes of this Act, have power to acquire and hold moveable and immoveable property, whether within or without the limits of the Port or City of Bombay; and shall also have power to lease, sell or otherwise convey any moveable or immoveable property which may have become vested in or been acquired by them:

Provided that no sale of immoveable property and no lease of any such property for a term exceeding fifty years shall be valid unless such sale or lease shall have been made with the previous sanction of Government.

27. When the Board are unable to acquire, by agreement, any immoveable property required for the purposes of this Act, Government may, in their discretion, order proceedings to be taken for acquiring the same on behalf of the Board as if such property were land needed for a public purpose within the meaning of the Land Acquisition Act, 1870.

The amount of compensation awarded and all other charges incurred in the acquisition of any such property shall be forthwith defrayed by the Board, and thereupon the said property shall vest in the Board.

Transfer of Property to Board.

28. All such immoveable and other property as is held by or in trust for the Trustees of the Port of Bombay under or in pursuance or for the purposes of the Bombay Port Trust Act, 1873, shall, upon and after the date notified by the Governor in Council under section 8, vest in the Board, but subject to all charges and liabilities affecting the same.

The property vested by this section in the Board shall be deemed to include

the estate, right, title, and interest of the Secretary of State for India in Council in the rock, stones, shingle, gravel, sand or soil within the Port, and also the right of levying rates on all goods landed at or shipped from any part of the foreshore between Malabár Point and Colába Point.

29. Whereas the Secretary of State for India in Council has initiated measures for the acquisition from the holders thereof, of the properties severally named and generally described in Schedule A, but the arrangements for the said acquisition are not yet complete; and whereas it is expedient that all such estate and interest as may be acquired by the Secretary of State for India in Council in the said properties should vest in the Board; it is hereby enacted that upon and after such date as shall be fixed in this behalf by the Governor in Council, all the estate, right, title, and interest of the Secretary of State for India in Council in the said properties shall, subject to the provisions hereinafter contained, become vested in the Board, subject to all covenants, charges, contracts, and liabilities affecting the same.

30. And whereas it is purposed that the Board to issue securities in payment of price of properties vested in them under Sec. 29. purchase money of the said properties shall be paid in Port Trust securities bearing interest at the rate of four per centum per annum; it is hereby enacted that the Board shall within two months from the date aforesaid execute and deliver to the holders of the said properties securities in the form of Schedule B, under their common seal, for the sums for which their said properties shall be respectively purchased by the Secretary of State for India in Council: Provided that the said sums shall not exceed, in the aggregate, seventy-seven lacs of rupees, and that so long as the said amount is not exceeded it shall be competent to the Secretary of State for India in Council to acquire such estate, right, title and interest in the said properties as he shall deem fit, anything contained in Schedule A notwithstanding.

Every such security shall be for an amount of not less than one hundred rupees, and shall covenant for the payment of interest on the principal sum at

the rate of four per centum per annum from the date fixed by the Governor in Council under section 29, and such interest shall be payable half-yearly on or after the 1st April and the 1st October.

The said securities shall be transferable by endorsement.

and to be transferable.

Application of the Board's Property.

31. The proceeds of the sale of any portion of the property vested in or acquired by the Board under or by virtue of this Act, and all sums paid to the Board by way of compensation under the next following section, shall be applied as follows and not otherwise (namely) :—

(a) in liquidation of the principal sum of any debt contracted under paragraph 2 of section 39, if the same or any portion of the same is at the time payable; or

(b) in liquidation of the principal of any debt at the time due to the Secretary of State for India in Council; or

(c) in liquidation of the securities, or of any of them, issued under section 30.

32. Nothing in this Act shall be deemed to affect the power of Government to order proceedings to be taken under the Land Acquisition Act of 1870, or any other law for the time being in force for the acquisition of land for public purposes in respect of any land vesting in the Board.

Saving of powers of Government under Land Acquisition Act, 1870.

Liabilities.

33. The capital debts due by the Board on account of the immovable and other property vested in it by this Act are as follows (namely) :—

(a) to the Secretary of State for India in Council, the amounts mentioned in Schedule C; and the amounts which have been advanced by or on behalf of the Secretary of State for India in Council to the Trustees appointed under the Bombay Port Trust Act, 1873, or applied by or on behalf of the said Secretary of State in Council, with the consent of the said Trustees, for the improvement of the Port of Bombay or otherwise under sections 46 and 50, clause (2) of the said Act,

(b) to the holders of the securities to be issued by the Board under section 30, the amounts of such securities.

34. On the amounts mentioned in column Interest in what three of Schedule C cases to be paid by the Board. no interest shall be payable.

On the amounts mentioned in column two of the said schedule interest shall be payable by the Board to the Secretary of State for India in Council annually on the 1st April at the rate of four per centum per annum until, and inclusive of, the twenty-fifth day of June 1883, and thereafter at the rate of four and one-half per centum per annum.

On the amounts due to the Secretary of State for India in Council under clause (a) of the last preceding section which are not mentioned in the said schedule, interest shall be payable by the Board to the said Secretary of State in Council annually on the 1st April at the rate of four and one-half per centum per annum.

On the amounts, if any, which may hereafter be advanced to the Board by the Governor in Council under section 39 of this Act interest shall be payable by the Board to the Secretary of State in Council on such dates and at such rates as shall be agreed upon between Government and the Board in respect of such advances.

On the amounts of the securities issued by the Board under section 30 interest at the covenanted rate of four per centum per annum shall be payable by the Board half-yearly on the 31st March and the 30th September to the Accountant General of Bombay or other officer for the time being performing the duties of the office of the said Accountant General, who shall pay the same on or after the 1st April and 1st October respectively to the holders of the said securities.

If any sum due by the Board under this section on account of interest, or any portion thereof, is not paid by them on the date on which the same is hereby declared to be payable, they shall continue liable for the payment thereof, and interest shall be paid by them to the Secretary of State for India in Council upon the balance from time to time overdue at the rate of four and one-half per centum per annum, until the whole amount is paid.

35. In the event of default being made Interest to be paid by the Board in any out of Provincial Revenues if default is made by the Board. payment of interest due by it under paragraph two, three or four of the last preceding section, the same shall be paid by the Accountant General of Bombay or other officer aforesaid, who shall debit the amount so paid to the

Provincial Revenues of the Presidency of Bombay; and in the event of default being made by the Board in any payment due by it under paragraph five of the said section, the Accountant General or other officer aforesaid shall nevertheless pay to the security-holders the interest due upon their securities, and shall debit the amounts so paid to the Provincial Revenues of the Presidency of Bombay.

36. The Board shall pay annually on the 30th day of September to the Municipal Corporation of the City of Bombay a lump sum which shall be calculated at the following rates, namely:

Lump payment to be made to the Municipality in lieu of consolidated rate.

(a) for the period commencing on the 1st day of October last preceding the date on which this Act comes into force and ending on the day next previous to the date fixed by the Governor in Council under section 29 at the rate of fifty thousand rupees per annum;

(b) for the period commencing on the date fixed as aforesaid and ending on the 25th day of June 1883 at the rate of sixty thousand rupees per annum; and

(c) thereafter at such rate as the Governor in Council shall from time to time determine.

The said payment shall be in lieu of the consolidated rate leviable by the said Corporation, to which the property hereby vested in the Board or some portion of the same would otherwise be liable to be assessed.

37. In consideration of the said payment the Municipal Commissioner shall, on being satisfied that any road or thoroughfare has been duly levelled, paved, metalled, flagged, channelled, and sewered by the Board, declare such road or thoroughfare to be a public road or thoroughfare, and the Municipality shall thenceforward maintain, keep in repair, light and cleanse such road or thoroughfare. The Municipality shall also, on requisition by the Board, maintain, keep in repair, light and cleanse the road of any wharf, dock or pier vested in the Board.

The Municipality shall maintain, keep in repair, light and cleanse the said roads and thoroughfares in the same manner and with the same liabilities

Such roads and thoroughfares not to be stopped up without the consent of the Board.

ties in respect thereof as if the said roads and public thoroughfares were vested in the said Municipality; but it shall not be competent to the Municipal Commissioner or to the Municipality to discontinue or stop up any road or thoroughfare which at any time vested in, or which has been constructed by the Board, or the Trustees of the Port appointed under the Bombay Port Trust Act, 1873, and which has been declared to be a public road or thoroughfare under this section, or under section 9 of the said Act, without the previous consent in writing of the Board; and the land occupied by any road or thoroughfare so discontinued or stopped shall vest in the Board and not in the Municipality.

38. Any dispute which arises between the Board and the Municipality in respect of any of the provisions of the last preceding section shall be determined by the Government, and their decision shall be final.

Disputes under the last section to be settled by Government.

V.—OF THE BORROWING POWERS OF THE BOARD.

39. The Governor in Council, acting on behalf of the Secretary of State for India in Council, may, with the previous consent of the Governor General of India in Council, from time to time advance money to the Board for the general purposes of this Act; or

The Board may, with the previous consent of Government, from time to time raise money for the said purposes:

Provided always that no expenditure shall be charged by the Board to capital, except with the express sanction of Government.

40. Whenever the consent of Government has been obtained to the raising of money by the Board under the last preceding section, Government shall, with the previous consent of the Governor General of India in Council, direct and appoint the manner in which such money shall be raised.

41. If such money shall be raised on debentures bearing interest, such interest shall be a charge on the rates prior to the charge for interest

Manner of raising such loans to be determined by Government.

Interest on debentures to be a charge on the rates prior to interest due to Secretary of State.

payable to the Secretary of State for India in Council, provided for by section 34.

42. All debentures which may be so issued shall be in the form of Schedule D, and shall be transferable by endorsement; and the right to sue in respect of the monies secured by any such debentures shall be vested in the holders thereof for the time being, without any preference by reason of some of such debentures being prior in date to others.

VI.—OF REVENUE AND EXPENDITURE.

Levy of Rates.

43. The Board shall frame a scale of tolls, dues, rents, rates, and charges, to be levied for each or any of the following matters (namely):

(a) for the landing, shipping, wharfage, crannage, storage, or demurrage of goods at,

(b) for permission for vessels or boats to approach, or be alongside, and

(c) for animals or vehicles carrying goods to or from, or entering upon or plying for hire at or on,

any wharf, dock, or pier in the possession of the Board, and so much of the Wári Bandar and of the Gun Carriage Reclamation as is in the possession of the Great Indian Peninsula and the Bombay Baroda and Central India Railway Companies respectively: Provided that no such toll, due, rent, rate or charge shall be leviable at so much of the said Wári Bandar and Gun Carriage Reclamation as is aforesaid in respect of any goods, vessel, animal or vehicle belonging to the said companies respectively.

The scale so framed shall be submitted to Government for sanction, and when so sanctioned and published in the *Bombay Government Gazette* shall have the force of law, and, subject to the like sanction and publication, may from time to time be amended or added to by the Board.

Until a scale of rates is framed, sanctioned, and published under this section, the scale in force when this Act comes into operation under section 57 of the Bombay Port Trust Act, 1873, shall be deemed to have been duly framed, sanctioned and published under this section.

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The Board may, in special cases, with the previous sanction of Government, remit the whole or any portion of the rates leviable under this section.

44. The said rates shall not be leviable in respect of any vessel employed by Government solely for the transport of troops, nor in respect of the baggage or other effects of any troops landing or embarking at the port. In lieu thereof a toll shall be payable by Government to the Board on all troops and all the families of troops landing or embarking at Bombay at the rate of one rupee per head, and, if such troops and their families shall land or embark at any dock in the possession of the Board, at such additional rate as shall from time to time be determined by Government.

45. Subject to the provisions of any law for the time being in force, the Board may land, ship, or tranship goods between vessels in the harbour and the wharves, piers or docks in their possession, and may make such charges for so doing as they shall think fit.

46. The Board may procure and maintain such number of steam-vessels as they may deem fit to be employed in towing vessels into, out of, or in the harbour, and may make such charges for towage by the said steam-vessels as they shall think fit.

Division of Accounts.

47. In the accounts of the Board a Pilotage account shall be kept separate from the General account.

48. The rates and charges from time to time levied under sections 43 to 46, together with all rents of lands and buildings, and all fines and penalties levied under this Act, other than fines and penalties levied from pilots or other persons employed in the pilot service, and all miscellaneous items of revenue recovered by the Board, except pilotage-fees, shall be credited to the General Account.

49. The monies credited to the General Account shall be held by the Board in trust, and except as is hereinafter provided shall

be applied by them in payment of the following charges (namely):—

(1) the salaries, fees, allowances, pensions, gratuities, compassionate allowances or other monies due to the Trustees and to the officers and servants appointed under this Act, and the contributions, if any, duly authorized to be made to any Provident Fund established by the said officers and servants;

(2) the cost of repairs and maintenance of the property vested in the Board, and all charges upon the same and all working expenses;

(3) the interest due on any money that may have been raised by the Board under section 39;

(4) the cost, or such portion of the cost, of any new work, plant, vessel or appliance which the Board may determine to charge to revenue;

(5) the interest payable by the Board under section 34:

Provided always that no charge which is debitable under section 50 to the Pilotage account shall be debited to the General account.

50. All fees for pilotage and all fines and penalties levied under this Act from pilots or other persons employed in the pilot service shall be credited to the Pilotage Account and shall be held by the Board

in trust, and be applied, in such proportions as they shall from time to time direct, to the following purposes only (namely):—

(1) the purchase and maintenance in repair of such vessels, and the supply of such materials, stores, or other things as the Board deem it necessary to maintain or supply for the efficiency of the pilot service;

(2) the payment of the salaries and allowances of pilots and other officers and servants of the Board employed in the pilot service or in the supervision thereof;

(3) the payment of pensions or retiring gratuities or compassionate allowances to pilots and other officers and servants engaged in the pilot service, and of the contributions, if any, duly authorized to be made in their behalf to any Provident Fund.

Disposal of Balances.

51. The Board may invest any balance remaining on the 31st March of each year to the credit of either the General or Pilotage account after meeting all the charges properly debitable to such account, in public securities, and may from time to time sell the said securities and re-invest the proceeds in other public securities, or credit the same to the account to which the balance invested belonged for expenditure on any of the purposes to which the monies credited to such account may lawfully be applied.

But the money so invested by the Board, whether in respect of the General account or of the Pilotage account, shall not exceed such amount annually, or in the aggregate, as shall from time to time be prescribed by Government, and any surplus remaining after deducting the amounts which may be so invested to be limited by Government, shall not exceed such amount annually, or in the aggregate, as shall from time to time be prescribed by Government, and any surplus remaining after deducting the amounts which may be so invested shall be applied:

(a) if such surplus belongs to the General account, in liquidation, on or before the 1st August next following the 31st March on which such surplus accrued, of the principal of any loan raised by the Board under section 39, or of the capital of any debt at any time due by the Board to the Secretary of State for India in Council; or of the money due to the holders of the securities issued by the Board under section 30; and

(b) if such surplus belongs to the Pilotage account, in such manner as Government shall direct:

Provided always that the pilots and other officers and servants employed in the pilot service shall have no claim upon any balance to the credit of the pilotage account or upon the profits or interest arising from any investment thereof, or of any portion thereof except to such extent as payments to them, or in their behalf, may from time to time be sanctioned by the Board under clauses (2) and (3) of section 50.

The interest and profits accruing and the loss, if any, arising from such investments as aforesaid shall be respectively credited and debited to the account to which the balance invested belongs.

Annual Estimates.

52. The Chairman shall, at a special meeting to be held, Chairman to submit an annual estimate of income and expenditure to the Board. in the month of February in each year, lay before the Board an estimate of the income and of the expenditure of the Board for the year commencing on the 1st day of April, then next ensuing in such detail and form as the Board shall from time to time direct.

Such estimate shall be completed and printed, and a copy thereof sent by post, or otherwise, to each Trustee, at least ten clear days prior to the meeting before which the estimate is to be laid.

53. The Board shall consider the estimate so submitted Board to revise and sanction the estimate. to them, and shall sanction the same either unaltered, or subject to such alterations as they shall think fit.

54. The estimate, as sanctioned by the Board, shall be submitted to the Government, which may, if it thinks fit, at any time within one month after receipt of the same, disallow such estimate, or any portion thereof, and return the same for amendment. The Board shall, if the estimate is so returned by Government, forthwith proceed to amend the same, and shall re-submit the estimate so amended to the Government.

55. The Board may, at any time during the year for which any such estimate has been sanctioned, cause a supplementary estimate to be prepared and submitted to them. Every such supplementary estimate shall be considered and sanctioned by the Board and submitted to the Government in the same manner as if it were an original annual estimate.

56. Save in cases of pressing emergency, no expenditure above Rs. 5,000 to be incurred unless sanctioned in the estimate. no sum exceeding five thousand rupees shall be expended by or on behalf of the Board, unless such sum is included in some estimate at the time in force which has been finally approved by Government.

If any sum exceeding five thousand rupees in amount is so expended on a pressing emergency, the circumstances shall be forthwith reported by the Chairman to

the Government, together with an explanation of the way in which it is proposed by the Board to cover such extra expenditure.

57. Any estimate prepared by the Trustees appointed under the Bombay Port Trust Act, 1873, and approved by Government under section 53 of that Act, and which but for the passing of this Act would have force and effect, shall be deemed to have been duly prepared, passed and approved under this Act.

Audit of Accounts.

58. The accounts of the receipts and expenditure of the Board shall, twice in every year, be laid before Government, and shall be audited and examined by such auditors as shall, from time to time, be appointed by Government.

For the purposes of such audit and examination the auditors may, by summons in writing, require the production before them of all books, deeds, contracts, vouchers, and all other documents and papers which they may deem necessary, and may require any person holding, or accountable for any such books, deeds, contracts, accounts, vouchers, documents, or papers, to appear before them at any such audit and examination, or adjournment thereof, and to make and sign a declaration with respect to the same.

The auditors shall be paid by the Board such remuneration as Government shall determine, the amount being debited to the General account; and within fourteen days after the audit and examination shall have been completed, the auditors shall forward their report upon the accounts to the Board, who shall cause the same to be published, together with an abstract of the accounts, in the *Bombay Government Gazette*.

Fulfilment of Board's Liabilities.

59. It shall be incumbent on the Board to make ample provision year by year, either by retrenchment of expenditure

Board bound to provide for fulfilment of all their liabilities.

or by increase of rates for the due fulfilment of all their liabilities, and for the efficient administration of this Act; and in the event of any deficiency being at any time anticipated in the income of the Board, they shall forthwith take such measures as shall seem most expedient for preventing such deficiency.

60. If it shall at any time appear to the Governor in Council that sufficient provision is not being made by the Board to meet their liabilities, or if default shall at any time be made by the Board in any payment of interest which they are required to make under section 34, the Governor in Council may require the Board, by an order in writing signed by a Secretary to Government, to increase, subject to his sanction and to the provisions of section 43, to such extent and for such period as shall appear necessary, the rates or any of the rates for the time being in force under the said section.

If within fifteen days after receipt of such order the Board and on the Board's failing to do so, may himself increase them. do not comply with the same, the Governor in Council may, by notification in the *Bombay Government Gazette*, increase the said rates or any of them, and such notification shall have the same force as if a new scale of rates to the same effect had been duly framed, sanctioned and published under section 43.

And for the purpose of realizing any interest which has not been paid by the Board when due, in accordance with section 34, the Governor in Council may, by an order published in the *Bombay Government Gazette*, appoint some person to receive the rates, charges, and other income which the Board may be entitled to receive, or any portion thereof, and to apply the same in discharge of the amount due and of all expenses authorized by Government in respect of the appointment of such person and of the recovery by him of the said rates, charges and income; and the person so appointed shall have for the recovery of the said rates, charges, or other income, all and singular the powers and authorities conferred by this Act on the Board for the said purpose.

VII.—OF THE POWERS AND FUNCTIONS OF THE BOARD.

Recovery of Rates.

61. For the amount of all rates leviable under this Act in respect of any goods, the Board shall have a lien on such goods, and shall be entitled to seize and detain the same until such rates are fully paid. Rates in respect of goods to be landed shall become payable immediately on the landing of such goods. Rates in respect of goods to be removed from the premises of the Board, or to be shipped for export, shall be payable before such goods are removed or shipped. The lien for such rates shall have priority over all other liens and claims, except for general average, for the ship-owner's lien for freight upon the said goods, (where such lien exists and has been preserved in the manner hereinafter provided), for primage and for money payable to Her Majesty or to the Secretary of State for India in Council.

62. If the master or owner of any vessel, or his agent, at or before the time of landing from such vessel any goods at any wharf, dock or pier in the possession of the Board, shall give to the Board notice, in writing, that such goods are to remain subject to a lien for freight or other charges payable to the ship-owner, to an amount to be mentioned in such notice, such goods shall continue liable to the same lien, if any, for such charges as they were subject to before the landing thereof. Such goods shall be retained either in the warehouses and sheds of the Board, or, with the consent of the Chief Customs Authority of the Presidency in the public warehouses, at the risk and expense of the owners of the said goods until the lien is discharged as hereinafter mentioned.

63. Upon production to the proper officer of the Board of a document purporting to be a receipt for the amount claimed as due, or a release of freight from the person by or on whose behalf such notice shall have been given, it shall be lawful for the Board to permit such goods to be removed without regard to such lien, provided they shall have used reasonable care in respect to the authenticity of such document.

64. If the rates payable to the Board in respect of any goods are not paid, or if the lien of the ship-owner for freight, when such notice as aforesaid has been given, is not discharged, the Board may, and in the latter event, if required by or on behalf of the person claiming such lien for freight, shall, at the expiration of two months from the time when the goods were placed in their custody, or if the goods are of a perishable nature, at such earlier period (being not less than twenty-four hours after the landing of the goods), as they shall think fit, sell by public auction the said goods, or so much as may be necessary to satisfy the amounts hereinafter directed to be paid out of the produce of such sale.

Before making such sale, ten days' notice of the same shall be given by publication thereof in the *Bombay Government Gazette*, unless the goods are of so perishable a nature as, in the opinion of the officer aforesaid, to render their immediate sale necessary or advisable, in which event such notice shall be given as the urgency of the case admits of.

If the address of the owner of the goods has been stated on the manifest of the cargo or in any of the documents which have come into the hands of the Board, or is otherwise known, notice shall also be given to the owner of the goods by letter delivered at such address, or sent by post; but the title of a *bonâ fide* purchaser of such goods shall not be invalidated by reason of the omission to send the notice hereinbefore mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

65. In every case of any such sale as aforesaid, the monies received from the sale shall be applied as follows:—

1stly.—In payment, according to their respective priorities, of the liens and claims excepted in section 61 from the priority of the lien of the Board for rates;

2ndly.—In payment of the expenses of the sale;

3rdly.—In payment of the rates and expenses due to the Board in respect thereof.

The surplus, if any, shall be paid to the owner of the goods or his agent on his applying for the same, provided such appli-

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cation be made within one year from the sale of the goods, or good reason be shown why such application was not so made to the satisfaction of the Board; and in case such application shall not be so made, nor reason shown, such surplus shall be applied by the Board to the purposes of this Act.

66. If the master of any vessel in respect of which any rates, charges, or penalties shall be payable under this Act, or any bye-laws made in pursuance hereof, shall refuse or neglect to pay the same, or any part thereof, on demand, it shall be lawful for the Board to distrain or arrest, of their own authority, such vessel, and the tackle, apparel, or furniture belonging thereto, or any part thereof, and detain the same until the amount so due shall be paid; and, in case any part of the said rates or penalties or of the costs of the distress or arrest, or of the keeping of the same, shall remain unpaid for the space of fifteen days next after any such distress or arrest shall have been so made, the Board may cause the vessel, or other thing so distrained or arrested, to be sold, and with the proceeds of such sale may satisfy such tolls, dues, rates, penalties, or charges and costs of sale remaining unpaid, rendering the surplus (if any) to the master of such vessel on demand.

67. If the Board shall give to the officer of Government, whose duty it is to grant the port clearance of any vessel, a notice stating that an amount therein specified is due in respect of rates, charges, or penalties chargeable under this Act, or any bye-laws, or orders made in pursuance hereof, against such vessel, or the owner or master of such vessel, in respect thereof, such officer shall not grant such port clearance until the amount so chargeable shall have been paid.

Works.

68. The works to be undertaken by the Board under this Act may include—

(1) wharves, docks, and piers within the Port or on the foreshore of the Port with all necessary and convenient arches, drains, fences, roads, railways, and approaches;

(2) tramways, warehouses, sheds, engines, and other appliances for conveying, receiving, and storing goods landed, or to be shipped, or otherwise;

(3) light-houses, light-ships, beacons, pilot-boats, and other appliances necessary for the safe navigation of the Port and of the approaches thereto within a distance of three miles from the limits of the Port;

(4) laying down moorings, and the erection of cranes, scales, and all means and appliances necessary for berthing, loading and unloading vessels;

(5) reclaiming, excavating, enclosing, and raising any part of the foreshore of the Port vested in the Board, when such reclamation, excavation, enclosure, or raising may be necessary for any of the purposes of this Act;

(6) the construction and application of dredges and other machines for cleaning, deepening, and improving any portion of the Port or foreshore aforesaid;

(7) the construction of such works, without the limits of the Port, as shall be necessary for the protection of works executed by the Board within the Port, and all such other works and appliances as may, in the opinion of the Board, be necessary for carrying out the purposes of this Act:

Provided always that no new work, the

But no new work to be commenced without a plan and estimate, if its cost shall exceed Rs. 2,000;

estimated cost of which exceeds two thousand rupees, shall be commenced by the Board, nor shall any contract be entered into by the Board in respect of any such new work, until a plan and estimate of such work shall have been submitted to the Board and considered and approved by them, nor shall any new work, the estimated cost of which exceeds two

lacs of rupees, be commenced until such plan and estimate shall have been submitted to, and approved by Government.

Regulation of use of Wharves, &c.

69. Nothing in this Act shall be deemed to affect:

(a) the right of Government to collect

Reservation of the rights of Government to use the wharves, &c., for collecting customs duties;

customs duties, or of the Municipal Corporation of the City of Bombay to collect town duties, at any wharf, pier, or dock in the possession of the Board, or

(b) any power or authority vested in the Customs Authorities of the Presidency under any law for the time being in force for the administration of Sea Customs.

70. Whenever any wharf, pier, or dock, Places to be set apart for use of Customs Officers on wharves, &c.

in the possession of the Board shall be appointed, under the provisions of any Act for the time being in force, for the administration of Sea Customs, a wharf or place for the landing and shipping of goods within the meaning of such Act,

and whenever any warehouse, or portion of a warehouse, in the possession of the Board shall be appointed or licensed under the provisions of any such Act as a warehouse for the deposit of dutiable goods on the first importation thereof without payment of duty,

the Board shall set apart, and maintain, such place on or adjoining such wharf, dock, or pier, or in such warehouse, or portion of a warehouse, for the use of the Officers of Customs as Government shall in that behalf approve or appoint;

but all rates payable in respect of any wharf, pier, or warehouse, or portion thereof so set apart, or for the storage of goods thereupon or therein, shall be paid to the Board or to such person or persons as they may appoint to receive the same, notwithstanding that the same has been so set apart;

and if any portion of the Customs Bonded

Warehouses shall, with the consent of Government, be appointed a public warehouse for the deposit of dutiable goods as aforesaid, the Board and the surplus income derived from any portion of the Customs Bonded Warehouse used as a public warehouse to be paid to the Board.

shall set apart and maintain such portion thereof in good order for the said purpose; but the Chief Customs Authority shall pay to the Board from time to time, as may be determined by Government, all surplus income derived from the use of such portion of the said Customs Bonded Warehouse as a public warehouse as aforesaid after payment of all charges and expenses of management.

71. The Board shall provide such number of public landing-places as shall, in the opinion of Govern-

Board to provide free landing-places.

ment, be sufficient, from and upon which the public shall be permitted to embark and to land free of charge.

Control of Pilots.

72. The Board shall have the right and privilege of maintaining pilots for the navigation of vessels at the Port, and all fees for pilotage shall be paid to the Board: Provided that no person shall be appointed to be a pilot by the Board who is not for the time being authorized by Government, under the provisions of the Indian Ports Act, 1875, to pilot vessels.

The Board may also, from time to time, make such bye-laws and regulations as they shall think fit:

(a) for fixing and regulating the wages and allowances for pilotage to be received by pilots, and

(b) for regulating the behaviour and conduct of pilots;

and shall enforce the observance of such bye-laws and regulations, by the imposition of pecuniary penalties not exceeding two hundred rupees for each offence, or by suspension, or deprivation of appointment, or otherwise as to them may appear expedient: Provided that such bye-laws shall first have been approved by Government, and published in the manner directed by section 74.

Bye-Laws.

73. The Board may, from time to time, make bye-laws:

(a) for the guidance of persons employed by them under this Act;

(b) for the safe and convenient use of the wharves, docks, piers, warehouses, tramways, and other works constructed or acquired by them under this Act;

(c) for the use of the public landing-places constructed by or belonging to them;

(d) for the reception and removal of goods brought within the premises of the Board;

(e) for keeping clean the harbour and basins and the works of the Board, and for preventing filth or rubbish being thrown therein or thereon;

(f) for settling the mode of the payment of the rates and charges leviable under this Act;

(g) for regulating, declaring, and defining the wharves, docks, and piers vested in the Board on which goods shall be landed from, and shipped on board vessels; and

(h) generally for carrying out the purposes of this Act.

The Board may also, from time to time, vary, alter, or revoke any such bye-laws so made by them.

74. No bye-law, or alteration or revocation of a bye-law, shall have effect until the same shall have been approved by Government, and such approval shall have been published in the *Bombay Government Gazette*; and no bye-law or alteration or revocation of a bye-law shall be approved by Government until the same shall have been published for three weeks successively in the said *Gazette*.

It shall be lawful for Government at any time by notification in the said *Gazette* to cancel any bye-law or regulation made and published under the provisions of this and of the last two preceding sections.

75. The Board may, in the bye-laws made under section 73, prescribe such penalties as they shall deem fit for the infringement of the same: Provided that no penalty for any one infringement of a bye-law shall exceed one hundred rupees, nor, in case of a continuing infringement, shall any penalty exceed fifty rupees per diem for every day after notice of such infringement shall have been given by the Board to the person guilty of such infringement.

76. The Board shall cause the said bye-laws and the scales of rates and charges to be exhibited, leviable by the Board, to be printed in the English, Maráthi and Guzeráthi languages, and to be hung up at the several wharves, docks, and piers, and other convenient places on the premises of the Board.

77. Until bye-laws are framed by the Board under section 73, the bye-laws framed by the Trustees appointed under the *Bombay Port Trust Act, 1873*, under section 85 of that Act, and in force when this Act comes into operation, shall be deemed

to have been framed under the said section 73 of this Act.

VIII.—PENALTIES.

78. Any person who being a Trustee, or an officer or servant of the Board, shall acquire, directly or indirectly, any share or interest in any contract or employment with, by, or on behalf of the Board, shall be deemed to have committed the offence made punishable by section 168 of the Indian Penal Code:

Provided that nothing in this section shall apply to a person—

(a) having a share in any Joint Stock Company which shall contract with, or be employed by, or on behalf of the Board, or

(b) having a share or interest in any newspaper in which any advertisement relating to the affairs of the Board may be inserted, or,

(c) interested in any loan of money to the Board.

79. Any person employed under this Act, not being a public servant within the meaning of section 21 of the Indian Penal Code, who shall accept or obtain, or agree to accept or attempt to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a reward for doing, or forbearing to do, any official act, or for showing, or forbearing to show, in the exercise of his official functions, favour or disfavour to any person; or for rendering, or attempting to render, any service or dis-service to any person with the Board or with any public servant as such, or with the Government, shall be liable to the same punishment as is provided by the Indian Penal Code in the case of the like offence committed by a public servant.

80. Any person who shall refuse or neglect to appear before any auditor of accounts, or to produce any books, deeds, contracts, accounts, vouchers, documents, or papers, or to make or sign any declaration when duly required so to do by any auditor of accounts under section 58, shall be punished for every such neglect or refusal with fine which may extend to one hundred rupees.

81. Any person, other than the Board or the Conservator of the Port, who shall, without first obtaining the written consent of Government to his so doing, make, set up, or fix, below high-water mark within the Port, any wharf, quay, pier, mooring, or other erection whatsoever, shall be punished with fine which may extend to one thousand rupees, and to a further fine which may extend to one hundred rupees for every day during which he shall permit such wharf, quay, pier, mooring, or other erection, to remain after notice to remove the same has been given to him.

Any such wharf, quay, pier, mooring, or other erection, may be removed by the Board, and the person who made, set up, or fixed the same, shall also be liable to pay all expenses which may be incurred by the Board in the removal thereof.

82. If it be found when goods are imported at, or exported from, any wharf, dock or pier in the possession of the Board, that the weight or quantity of such goods, or the tonnage of any vessel carrying such goods, has been understated in any document presented to any officer of the Board for the purpose of enabling him to determine the rates or charges payable in respect of the said goods or vessel, the consignee, in the case of goods imported, and the consignor, in the case of goods exported, shall be liable to pay to the Board such sum not exceeding twice the proper rates or charges on the weight or quantity of goods or amount of tonnage so understated as may be determined by the Board, and the said sum shall on the application of the Board be recoverable under a Presidency Magistrate's warrant as if it were a fine inflicted by such Magistrate.

83. Any person who removes, or attempts to remove, or abets within the meaning of the Indian Penal Code the removal of any goods, vessel, animal, or vehicle with the intention of evading payment of the rates or charges lawfully due in respect thereof to the Board shall be punished with fine which may extend to fifty rupees.

84. If, through the negligence of any person having the guidance or command of any vessel, or of any of the mariners

Recovery of value of damage to any property of the Board.

or persons employed on such vessel, damage shall be caused to any wharf, dock, pier, or other work in the possession of the Board, the amount of such damage shall, on the application of the Board, be recoverable, together with the cost of such recovery, by distress and sale, under a Presidency Magistrate's warrant, of a sufficient portion of the boats, masts, spars, ropes, cables, anchors, or stores belonging to such vessel: Provided that no such warrant shall issue until the master of such vessel has been duly summoned to appear, or, if he appears, until he has been heard, and provided also that no such warrant shall issue if the vessel was at the time under the orders of a duly authorized officer in the pilot service of the Port or of the Master Attendant's Department.

85. Except as is otherwise provided in section 82, all offences against this Act or against any bye-law made under section 73 shall be cognizable by a Presidency Magistrate.

All fines and damages recovered from any offender, or by any distress under section 84, shall be paid to the Board.

IX.—MISCELLANEOUS.

86. Whenever any day by this Act appointed for any purpose shall happen to be a Sunday or a public holiday, the business appointed to

be done on such day shall be done on the day next after such Sunday or public holiday.

87. No suit or other proceeding shall be commenced against any person for anything done, or purporting to have been done, in pursuance of this Act without giving to such person one month's previous notice in writing of the intended suit or other proceeding, and of the cause thereof, nor after six months from the accrual of the cause of such suit or other proceeding.

The Board shall not be responsible for any mis-feasance, mal-feasance, or non-feasance of any officer or servant appointed under this Act;

nor, if they should be appointed by Government, under the Indian Ports Act, 1875, Conservators of the Port, for any mis-feasance, mal-feasance or non-feasance of any Deputy Conservator, Master Attendant or Harbour-Master, or of any assistant or deputy of any such officer, or of any person acting under the authority or direction of or in subordination to any such officer, assistant or deputy;

nor for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers, or other things belonging to the Board, which may be used by such vessel;

nor shall the Board, or any of the said officers or servants, be liable in damages for any act *bonâ fide* done, or ordered to be done by them in pursuance of this Act.

SCHEDULE A.

Properties referred to in Section 29.

No.	Names of Holders.	General Description of Properties.
1	The Sassoon Dock Company.	All the property at Colába, belonging to the Sassoon Dock Company, known as the Sassoon Dock, together with the land on the west of the Colába road appertaining thereto, and all rights, privileges, and powers enjoyed or claimed by the Sassoon Dock Company in connection therewith.
2	The New Colába Company.	A strip of land, varying from 25 to 50 feet or thereabouts in width, running along the whole foreshore of the estate of the New Colába Company, situated at Colába, commencing from the Colába road at the point where the properties of the New Colába Company and the Sassoon Dock Company adjoin, and thence continuing alongside the Bandar wall of the Victoria Basin and the Harbour Face up to the junction of the New Colába Company's

SCHEDULE A—continued.

No.	Names of Holders.	General Description of Properties.
3	The Apollo Press Company.	property with the Gun Carriage Reclamation; again commencing at the junction of the New Colába Company's property and the property of the Apollo Press Company and running along the Harbour Face and alongside the Arthur Basin up to the Colába road; together with the whole of the Arthur Bandar and the ground adjacent thereto, situate within Customs limits, together with all rights and privileges enjoyed or claimed by the New Colába Company in respect of the strip of land, Bandar, and ground aforesaid, and of the Victoria and Arthur Basins.
4	The Mázgaon Land Company.	All the land at Colába the property of the Apollo Press Company, and known as the Jamsetjee Bandar and Reclamation, including all rights and privileges enjoyed or claimed by the Apollo Press Company in respect of the said land and of the Gun Carriage Basin, together with all rights and privileges enjoyed or claimed by the Apollo Press Company at or in respect of any of the Bandars belonging to the New Colába Company.
5	The Frere Land Company.	All the land at Mázgaon, known as the Powder Works Bandar, the property of the Mázgaon Land Company, lying between the Harbour and the western side of the road running from the Harbour Defences Office to Tank Bandar, together with all rights and privileges enjoyed or claimed by the Mázgaon Land Company in respect of the said land.
6	Hajee Ismael Hajee Hubeeb.	All the land north of Tank Bandar the property of the Frere Land Company, bounded towards the west by the Ghorupdavi road and towards the north and west by the Jackaria Bandar road, together with all rights and privileges enjoyed or claimed by the Frere Land Company in respect of the said land.
7	Hajee Jackaria Noor Mahomed.	All the land and fish-ponds bounded by the Harbour on the east and by the Jackaria Bandar road and the Siwri road on the west and north, by the property of the Frere Land Company on the south, and by the property of the Trustees of the Port on the north, known as Siwri Bandar, together with all rights and privileges enjoyed or claimed in respect of the said land by the respective holders thereof.
8	Manockjee Adurjee ...	
9	Aitwar Lukdee	
10	Muncherjee Framjee Cama.	
11	Dadabhoy Hormusjee	
12	Hajee Essa Hajee Fuzla	
13	Dorabjee Nusserwanjee	
14	Byramjee Cowasjee ...	
15	Esmail Mahomed Songaji.	

SCHEDULE B. (SEE SECTION 30.)

Form of Security.

THE TRUSTEES OF THE PORT OF BOMBAY.

No.

Under the provisions of the Bombay Port Trust Act, 1879, we, the Trustees of the Port of Bombay, do hereby for ourselves and our successors promise and agree to pay to _____, or order, the sum of Rupees _____ value received; such payment to be made on demand at the office of the Accountant General, Bombay, after the expiration of three months' notice of payment to be given by the Chairman of the said Trustees in the *Bombay Government Gazette*. We further promise and agree for ourselves and our successors to pay to the said _____, or order, interest on the said sum of Rupees _____ from the _____ day of _____ until the expiration of three months after such notice of payment as aforesaid; such interest to be _____ at the rate of four per centum per annum.

and to be payable on demand at the office aforesaid half-yearly on the 1st day of April and the 1st day of October in every year until the expiration of three months from the date of such notice of payment as aforesaid, when the amount of interest then due hereunder will be payable with the principal on demand at the office aforesaid and (such notice being considered as equivalent to a tender of payment at the period appointed for the discharge hereof) all further interest shall cease.

Given under our common Seal this day of 187 .

(Signature of the Chairman and two Trustees.)



Seal of the Corporation.

SCHEDULE C. (SEE SECTION 33.)

Statement of Capital Debts of the Board due to the Secretary of State for India in Council.

On account of what Property, &c.	Bearing Interest.			Not bearing Interest.			Total.		
	Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.
Elphinstone Estate, purchase price ...	1,85,91,596	12	8	.....	.....	.....	.....	.....	.....
Elphinstone Estate, expended in 11 months to 31st March 1871.	7,47,370	2	10	.....	.....	.....	.....	.....	.....
Elphinstone Estate, expended in 12 months to 31st March 1872.	2,75,090	8	6	.....	.....	.....	.....	.....	.....
Elphinstone Estate, Troop Siding, Carnac Bunder.	39,790	3	2	.....	.....	.....	.....	.....	.....
							1,96,53,847	11	2
Moody Bay Reclamation (portion east of Frere Road), expended in year to 31st March 1871.	3,57,596	8	8	.....	.....	.....	.....	.....	.....
Moody Bay Reclamation (portion east of Frere Road), expended in year to 31st March 1872.	2,01,345	6	4	.....	.....	.....	.....	.....	.....
							5,58,941	15	0
Apollo Bay Reclamation, expended in year to 31st March 1872.	9,752	11	11	.....	.....	.....	9,752	11	11
Wellington Reclamation, expended in year to 31st March 1872.	934	12	8	.....	.....	.....	934	12	8
Apollo Pier, expended prior to 31st March 1870.	.....	.....	.....	2,23,038	12	2	.....	.....	.....
Apollo Pier, expended in year to 31st March 1871.	1,38,173	7	8	.....	.....	.....	.....	.....	.....
Apollo Pier, expended in year to 31st March 1872.	61,825	9	2	.....	.....	.....	.....	.....	.....
							4,23,037	13	0
Tank Bandar, expended in year to 31st March 1871.	182	0	0	.....	.....	.....	182	0	0
Customs } Apollo Bonded Ware- Bonded } house. Warehouse } Custom-house Godown...	.....	.....	.....	5,50,000	0	0	.....	.....	.....
				25,165	0	0	5,75,165	0	0
Kussara Bandar ... ..	.....	.....	.....	5,285	0	0	5,285	0	0
Saw Mill Property, Tank Bandar ...	.....	.....	.....	41,189	14	4	41,189	14	4
Expended on the above properties between 31st March 1872 and the passing of Bombay Act I. of 1873.	1,45,053	5	4	.....	.....	.....	1,45,053	5	4
Balance of Interest unpaid at 31st March 1871.	2,75,273	4	7	.....	.....	.....	.....	.....	.....
Balance of Interest unpaid at 31st March 1872.	1,50,233	3	2	.....	.....	.....	6,02,042	10	0
Balance of Interest unpaid for the period from 1st April 1872 until the date on which Bombay Act I. of 1873 came into operation.	1,76,536	2	3	.....	.....	.....	.....	.....	.....
Total...Rs.	2,11,70,754	2	11	8,44,678	10	6	2,20,15,432	13	5

SCHEDULE D. (SEE SECTION 42.)

Form of Debenture.

THE TRUSTEES OF THE PORT OF BOMBAY.

The

18

No.

By virtue of the Act No. of 1879 of the Council of the Governor of Bombay for making Laws and Regulations, entitled "The Bombay Port Trust Act, 1879," we, the Trustees of the Port of Bombay, in consideration of the sum of Rupees paid to us by A. B., of promise to pay to the said , or order, the said sum of Rupees after the date hereof, together with interest at the rate of per centum per annum, payable half-yearly on the day of and the day of

Given under our Corporate Seal this day of 187

(Signatures of the Chairman and two Trustees.)

Seal of the Corporation.

By order of His Excellency the Honourable the Governor in Council,

C. G. W. MACPHERSON,
Acting Under Secretary to Government.

Poona, 1st September 1879.

[Published with the "Bombay Government Gazette" on the 11th September 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 31st July 1879, and the assent of His Excellency the Viceroy and Governor General on the 27th August 1879, and is published for general information :—

Bombay Act No. VI. of 1879.

An Act to consolidate the immoveable and other property vesting in the Trustees of the Port of Bombay and certain other property on, or connected with, the foreshore of the Island of Bombay into one estate, and to vest the control and management of the same in one Public Trust; and for other purposes.

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An Act to consolidate the immoveable and other property vesting in the Trustees of the Port of Bombay and certain other property on, or connected with, the foreshore of the Island of Bombay into one estate, and to vest the control and management of the same in one Public Trust; and for other purposes.

WHEREAS it is expedient that the immoveable and other property vesting in the Trustees of the Port of Bombay should be consolidated with certain other property on, or connected with, the foreshore of the Island of Bombay into one estate, and that such consolidated estate should, together with the rights and powers now exerciseable by the said Trustees, be vested, subject to the provisions hereinafter appearing, in a new Trust; It is enacted as follows :—

I.—PRELIMINARY.

1. This Act may be called "The Bombay Port Trust Act, 1879."

Short title. Bombay Port Trust Act, 1879."
- 2., From the date which shall be notified by the Governor in Council under Section 8, Bombay Act I. of 1873. (The Bombay Port Trust Act, 1873,) shall be repealed:

Provided that all debts and obligations incurred, all contracts entered into, and all matters and things engaged to be done by, with or for the Trustees appointed under the said Act, shall be deemed to have been incurred, entered into, or engaged to be done by, with or for the Board constituted by this Act;

and all rates and sums of money due to the said Trustees shall be deemed to be due to the said Board;

and all suits or other legal proceedings, civil or criminal, instituted, or which might, but for the passing of this Act, have been instituted by or against the said Trustees, may be continued or instituted by or against the said Board.

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

Interpretation Section. subject or context,

- (1) the word "rates" includes any toll, due, rent, rate, or charge, leviable under section 43 ;
- "Rates."
- (2) "Port" means the Port of Bombay within such limits as may from time to time be defined by Government for the purposes of this Act by notification in the *Bombay Government Gazette*, and until a notification is so issued, within such limits as may have been defined by Government under section 73 of the Bombay Port Trust Act, 1873, for the purposes of that Act ;
- "Port."
- (3) "Vessel" denotes any thing made for the conveyance by water of human beings or of property ;
- "Vessel."
- (4) "Master," when used in relation to any vessel, means any person having for the time being the charge or control of such vessel ;
- "Master."
- (5) "Owner," when used in relation to goods, includes any consignor, consignee, shipper or agent for the sale or custody of such goods; and when used in relation to any vessel, includes any part owner, charterer, consignee, or mortgagee in possession thereof ;
- "Owner."
- (6) "Land" includes the bed of the sea below high-water mark ;
- "Land."
- (7) "Wharf" includes a bandar and any part of the foreshore used for loading or unloading goods, and any wall enclosing or adjoining the same ;
- "Wharf."
- (8) "Dock" includes basins, locks, cuts, entrances, graving docks, graving blocks, inclined planes, patent slips, grid-irons, quays, warehouses, and other works and things appertaining to any dock ;
- "Dock."
- (9) "Pier" includes any stage, stairs, landing-place, hard, jetty, landing-stage, floating barge, or pontoon, and any bridges or other works connected therewith ;
- "Pier."
- (10) the word "Goods" includes wares and merchandise of every description ;
- "Goods."
- (11) "Immoveable Property" includes wharfage-rights and all other
- "Immoveable Property."

rights exercisable on, over, or in respect of any land, wharf, dock or pier ;

(12) the words "Public Securities" mean securities of "Public Securities." the Government of India, Bombay Municipal Debentures and securities and debentures issued under sections 30 and 41, respectively, of this Act.

II.—OF THE BOARD OF TRUSTEES.

Constitution of Board.

4. The duty of carrying out the provisions of this Act shall, subject to such conditions and limitations as are hereinafter contained, be vested in a Board, to be called "the Trustees of the Port of Bombay"; and such Board, hereinafter referred to as "the Board," shall be a body corporate and have perpetual succession and a common seal, and shall sue and be sued by the name first aforesaid.

Act to be carried out by Trustees.

5. The Board shall consist of thirteen members, that is to say, of

Constitution of Board.

five Elective Trustees,
seven Nominee Trustees, and
a Chairman ;
and not less than three of the Trustees shall be natives of India residing in the City of Bombay.

6. The Elective Trustees shall be elected by the members for the time being of the Bombay Chamber of Commerce in such manner as shall from time to time be determined at a meeting of the members of the said Chamber convened in accordance with the rules at the time in force in this behalf. The Secretary to the said Chamber shall make a return to the Government of the name of every person so elected by the Chamber, and his return shall be published in the *Bombay Government Gazette*.

Elective Trustees to be elected by the Bombay Chamber of Commerce ;

In the event of default being made by the Chamber in electing any Trustee under the foregoing provisions within the period hereinafter prescribed in this behalf, it shall be lawful for Government by notification in the *Bombay Government Gazette* to nominate a person, and the person so nominated shall be deemed to be a Trustee as if he had been duly elected by the Chamber.

or in default of such election shall be nominated by Government.

7. The nominee Trustees and the Chairman shall be appointed by Government by notification in the *Bombay Government Gazette*.

8. The term of office of the first nominee and elective Trustees shall commence on such date as shall be notified in this behalf by the Governor in Council.

9. Three of the first nominee Trustees and three of the first elective Trustees shall, unless they become in the meantime disqualified, hold office up to and inclusive of the 31st day of March next succeeding the date on which their term of office shall commence, the selection of the said six Trustees being made by lot at such time and in such manner as the Chairman shall determine. The remaining four of the first nominee Trustees and the remaining two of the first elective Trustees shall hold office until and inclusive of the 31st day of March next following the 31st day of March aforesaid.

In every other case the nominee and elective Trustees shall, unless they become in the meantime disqualified, hold office for a term of two years.

10. The first elective Trustees shall be elected on some day not later than a fortnight previous to the date which shall be notified by the Governor in Council under section 8, and the first nominee Trustees shall be appointed on some day during the said fortnight; in every other case elective Trustees shall be elected on some day not earlier than the first and not later than the fifteenth day of the month of March next preceding the 1st of April from which their term of office is to commence; and nominee Trustees shall be appointed on some day in the remainder of the said month of March.

11. The Chairman shall hold office during the pleasure of Government, provided that he does not in the meantime cease, through disqualification, to be a Trustee.

12. Any person on ceasing to be a Trustee, shall, unless disqualified under section 14, be re-eligible.

13. Any casual vacancy in the office of a Trustee other than the Chairman occasioned by the death, resignation, or disqualification of such Trustee shall be filled up within one month by Government, if the office vacated was that of a nominee Trustee, or by the Chamber of Commerce, if it was that of an elective Trustee, in the same manner and subject, so far as may be, to the same provisions as are applicable in the case of original appointments and elections of Trustees: Provided that the Trustee so chosen shall retain his office so long only as the vacating Trustee would have retained the same, if such vacancy had not occurred.

If a Trustee departs from Bombay with an intention of being absent for a longer period than three months, or if a Trustee shall have been absent for such period, a person shall be elected or appointed as aforesaid to act for such Trustee during his absence or until he shall cease to be a Trustee, and the person so acting shall be deemed for all the purposes of this Act to be a Trustee.

Disqualifications of Trustees.

14. No person shall be qualified to be a Trustee during such time as he

(a) is an uncertificated bankrupt or insolvent, or

(b) holds any office or place of profit under the Board, or

(c) has, directly or indirectly, any share or interest in any work done by order of the Board, or in any contract, or employment with, by, or on behalf of, the Board;

and any Trustee who

(d) becomes disqualified for any of the aforesaid reasons, or

(e) is absent from the meetings of the Board for a period exceeding twelve consecutive months, or, without the permission of the Board, from six consecutive meetings of the Board, or

(f) is sentenced to imprisonment, shall cease to be a Trustee, and his office shall thereupon become vacant:

Provided always that no Trustee shall vacate his office by reason only of his

Proviso.

(g) having a share in any Joint Stock Company which shall contract with or be employed by, or on behalf of, the Board, or

(h) having a share or interest in any newspaper in which any advertisement relating to the affairs of the Board may be inserted, or

(i) being interested in any loan of money to the Board.

Salaries of Trustees.

15. The Chairman shall receive such salary as Government shall from time to time determine.

Every Trustee other than the Chairman shall be entitled to a fee of thirty rupees for each meeting of the Board at which a quorum is present and business is transacted and which he attends from the beginning to the end thereof: Provided that if more than one such meeting is held in any one week, no more than thirty rupees shall be paid to any Trustee for his attendance at all such meetings during that one week.

Proceedings of Board.

16. The following provisions shall be observed with respect to the proceedings of the Board (namely):—

(1) During any vacancy in the Board the continuing Trustees may act as if no vacancy had occurred.

(2) The Board shall meet together and shall from time to time make such arrangements, not inconsistent with this Act, with respect to the place, day, hour, notice, management, and adjournment of such meetings, and generally with respect to the transaction of business, as they think fit, subject to the following conditions (namely):—

(a) that a meeting shall be held once at least in every fortnight;

(b) that the Chairman may, whenever necessary upon an emergency, and whenever necessary upon an emergency, and call a special meeting;

(c) that no business shall be transacted at any meeting unless at least five Trustees are present from the beginning to the end of such meeting;

(d) that every meeting shall be presided over by the Chairman, if he is present at the time appointed for holding the same, and if he is absent, by such one of the Trustees present as may be chosen by the meeting;

(e) that all questions shall be decided by a majority of votes of the Trustees present, the president having a second or casting vote in all cases of equality of votes;

(f) that if a poll be demanded, the names of the Trustees voting and the nature of their votes shall be recorded by the president;

(g) that minutes shall be kept of the names of the Trustees present and of the proceedings at each meeting in a book to be provided for this purpose, which shall be signed, as soon as practicable, by the president of such meeting, and shall be open to inspection by any Trustee during office hours;

(3) The Board may delegate their powers to committees consisting of such Trustees as they think fit; any committee so formed shall conform to any instructions that may from time to time be given to them by the Board, and the Board may at any time discontinue or alter the constitution of any committee so formed;

(4) A committee may elect a chairman of their meetings, and if no such chairman is selected, or, if he is not present at the time appointed for holding the same, the

members present shall choose one of their number to be chairman of such meeting ;

(5) Committees may meet and adjourn as they think proper, but the Chairman of the Board may, whenever he thinks fit and shall, upon the written request of not less than two members of a committee, call a special meeting of such committee ;

(6) Questions at any meeting of a committee shall be decided by a majority of votes of the members present, and in case of an equal division of votes the chairman of the meeting shall have a second or casting vote, but no business shall be transacted at any such meeting unless at least two-thirds of the members of the committee are present from the beginning to the end thereof ;

(7) No act of the Board, or of any Committee, or of any person acting as Trustee, shall be deemed to be invalid by reason only of some defect in the appointment of such Board, Committee or Trustee or on the ground that they, or any of them, were disqualified for the office of Trustee.

17. The Chairman may, on behalf of the Board, enter into any contract or agreement, whereof the value or amount shall not exceed one thousand rupees, in such manner and form as, according to the law for the time being in force, would bind him if such contract or agreement were on his own behalf ; but every other contract and agreement, on behalf of the Board, shall be in writing, and shall be signed by the Chairman, and by two other Trustees, and shall be sealed with the common seal of the Board. No contract or agreement not executed as is in this section provided shall be binding on the Board.

18. The Board may compound or compromise for, or in respect of, any claim or demand arising out of any contract entered into by them under this Act, or in respect of any action or suit instituted by or against them, for such sum of money, or other compensation, as they shall deem sufficient.

The Chairman.

19. The Chairman shall :

(1) attend every meeting of the Board unless prevented by sickness or other reasonable cause ;

(2) exercise supervision and control over the acts and proceedings of all officers and servants of the Board in matters of executive administration, and in matters concerning the accounts and records of the Board ; and, subject to the regulations at the time being in force framed by the Board under section 22, dispose of all questions relating to the service of the said officers and servants, and their pay, privileges, and allowances ;

(3) furnish to the Government a copy of the minutes of any of the Board's proceedings, and any returns or other information which Government may from time to time call for.

20. Government may from time to time grant to the Chairman such leave of absence as they may deem fit, and any person whom Government appoint to act for the Chairman during any such absence on leave shall, while so acting, be deemed for all the purposes of this Act to be the Chairman.

The allowance, if any, which Government direct to be paid to the Chairman during his absence on leave, and the salary which Government direct to be paid to the person appointed to act for him, shall be a charge on the General Account of the Board.

III.—OF THE OFFICERS AND SERVANTS OF THE BOARD.

Strength of Staff.

21. The Board shall from time to time prepare and sanction a schedule of the staff of officers and servants whom they shall deem it necessary and proper to maintain for the purposes of this Act. Such schedule shall also set forth the amount and nature of the salaries, fees, and allowances which the Board sanctions for each such officer or servant.

Until a schedule is prepared and sanctioned under this section, the schedule in force under section 23 of the Bombay

Port Trust Act, 1873, on the day previous to the date notified by the Governor in Council under section 8, shall be deemed to be the schedule prepared and sanctioned by the Board under the foregoing provisions ;

Provided always that artisans, porters and labourers, and muccadums of porters and labourers shall not be deemed to be officers or servants within the meaning of this section or of section 22 or 23 of this Act.

22. The Board shall from time to time frame regulations :

(1) for regulating the grant of leave to the officers and servants of the Board ;

(2) for authorizing the payment of allowances to the said officers and servants, or to certain of them, whilst absent on leave ;

(3) for determining the remuneration to be paid to the persons appointed to act for any such officers or servants during their absence on leave ;

(4) for regulating the period of service of all such officers and servants ;

(5) for determining the conditions under which such officers and servants or any of them shall on retirement receive pensions, gratuities, or compassionate allowances, and the amount of such pensions, gratuities, or compassionate allowances ;

(6) for authorizing the payment of contributions at certain prescribed rates and subject to certain prescribed conditions to any Provident Fund which may, with their approval, be established by the officers and servants appointed under this Act :

Provided that officers and servants who were appointed by Government previous to the passing of the Bombay Port Trust Act, 1873, and whose salaries were paid from the fund known as "The Bombay Port Fund," and who have continued

Proviso as to certain old officers and servants.

in the service of the Trustees appointed under the Bombay Port Trust Act, 1873, and of the Trust constituted by this Act, shall be entitled to retiring pensions, gratuities, or compassionate allowances at the same rates and subject to the same conditions as may from time to time be applicable to the servants of Government of similar standing and status, and that in the event of any question arising as to the right of any such officer or servant to a retiring pension, gratuity, or compassionate allowance, or as to the amount of retiring pension, gratuity, or compassionate allowance to which he is entitled, it shall be determined by Government.

Powers of Appointment, &c.

23. Subject to the provisions of the said regulations and of the schedule for the time being in force framed by the Board under section 22, the power of appointing, promoting, suspending, dismissing, fining, reducing or granting leave to the officers and servants of the Board shall be exercised by the Chairman in the case of officers and servants whose monthly salary does not exceed three hundred rupees, and in every other case by the Board.

The power of dispensing with the services of any officer or servant of the Board, otherwise than by reason of such officer's or servant's own misconduct, or of permitting any such officer or servant to retire on a pension, gratuity, or compassionate allowance, shall, subject to the aforesaid provisions, be exercised by the Board alone.

24. Every order or regulation made by the Board under any of the three last preceding sections shall, so far as the same relates to the Secretary, Engineer, Traffic Manager, or Chief Accountant of the Board, be subject to the previous sanction of Government.

In this section the word "Engineer" means the engineer of highest grade on the Board's ordinary staff, and also any superior officer who may from time to time be employed in the capacity of Consulting Engineer to the Board.

Continuance of Present Officers and Servants.

25. All officers and servants holding any office on the day previous to the date notified by the Governor in Council under section 8 under

Officers and servants of the late Trustees to be continued under the Board.

the Trustees appointed under the Bombay Port Trust Act, 1873, shall be deemed to have been appointed under this Act, and shall continue to hold the same office and to receive the same remuneration under the Board until an order to the contrary is passed by competent authority under this Act.

IV.—OF THE PROPERTY AND LIABILITIES OF THE BOARD.

General Powers as to Property.

26. The Board shall, for the purposes of this Act, have Powers of Board as to property. power to acquire and hold moveable and immoveable property, whether within or without the limits of the Port or City of Bombay; and shall also have power to lease, sell or otherwise convey any moveable or immoveable property which may have become vested in or been acquired by them:

Provided that no sale of immoveable property and no lease of any such property for a term exceeding fifty years shall be valid unless such sale or lease shall have been made with the previous sanction of Government.

27. When the Board are unable to acquire, by agreement, any immoveable property required for the purposes of this Act, Government may, in their discretion, order proceedings to be taken for acquiring the same on behalf of the Board as if such property were land needed for a public purpose within the meaning of the Land Acquisition Act, 1870.

The amount of compensation awarded and all other charges incurred in the acquisition of any such property shall be forthwith defrayed by the Board, and thereupon the said property shall vest in the Board.

Transfer of Property to Board.

28. All such immoveable and other property as is held by or in trust for the Trustees of the Port of Bombay under or in pursuance or for the purposes of the Bombay Port Trust Act, 1873, shall, upon and after the date notified by the Governor in Council under section 8, vest in the Board, but subject to all charges and liabilities affecting the same.

The property vested by this section in the Board shall be deemed to include

the estate, right, title, and interest of the Secretary of State for India in Council in the rock, stones, shingle, gravel, sand or soil within the Port, and also the right of levying rates on all goods landed at or shipped from any part of the foreshore between Malabár Point and Colába Point.

29. Whereas the Secretary of State for India in Council has initiated measures for the acquisition from the holders thereof, of the properties severally named and generally described in Schedule A, but the arrangements for the said acquisition are not yet complete; and whereas it is expedient that all such estate and interest as may be acquired by the Secretary of State for India in Council in the said properties should vest in the Board; it is hereby enacted that upon and after such date as shall be fixed in this behalf by the Governor in Council, all the estate, right, title, and interest of the Secretary of State for India in Council in the said properties shall, subject to the provisions hereinafter contained, become vested in the Board, subject to all covenants, charges, contracts, and liabilities affecting the same.

30. And whereas it is purposed that the Board to issue securities in payment of price of properties vested in them under Sec. 29. purchase money of the said properties shall be paid in Port Trust securities bearing interest at the rate of four per centum per annum; it is hereby enacted that the Board shall within two months from the date aforesaid execute and deliver to the holders of the said properties securities in the form of Schedule B, under their common seal, for the sums for which their said properties shall be respectively purchased by the Secretary of State for India in Council: Provided that the said sums shall not exceed, in the aggregate, seventy-seven lacs of rupees, and that so long as the said amount is not exceeded it shall be competent to the Secretary of State for India in Council to acquire such estate, right, title and interest in the said properties as he shall deem fit, anything contained in Schedule A notwithstanding.

Every such security shall be for an amount of not less than one hundred rupees, and shall covenant for the payment of interest on the principal sum at

the rate of four per centum per annum from the date fixed by the Governor in Council under section 29, and such interest shall be payable half-yearly on or after the 1st April and the 1st October.

The said securities shall be transferable by endorsement.

and to be transferable.

Application of the Board's Property.

31. The proceeds of the sale of any portion of the property vested in or acquired by the Board under or by virtue of this Act, and all sums paid to the Board by way of compensation under the next following section, shall be applied as follows and not otherwise (namely) :—

(a) in liquidation of the principal sum of any debt contracted under paragraph 2 of section 39, if the same or any portion of the same is at the time payable; or

(b) in liquidation of the principal of any debt at the time due to the Secretary of State for India in Council; or

(c) in liquidation of the securities, or of any of them, issued under section 30.

32. Nothing in this Act shall be deemed to affect the power of Government to order proceedings to be taken under the Land

Acquisition Act of 1870, or any other law for the time being in force for the acquisition of land for public purposes in respect of any land vesting in the Board.

Liabilities.

33. The capital debts due by the Board on account of the immovable and other property vested in it by this Act are as follows (namely) :—

(a) to the Secretary of State for India in Council, the amounts mentioned in Schedule C; and the amounts which have been advanced by or on behalf of the Secretary of State for India in Council to the Trustees appointed under the Bombay Port Trust Act, 1873, or applied by or on behalf of the said Secretary of State in Council, with the consent of the said Trustees, for the improvement of the Port of Bombay or otherwise under sections 46 and 50, clause (2) of the said Act,

(b) to the holders of the securities to be issued by the Board under section 30, the amounts of such securities.

34. On the amounts mentioned in column Interest in what three of Schedule C cases to be paid by the Board. no interest shall be payable.

On the amounts mentioned in column two of the said schedule interest shall be payable by the Board to the Secretary of State for India in Council annually on the 1st April at the rate of four per centum per annum until, and inclusive of, the twenty-fifth day of June 1883, and thereafter at the rate of four and one-half per centum per annum.

On the amounts due to the Secretary of State for India in Council under clause (a) of the last preceding section which are not mentioned in the said schedule, interest shall be payable by the Board to the said Secretary of State in Council annually on the 1st April at the rate of four and one-half per centum per annum.

On the amounts, if any, which may hereafter be advanced to the Board by the Governor in Council under section 39 of this Act interest shall be payable by the Board to the Secretary of State in Council on such dates and at such rates as shall be agreed upon between Government and the Board in respect of such advances.

On the amounts of the securities issued by the Board under section 30 interest at the covenanted rate of four per centum per annum shall be payable by the Board half-yearly on the 31st March and the 30th September to the Accountant General of Bombay or other officer for the time being performing the duties of the office of the said Accountant General, who shall pay the same on or after the 1st April and 1st October respectively to the holders of the said securities.

If any sum due by the Board under this section on account of interest, or any portion thereof, is not paid by them on the date on which the same is hereby declared to be payable, they shall continue liable for the payment thereof, and interest shall be paid by them to the Secretary of State for India in Council upon the balance from time to time overdue at the rate of four and one-half per centum per annum, until the whole amount is paid.

35. In the event of default being made by the Board in any payment of interest due by it under paragraph two, three or four of the last preceding section, the same shall be paid by the Accountant General of Bombay or other officer aforesaid, who shall debit the amount so paid to the

Provincial Revenues of the Presidency of Bombay; and in the event of default being made by the Board in any payment due by it under paragraph five of the said section, the Accountant General or other officer aforesaid shall nevertheless pay to the security-holders the interest due upon their securities, and shall debit the amounts so paid to the Provincial Revenues of the Presidency of Bombay.

36. The Board shall pay annually on the 30th day of September to the Municipal Corporation of the City of Bombay a lump sum which shall be calculated at the following rates, namely:

Lump payment to be made to the Municipality in lieu of consolidated rate.

(a) for the period commencing on the 1st day of October last preceding the date on which this Act comes into force and ending on the day next previous to the date fixed by the Governor in Council under section 29 at the rate of fifty thousand rupees per annum;

(b) for the period commencing on the date fixed as aforesaid and ending on the 25th day of June 1883 at the rate of sixty thousand rupees per annum; and

(c) thereafter at such rate as the Governor in Council shall from time to time determine.

The said payment shall be in lieu of the consolidated rate leviable by the said Corporation, to which the property hereby vested in the Board or some portion of the same would otherwise be liable to be assessed.

37. In consideration of the said payment the Municipal Commissioner shall, on being satisfied that any road or thoroughfare has been duly levelled, paved, metal-
led, flagged, channelled, and sewered by the Board, declare such road or thoroughfare to be a public road or thoroughfare, and the Municipality shall thenceforward maintain, keep in repair, light and cleanse such road or thoroughfare. The Municipality shall also, on requisition by the Board, maintain, keep in repair, light and cleanse the road of any wharf, dock or pier vested in the Board.

The Municipality shall maintain, keep in repair, light and cleanse the said roads and thoroughfares in the same manner and with the same liabilities

Such roads and thoroughfares not to be stopped up without the consent of the Board.

ties in respect thereof as if the said roads and public thoroughfares were vested in the said Municipality; but it shall not be competent to the Municipal Commissioner or to the Municipality to discontinue or stop up any road or thoroughfare which at any time vested in, or which has been constructed by the Board, or the Trustees of the Port appointed under the Bombay Port Trust Act, 1873, and which has been declared to be a public road or thoroughfare under this section, or under section 9 of the said Act, without the previous consent in writing of the Board; and the land occupied by any road or thoroughfare so discontinued or stopped shall vest in the Board and not in the Municipality.

38. Any dispute which arises between the Board and the Municipality in respect of any of the provisions of the last preceding section shall be determined by the Government, and their decision shall be final.

Disputes under the last section to be settled by Government.

V.—OF THE BORROWING POWERS OF THE BOARD.

39. The Governor in Council, acting on behalf of the Secretary of State for India in Council, may, with the previous consent of the Governor General of India in Council, from time to time advance money to the Board for the general purposes of this Act; or

The Board may, with the previous consent of Government, from time to time raise money for the said purposes:

Provided always that no expenditure shall be charged by the Board to capital, except with the express sanction of Government.

40. Whenever the consent of Government has been obtained to the raising of money by the Board under the last preceding section, Government shall, with the previous consent of the Governor General of India in Council, direct and appoint the manner in which such money shall be raised.

41. If such money shall be raised on debentures bearing interest, such interest shall be a charge on the rates prior to the charge for interest

Manner of raising such loans to be determined by Government.

Interest on debentures to be a charge on the rates prior to interest due to Secretary of State.

payable to the Secretary of State for India in Council, provided for by section 34.

42. All debentures which may be so issued shall be in the form of Schedule D, and shall be transferable by endorsement; and the right to sue in respect of the monies secured by any such debentures shall be vested in the holders thereof for the time being, without any preference by reason of some of such debentures, being prior in date to others.

VI.—OF REVENUE AND EXPENDITURE.

Levy of Rates.

43. The Board shall frame a scale of tolls, dues, rents, rates, and charges, to be levied for each or any of the following matters (namely):

- (a) for the landing, shipping, wharfage, crannage, storage, or demurrage of goods at,
- (b) for permission for vessels or boats to approach, or be alongside, and
- (c) for animals or vehicles carrying goods to or from, or entering upon or plying for hire at or on,

any wharf, dock, or pier in the possession of the Board, and so much of the Wári Bandar and of the Gun Carriage Reclamation as is in the possession of the Great Indian Peninsula and the Bombay Baroda and Central India Railway Companies respectively: Provided that no such toll, due, rent, rate or charge shall be leviable at so much of the said Wári Bandar and Gun Carriage Reclamation as is aforesaid in respect of any goods, vessel, animal or vehicle belonging to the said companies respectively.

The scale so framed shall be submitted to Government for sanction, and when so sanctioned and published in the *Bombay Government Gazette* shall have the force of law, and, subject to the like sanction and publication, may from time to time be amended or added to by the Board.

Until a scale of rates is framed, sanctioned, and published under this section, the scale in force when this Act comes into operation under section 57 of the Bombay Port Trust Act, 1873, shall be deemed to have been duly framed, sanctioned and published under this section.

IV.—39 d

The Board may, in special cases, with the previous sanction of Government, remit the whole or any portion of the rates leviable under this section.

Rates may be remitted in special cases.

44. The said rates shall not be leviable in respect of any vessel employed by Government solely for the transport of troops, nor in respect of the baggage or other effects of any troops landing or embarking at the port. In lieu thereof a toll shall be payable by Government to the Board on all troops and all the families of troops landing or embarking at Bombay at the rate of one rupee per head, and, if such troops and their families shall land or embark at any dock in the possession of the Board, at such additional rate as shall from time to time be determined by Government.

45. Subject to the provisions of any law for the time being in force, the Board may land, ship, or tranship goods between vessels in the harbour and the wharves, piers or docks in their possession, and may make such charges for so doing as they shall think fit.

46. The Board may procure and maintain such number of steam-vessels as they may deem fit to be employed in towing vessels into, out of, or in the harbour, and may make such charges for towage by the said steam-vessels as they shall think fit.

Division of Accounts.

47. In the accounts of the Board a Pilotage Account shall be kept separate from the General Account.

48. The rates and charges from time to time levied under sections 43 to 46, together with all rents of lands and buildings, and all fines and penalties levied under this Act, other than fines and penalties levied from pilots or other persons employed in the pilot service, and all miscellaneous items of revenue recovered by the Board, except pilotage-fees, shall be credited to the General Account.

49. The monies credited to the General Account shall be held by the Board in trust, and except as is hereinafter provided shall

Monies credited to the General Account on what purposes to be expended.

be applied by them in payment of the following charges (namely):—

(1) the salaries, fees, allowances, pensions, gratuities, compassionate allowances or other monies due to the Trustees and to the officers and servants appointed under this Act, and the contributions, if any, duly authorized to be made to any Provident Fund established by the said officers and servants;

(2) the cost of repairs and maintenance of the property vested in the Board, and all charges upon the same and all working expenses;

(3) the interest due on any money that may have been raised by the Board under section 39;

(4) the cost, or such portion of the cost, of any new work, plant, vessel or appliance which the Board may determine to charge to revenue;

(5) the interest payable by the Board under section 34:

Provided always that no charge which is debitable under section 50 to the Pilotage account shall be debited to the General account.

50. All fees for pilotage and all fines and penalties levied under this Act from pilots or other persons employed in the pilot service shall be credited to the Pilotage Account and shall be held by the Board

in trust, and be applied, in such proportions as they shall from time to time

direct, to the following purposes only (namely):—

(1) the purchase and maintenance in repair of such vessels, and the supply of such materials, stores, or other things as the Board deem it necessary to maintain or supply for the efficiency of the pilot service;

(2) the payment of the salaries and allowances of pilots and other officers and servants of the Board employed in the pilot service or in the supervision thereof;

(3) the payment of pensions or retiring gratuities or compassionate allowances to pilots and other officers and servants engaged in the pilot service, and of the contributions, if any, duly authorized to be made in their behalf to any Provident Fund.

Disposal of Balances.

51. The Board may invest any balance remaining on the 31st March of each year to the credit of either the General or Pilotage account after meeting all the charges properly debitable to such account, in public securities, and may from time to time sell the said securities, and re-invest the proceeds in other public securities, or credit the same to the account, to which the balance invested belonged for expenditure on any of the purposes to which the monies credited to such account may lawfully be applied.

But the money so invested by the Board, whether in respect of the General account or of the Pilotage account, shall not exceed such amount annually, or in the aggregate, as shall from time to time be prescribed by Government, and any surplus remaining after deducting the amounts which may be so invested to be limited by Government, shall not exceed such amount annually, or in the aggregate, as shall from time to time be prescribed by Government, and any surplus beyond such limits how to be disposed of, shall be applied:

(a) if such surplus belongs to the General account, in liquidation, on or before the 1st August next following the 31st March on which such surplus accrued, of the principal of any loan raised by the Board under section 39, or of the capital of any debt at any time due by the Board to the Secretary of State for India in Council; or of the money due to the holders of the securities issued by the Board under section 30; and

(b) if such surplus belongs to the Pilotage account, in such manner as Government shall direct:

Provided always that the pilots and other officers and servants employed in the pilot service shall have no claim upon any balance to the credit of the pilotage account or upon the profits or interest arising from any investment thereof, or of any portion thereof except to such extent as payments to them, or in their behalf, may from time to time be sanctioned by the Board under clauses (2) and (3) of section 50.

The interest and profits accruing and the loss, if any, arising from such investments as aforesaid shall be respectively credited and debited to the account to which the balance invested belongs.

Annual Estimates.

52. The Chairman shall, at a special meeting to be held in the month of February in each year, lay before the Board an estimate of the income and of the expenditure of the Board for the year commencing on the 1st day of April then next ensuing in such detail and form as the Board shall from time to time direct.

Such estimate shall be completed and printed, and a copy thereof sent by post, or otherwise, to each Trustee, at least ten clear days prior to the meeting before which the estimate is to be laid.

53. The Board shall consider the estimate so submitted to them, and shall sanction the same either unaltered, or subject to such alterations as they shall think fit.

54. The estimate, as sanctioned by the Board, shall be submitted to the Government, which may, if it thinks fit, at any time within one month after receipt of the same, disallow such estimate, or any portion thereof, and return the same for amendment. The Board shall, if the estimate is so returned by Government, forthwith proceed to amend the same, and shall re-submit the estimate so amended to the Government.

55. The Board may, at any time during the year for which any such estimate has been sanctioned, cause a supplementary estimate to be prepared and submitted to them. Every such supplementary estimate shall be considered and sanctioned by the Board and submitted to the Government in the same manner as if it were an original annual estimate.

56. Save in cases of pressing emergency, no expenditure above Rs. 5,000 to be incurred unless sanctioned in the estimate. No sum exceeding five thousand rupees shall be expended by or on behalf of the Board, unless such sum is included in some estimate at the time in force which has been finally approved by Government.

If any sum exceeding five thousand rupees in amount is so expended on a pressing emergency, the circumstances shall be forthwith reported by the Chairman to

the Government, together with an explanation of the way in which it is proposed by the Board to cover such extra expenditure.

57. Any estimate prepared by the Trustees appointed under the Bombay Port Trust Act, 1873, to be accepted for purposes of this Act, and approved by Government under section 53 of that Act, and which but for the passing of this Act would have force and effect, shall be deemed to have been duly prepared, passed and approved under this Act.

Audit of Accounts.

58. The accounts of the receipts and expenditure of the Board shall, twice in every year, be laid before Government, and shall be audited and examined by such auditors as shall, from time to time, be appointed by Government.

For the purposes of such audit and examination the auditors may, by summons in writing, require the production before them of all books, deeds, contracts, vouchers, and all other documents and papers which they may deem necessary, and may require any person holding, or accountable for any such books, deeds, contracts, accounts, vouchers, documents, or papers, to appear before them at any such audit and examination, or adjournment thereof, and to make and sign a declaration with respect to the same.

The auditors shall be paid by the Board such remuneration as Government shall determine, the amount being debited to the General account; and within fourteen days after the audit and examination shall have been completed, the auditors shall forward their report upon the accounts to the Board, who shall cause the same to be published, together with an abstract of the accounts, in the *Bombay Government Gazette*.

Fulfilment of Board's Liabilities.

59. It shall be incumbent on the Board to make ample provision year by year, either by retrenchment of expenditure

Board bound to provide for fulfilment of all their liabilities.

or by increase of rates for the due fulfilment of all their liabilities, and for the efficient administration of this Act; and in the event of any deficiency being at any time anticipated in the income of the Board, they shall forthwith take such measures as shall seem most expedient for preventing such deficiency.

60. If it shall at any time appear to the Governor in Council that sufficient provision is not being made by the Board to meet their liabilities, or if default shall at any time be made by the Board in any payment of interest which they are required to make under section 34, the Governor in Council may require the Board, by an order in writing signed by a Secretary to Government, to increase, subject to his sanction and to the provisions of section 43, to such extent and for such period as shall appear necessary, the rates or any of the rates for the time being in force under the said section.

If within fifteen days after receipt of such order the Board do not comply with the same, the Governor in Council may, by notification in the *Bombay Government Gazette*, increase the said rates or any of them, and such notification shall have the same force as if a new scale of rates to the same effect had been duly framed, sanctioned and published under section 43.

And for the purpose of realizing any interest which has not been paid by the Board when due, in accordance with section 34, the Governor in Council may, by an order published in the *Bombay Government Gazette*, appoint some person to receive the rates, charges, and other income which the Board may be entitled to receive, or any portion thereof, and to apply the same in discharge of the amount due and of all expenses authorized by Government in respect of the appointment of such person and of the recovery by him of the said rates, charges and income; and the person so appointed shall have for the recovery of the said rates, charges, or other income, all and singular the powers and authorities conferred by this Act on the Board for the said purpose.

VII.—OF THE POWERS AND FUNCTIONS OF THE BOARD.

Recovery of Rates.

61. For the amount of all rates leviable under this Act in respect of any goods, the Board shall have a lien on such goods, and shall be entitled to seize and detain the same until such rates are fully paid. Rates in respect of goods to be landed shall become payable immediately on the landing of such goods. Rates in respect of goods to be removed from the premises of the Board, or to be shipped for export, shall be payable before such goods are removed or shipped. The lien for such rates shall have priority over all other liens and claims, except for general average, for the ship-owner's lien for freight upon the said goods, (where such lien exists and has been preserved in the manner hereinafter provided), for primage and for money payable to Her Majesty or to the Secretary of State for India in Council.

62. If the master or owner of any vessel, or his agent, at or before the time of landing from such vessel any goods at any wharf, dock or pier in the possession of the Board, shall give to the Board notice, in writing, that such goods are to remain subject to a lien for freight or other charges payable to the ship-owner, to an amount to be mentioned in such notice, such goods shall continue liable to the same lien, if any, for such charges as they were subject to before the landing thereof. Such goods shall be retained either in the warehouses and sheds of the Board, or, with the consent of the Chief Customs Authority of the Presidency in the public warehouses, at the risk and expense of the owners of the said goods until the lien is discharged as hereinafter mentioned.

63. Upon production to the proper officer of the Board of a document purporting to be a receipt for the amount claimed as due, or a release of freight from the person by or on whose behalf such notice shall have been given, it shall be lawful for the Board to permit such goods to be removed without regard to such lien, provided they shall have used reasonable care in respect to the authenticity of such document.

64. If the rates payable to the Board in

If rates are not paid, or the lien for freight is not discharged, goods may be sold after the expiration of two months. respect of any goods are not paid, or if the lien of the ship-owner for freight, when such notice as aforesaid has been given, is not discharged, the Board may, and in the latter event, if required by or on behalf of the person claiming such lien for freight, shall, at the expiration of two months from the time when the goods were placed in their custody, or if the goods are of a perishable nature, at such earlier period (being not less than twenty-four hours after the landing of the goods), as they shall think fit, sell by public auction the said goods, or so much as may be necessary to satisfy the amounts hereinafter directed to be paid out of the produce of such sale.

Before making such sale, ten days' notice of the same shall be given by publication thereof in the *Bombay Government Gazette*, unless the goods are of so perishable a nature as, in the opinion of the officer aforesaid, to render their immediate sale necessary or advisable, in which event such notice shall be given as the urgency of the case admits of.

If the address of the owner of the goods has been stated on the manifest of the cargo or in any of the documents which have come into the hands of the Board, or is otherwise known, notice shall also be given to the owner of the goods by letter delivered at such address, or sent by post; but the title of a *bonâ fide* purchaser of such goods shall not be invalidated by reason of the omission to send the notice hereinbefore mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

65. In every case of any such sale as aforesaid, the monies received from the sale shall be applied as follows:—

1stly.—In payment, according to their respective priorities, of the liens and claims excepted in section 61 from the priority of the lien of the Board for rates;

2ndly.—In payment of the expenses of the sale;

3rdly.—In payment of the rates and expenses due to the Board in respect thereof.

The surplus, if any, shall be paid to the owner of the goods or his agent on his applying for the same, provided such appli-

iv.—39 e

cation be made within one year from the sale of the goods, or good reason be shown why such application was not so made to the satisfaction of the Board; and in case such application shall not be so made, nor reason shown, such surplus shall be applied by the Board to the purposes of this Act.

66. If the master of any vessel in respect of which any rates, charges, or penalties shall be payable under this Act, or any bye-laws made in pursuance hereof, shall refuse or neglect to pay the same, or any part thereof, on demand, it shall be lawful for the Board to distrain or arrest, of their own authority, such vessel, and the tackle, apparel, or furniture belonging thereto, or any part thereof, and detain the same until the amount so due shall be paid; and, in case any part of the said rates or penalties or of the costs of the distress or arrest, or of the keeping of the same, shall remain unpaid for the space of fifteen days next after any such distress or arrest shall have been so made, the Board may cause the vessel, or other thing so distrained or arrested, to be sold, and with the proceeds of such sale may satisfy such tolls, dues, rates, penalties, or charges and costs of sale remaining unpaid, rendering the surplus (if any) to the master of such vessel on demand.

67. If the Board shall give to the officer of Government, whose duty it is to grant the port clearance of any vessel, a notice stating that an amount therein specified is due in respect of rates, charges, or penalties chargeable under this Act, or any bye-laws, or orders made in pursuance hereof, against such vessel, or the owner or master of such vessel, in respect thereof, such officer shall not grant such port clearance until the amount so chargeable shall have been paid.

Works.

68. The works to be undertaken by the Board under this Act may include—

(1) wharves, docks, and piers within the Port or on the foreshore of the Port with all necessary and convenient arches, drains, fences, roads, railways, and approaches;

(2) tramways, warehouses, sheds, engines, and other appliances for conveying, receiving, and storing goods landed, or to be shipped, or otherwise;

(3) light-houses, light-ships, beacons, pilot-boats, and other appliances necessary for the safe navigation of the Port and of the approaches thereto within a distance of three miles from the limits of the Port;

(4) laying down moorings, and the erection of cranes, scales, and all means and appliances necessary for berthing, loading and unloading vessels;

(5) reclaiming, excavating, enclosing, and raising any part of the foreshore of the Port vested in the Board, when such reclamation, excavation, enclosure, or raising may be necessary for any of the purposes of this Act;

(6) the construction and application of dredges and other machines for cleaning, deepening, and improving any portion of the Port or foreshore aforesaid;

(7) the construction of such works, without the limits of the Port, as shall be necessary for the protection of works executed by the Board within the Port, and all such other works and appliances as may, in the opinion of the Board, be necessary for carrying out the purposes of this Act:

Provided always that no new work, the

But no new work to be commenced without a plan and estimate, if its cost shall exceed Rs. 2,000;

estimated cost of which exceeds two thousand rupees, shall be commenced by the Board, nor shall any contract be entered into by the Board in respect of any such new work, until a plan and estimate of such work shall have been submitted to the Board and considered and approved by them, nor shall any new work, the estimated cost of which exceeds two

lacs of rupees, be commenced until such plan and estimate shall have been submitted to, and approved by Government.

nor without the sanction of Government to such plan and estimate, if the cost shall exceed two lacs of rupees.

Regulation of use of Wharves, &c.

69. Nothing in this Act shall be deemed to affect:

(a) the right of Government to collect customs duties, or of the Municipal Corporation of the City of Bombay to collect town duties, at any wharf, pier, or dock in the possession of the Board, or

(b) any power or authority vested in the Customs Authorities of the Presidency under any law for the time being in force for the administration of Sea Customs.

70. Whenever any wharf, pier, or dock, in the possession of the Board shall be appointed, under the provisions of any Act for the time being in force, for the administration of Sea Customs, a wharf or place for the landing and shipping of goods within the meaning of such Act,

and whenever any warehouse, or portion of a warehouse, in the possession of the Board shall be appointed or licensed under the provisions of any such Act as a warehouse for the deposit of dutiable goods on the first importation thereof without payment of duty,

the Board shall set apart, and maintain, such place on or adjoining such wharf, dock, or pier, or in such warehouse, or portion of a warehouse, for the use of the Officers of Customs as Government shall in that behalf approve or appoint;

but all rates payable in respect of any wharf, pier, or warehouse, or portion thereof so set apart, or for the storage of goods thereupon or therein, shall be paid to the Board or to such person or persons as they may appoint to receive the same, notwithstanding that the same has been so set apart;

and if any portion of the Customs Bonded Warehouses shall, with the consent of Government, be appointed as a public warehouse for the deposit of dutiable goods as aforesaid, the Board

shall set apart and maintain such portion thereof in good order for the said purpose; but the Chief Customs Authority shall pay to the Board from time to time, as may be determined by Government, all surplus income derived from the use of such portion of the said Customs Bonded Warehouse as a public warehouse as aforesaid after payment of all charges and expenses of management.

71. The Board shall provide such number of public landing-places as shall, in the opinion of Govern-

ment, be necessary for the use of the Board, and shall provide free landing-places.

ment, be sufficient, from and upon which the public shall be permitted to embark and to land free of charge.

Control of Pilots.

72. The Board shall have the right and privilege of maintaining pilots for the navigation of vessels at the Port, and all fees for pilotage shall be paid to the Board : Provided that no person shall be appointed to be a pilot by the Board who is not for the time being authorized by Government, under the provisions of the Indian Ports Act, 1875, to pilot vessels.

The Board may also, from time to time, make such bye-laws and regulations as they shall think fit :

(a) for fixing and regulating the wages and allowances for pilotage to be received by pilots, and

(b) for regulating the behaviour and conduct of pilots ;

and shall enforce the observance of such bye-laws and regulations, by the imposition of pecuniary penalties not exceeding two hundred rupees for each offence, or by suspension, or deprivation of appointment, or otherwise as to them may appear expedient : Provided that such bye-laws shall first have been approved by Government, and published in the manner directed by section 74.

Bye-Laws.

73. The Board Trustees empowered may, from time to time, make bye-laws :

(a) for the guidance of persons employed by them under this Act ;

(b) for the safe and convenient use of the wharves, docks, piers, warehouses, tramways, and other works constructed or acquired by them under this Act ;

(c) for the use of the public landing-places constructed by or belonging to them ;

(d) for the reception and removal of goods brought within the premises of the Board ;

(e) for keeping clean the harbour and basins and the works of the Board, and for preventing filth or rubbish being thrown therein or thereon ;

(f) for settling the mode of the payment of the rates and charges leviable under this Act ;

(g) for regulating, declaring, and defining the wharves, docks, and piers vested in the Board on which goods shall be landed from, and shipped on board vessels ; and

(h) generally for carrying out the purposes of this Act.

The Board may also, from time to time, vary, alter, or revoke any such bye-laws so made by them.

74. No bye-law, or alteration or revocation of a bye-law, shall have effect until the same shall have been approved by Government, and such approval shall have been published in the *Bombay Government Gazette* ; and no bye-law or alteration or revocation of a bye-law shall be approved by Government until the same shall have been published for three weeks successively in the said *Gazette*.

It shall be lawful for Government at any time by notification in the said *Gazette* to cancel any bye-law or regulation made and published under the provisions of this and of the last two preceding sections.

75. The Board may, in the bye-laws made under section 73, prescribe such penalties as they shall deem fit for the infringement of the same : Provided that no penalty for any one infringement of a bye-law shall exceed one hundred rupees, nor, in case of a continuing infringement, shall any penalty exceed fifty rupees per diem for every day after notice of such infringement shall have been given by the Board to the person guilty of such infringement.

76. The Board shall cause the said bye-laws and the scales of rates and charges to be exhibited. rates and charges leviable by the Board, to be printed in the English, Maráthi and Guzeráthi languages, and to be hung up at the several wharves, docks, and piers, and other convenient places on the premises of the Board.

77. Until bye-laws are framed by the Board under section 73, the bye-laws framed by the Trustees appointed under the Bombay Port Trust Act, 1873, under section 85 of that Act, and in force when this Act comes into operation, shall be deemed

to have been framed under the said section 73 of this Act.

VIII.—PENALTIES.

78. Any person who being a Trustee, or an officer or servant of the Board, shall acquire, directly or indirectly, any share or interest in any contract or employment with, by, or on behalf of the Board, shall be deemed to have committed the offence made punishable by section 168 of the Indian Penal Code:

Provided that nothing in this section shall apply to a person—

(a) having a share in any Joint Stock Company which shall contract with, or be employed by, or on behalf of the Board, or

(b) having a share or interest in any newspaper in which any advertisement relating to the affairs of the Board may be inserted, or,

(c) interested in any loan of money to the Board.

79. Any person employed under this Act, not being a public servant within the meaning of section 21 of the Indian Penal Code, who shall accept or obtain, or agree to accept or attempt to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a reward for doing, or forbearing to do, any official act, or for showing, or forbearing to show, in the exercise of his official functions, favour or disfavour to any person; or for rendering, or attempting to render, any service or dis-service to any person with the Board or with any public servant as such, or with the Government, shall be liable to the same punishment as is provided by the Indian Penal Code in the case of the like offence committed by a public servant.

80. Any person who shall refuse or neglect to appear before any auditor of accounts, or to produce any books, deeds, contracts, accounts, vouchers, documents, or papers, or to make or sign any declaration when duly required so to do by any auditor of accounts under section 58, shall be punished for every such neglect or refusal with fine which may extend to one hundred rupees,

81. Any person, other than the Board or the Conservator of the Port, who shall, without first obtaining the written consent of Government to his so doing, make, set up, or fix, below high-water mark within the Port, any wharf, quay, pier, mooring, or other erection whatsoever, shall be punished with fine which may extend to one thousand rupees, and to a further fine which may extend to one hundred rupees for every day during which he shall permit such wharf, quay, pier, mooring, or other erection, to remain after notice to remove the same has been given to him.

Any such wharf, quay, pier, mooring, or other erection, may be removed by the Board, and the person who made, set up, or fixed the same, shall also be liable to pay all expenses which may be incurred by the Board in the removal thereof.

82. If it be found when goods are imported at, or exported from, any wharf, dock or pier in the possession of the Board, that the weight or quantity of such goods, or the tonnage of any vessel carrying such goods, has been understated in any document presented to any officer of the Board for the purpose of enabling him to determine the rates or charges payable in respect of the said goods or vessel, the consignee, in the case of goods imported, and the consignor, in the case of goods exported, shall be liable to pay to the Board such sum not exceeding twice the proper rates or charges on the weight or quantity of goods or amount of tonnage so understated as may be determined by the Board, and the said sum shall on the application of the Board be recoverable under a Presidency Magistrate's warrant as if it were a fine inflicted by such Magistrate.

83. Any person who removes, or attempts to remove, or abets within the meaning of the Indian Penal Code the removal of any goods, vessel, animal, or vehicle with the intention of evading payment of the rates or charges lawfully due in respect thereof to the Board shall be punished with fine which may extend to fifty rupees.

84. If, through the negligence of any person having the guidance or command of any vessel, or of any of the mariners

Recovery of value of damage to any property of the Board.

or persons employed on such vessel, damage shall be caused to any wharf, dock, pier, or other work in the possession of the Board, the amount of such damage shall, on the application of the Board, be recoverable, together with the cost of such recovery, by distress and sale, under a Presidency Magistrate's warrant, of a sufficient portion of the boats, masts, spars, ropes, cables, anchors, or stores belonging to such vessel: Provided that no such warrant shall issue until the master of such vessel has been duly summoned to appear, or, if he appears, until he has been heard, and provided also that no such warrant shall issue if the vessel was at the time under the orders of a duly authorized officer in the pilot service of the Port or of the Master Attendant's Department.

85. Except as is otherwise provided in section 82, all offences against this Act or against any bye-law made under section 73 shall be cognizable by a Presidency Magistrate.

All fines and damages recovered from any offender, or by any distress under section 84, shall be paid to the Board.

IX.—MISCELLANEOUS.

86. Whenever any day by this Act appointed for any purpose shall happen to be a Sunday or a public holiday, the business appointed to

be done on such day shall be done on the day next after such Sunday or public holiday.

87. No suit or other proceeding shall be commenced against any person for anything done, or purporting to have been done, in pursuance of this Act without giving to such person one month's previous notice in writing of the intended suit or other proceeding, and of the cause thereof, nor after six months from the accrual of the cause of such suit or other proceeding.

The Board shall not be responsible for any mis-feasance, mal-feasance, or non-feasance of any officer or servant appointed under this Act;

nor, if they should be appointed by Government, under the Indian Ports Act, 1875, Conservators of the Port, for any mis-feasance, mal-feasance or non-feasance of any Deputy Conservator, Master Attendant or Harbour-Master, or of any assistant or deputy of any such officer, or of any person acting under the authority or direction of or in subordination to any such officer, assistant or deputy;

nor for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawsers, or other things belonging to the Board, which may be used by such vessel;

nor shall the Board, or any of the said officers or servants, be liable in damages for any act *bonâ fide* done, or ordered to be done by them in pursuance of this Act.

SCHEDULE A.

Properties referred to in Section 29.

No.	Names of Holders.	General Description of Properties.
1	The Sassoon Dock Company.	All the property at Colába, belonging to the Sassoon Dock Company, known as the Sassoon Dock, together with the land on the west of the Colába road appertaining thereto, and all rights, privileges, and powers enjoyed or claimed by the Sassoon Dock Company in connection therewith.
2	The New Colába Company.	A strip of land, varying from 25 to 50 feet or thereabouts in width, running along the whole foreshore of the estate of the New Colába Company, situated at Colába, commencing from the Colába road at the point where the properties of the New Colába Company and the Sassoon Dock Company adjoin, and thence continuing alongside the Bandar wall of the Victoria Basin and the Harbour Face up to the junction of the New Colába Company's

SCHEDULE A—continued.

No.	Names of Holders.	General Description of Properties.
3	The Apollo Press Company.	property with the Gun Carriage Reclamation; again commencing at the junction of the New Colába Company's property and the property of the Apollo Press Company and running along the Harbour Face and alongside the Arthur Basin up to the Colába road; together with the whole of the Arthur Bandar and the ground adjacent thereto, situate within Customs limits, together with all rights and privileges enjoyed or claimed by the New Colába Company in respect of the strip of land, Bandar, and ground aforesaid, and of the Victoria and Arthur Basins. All the land at Colába the property of the Apollo Press Company, and known as the Jamsetjee Bandar and Reclamation, including all rights and privileges enjoyed or claimed by the Apollo Press Company in respect of the said land and of the Gun Carriage Basin, together with all rights and privileges enjoyed or claimed by the Apollo Press Company at or in respect of any of the Bandars belonging to the New Colába Company.
4	The Mázgaon Land Company.	All the land at Mázgaon, known as the Powder Works Bandar, the property of the Mázgaon Land Company, lying between the Harbour and the western side of the road running from the Harbour Defences Office to Tank Bandar, together with all rights and privileges enjoyed or claimed by the Mázgaon Land Company in respect of the said land.
5	The Frere Land Company.	All the land north of Tank Bandar the property of the Frere Land Company, bounded towards the west by the Ghorupdavi road and towards the north and west by the Jackaria Bandar road, together with all rights and privileges enjoyed or claimed by the Frere Land Company in respect of the said land.
6	Hajee Ismael Hajee Hubeeb.	All the land and fish-ponds bounded by the Harbour on the east and by the Jackaria Bandar road and the Siwri road on the west and north, by the property of the Frere Land Company on the south, and by the property of the Trustees of the Port on the north, known as Siwri Bandar, together with all rights and privileges enjoyed or claimed in respect of the said land by the respective holders thereof.
7	Hajee Jackaria Noor Mahomed.	
8	Manockjee Adurjee ...	
9	Aitwar Lukdee ...	
10	Muncherjee Framjee Cama.	
11	Dadabhoy Hormusjee .	
12	Hajee Essa Hajee Fuzla	
13	Dorabjee Nusserwanjee	
14	Byramjee Cowasjee ...	
15	Esmail Mahomed Songaji.	

SCHEDULE B. (SEE SECTION 30.)

Form of Security.

THE TRUSTEES OF THE PORT OF BOMBAY.

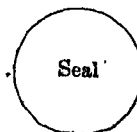
No.

Under the provisions of the Bombay Port Trust Act, 1879, we, the Trustees of the Port of Bombay, do hereby for ourselves and our successors promise and agree to pay to _____, or order, the sum of Rupees _____ value received; such payment to be made on demand at the office of the Accountant General, Bombay, after the expiration of three months' notice of payment to be given by the Chairman of the said Trustees in the *Bombay Government Gazette*. We further promise and agree for ourselves and our successors to pay to the said _____, or order, interest on the said sum of Rupees _____ from the _____ day of _____ until the expiration of three months after such notice of payment as aforesaid; such interest to be at the rate of four per centum per annum.

and to be payable on demand at the office aforesaid half-yearly on the 1st day of April and the 1st day of October in every year until the expiration of three months from the date of such notice of payment as aforesaid, when the amount of interest then due hereunder will be payable with the principal on demand at the office aforesaid and (such notice being considered as equivalent to a tender of payment at the period appointed for the discharge hereof) all further interest shall cease.

Given under our common Seal this day of 187 .

(Signature of the Chairman and two Trustees.)



Seal of the Corporation.

SCHEDULE C. (SEE SECTION 33.)

Statement of Capital Debts of the Board due to the Secretary of State for India in Council.

On account of what Property, &c.	Bearing Interest.			Not bearing Interest.			Total.		
	Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.
Elphinstone Estate, purchase price ...	1,85,91,596	12	8	.....	.....	.....	.....	.....	.....
Elphinstone Estate, expended in 11 months to 31st March 1871.	7,47,370	2	10	.....	.....	.....	.....	.....	.....
Elphinstone Estate, expended in 12 months to 31st March 1872.	2,75,090	8	6	.....	.....	.....	.....	.....	.....
Elphinstone Estate, Troop Siding, Carnac Bunder.	39,790	3	2	.....	.....	.....	1,96,53,847	11	2
Moody Bay Reclamation (portion east of Frere Road), expended in year to 31st March 1871.	3,57,596	8	8	.....	.....	.....	.....	.....	.....
Moody Bay Reclamation (portion east of Frere Road), expended in year to 31st March 1872.	2,01,345	6	4	.....	.....	.....	5,58,941	15	0
Apollo Bay Reclamation, expended in year to 31st March 1872.	9,752	11	11	.....	.....	.....	9,752	11	11
Wellington Reclamation, expended in year to 31st March 1872.	934	12	8	.....	.....	.....	934	12	8
Apollo Pier, expended prior to 31st March 1870.	.....	.....	.....	2,23,038	12	2	.....	.....	.....
Apollo Pier, expended in year to 31st March 1871.	1,38,173	7	8	.....	.....	.....	.....	.....	.....
Apollo Pier, expended in year to 31st March 1872.	61,825	9	2	.....	.....	.....	4,23,037	13	0
Tank Bandar, expended in year to 31st March 1871.	182	0	0	.....	.....	.....	182	0	0
Customs } Apollo Bonded Ware- Bonded } house. Warehouse } Custom-house Godown...	.....	.....	.....	5,50,000	0	0	.....	.....	.....
	.....	.....	.....	25,165	0	0	5,75,165	0	0
Kussara Bandar ... ..	.....	.....	.....	5,285	0	0	5,285	0	0
Saw Mill Property, Tank Bandar ...	.....	.....	.....	41,189	14	4	41,189	14	4
Expended on the above properties between 31st March 1872 and the passing of Bombay Act I. of 1873.	1,45,053	5	4	.....	.....	.....	1,45,053	5	4
Balance of Interest unpaid at 31st March 1871.	2,75,273	4	7	.....	.....	.....	.....	.....	.....
Balance of Interest unpaid at 31st March 1872.	1,50,233	3	2	.....	.....	.....	6,02,042	10	0
Balance of Interest unpaid for the period from 1st April 1872 until the date on which Bombay Act I. of 1873 came into operation.	1,76,536	2	3	.....	.....	.....	.....	.....	.....
Total...Rs.	2,11,70,754	2	11	8,44,678	10	6	2,20,15,432	13	5

SCHEDULE D. (SEE SECTION 42.)

Form of Debenture.

THE TRUSTEES OF THE PORT OF BOMBAY.

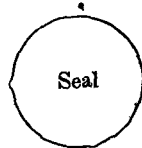
The

18

No.

By virtue of the Act No. of 1879 of the Council of the Governor of Bombay for making Laws and Regulations, entitled "The Bombay Port Trust Act, 1879," we, the Trustees of the Port of Bombay, in consideration of the sum of Rupees paid to us by A. B., of promise to pay to the said , or order, the said sum of Rupees after the date hereof, together with interest at the rate of per centum per annum, payable half-yearly on the day of and the day of

Given under our Corporate Seal this day of 187

(Signatures of the Chairman and two Trustees.)

of the Corporation.

By order of His Excellency the Honourable the Governor in Council,

C. G. W. MACPHERSON,

Acting Under Secretary to Government.

Poona, 1st September 1879.

[Published with the "Bombay Government Gazette" on the 9th October 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 4th August 1879, and the assent of His Excellency the Viceroy and Governor General on the 19th September 1879, and is published for general information:—

Bombay Act No. VII. of 1879.

An Act to provide for Irrigation in the Bombay Presidency.

WHEREAS it is necessary to make provision for the construction, maintenance, and regulation of canals, for the supply of water therefrom, and for the levy of rates for water so supplied, in the Bombay Presidency; It is enacted as follows:—

Preamble.

PART I.

PRELIMINARY.

1. This Act may be called "The Bombay Irrigation Act, 1879."

Short title.

It extends to the whole of the Presidency of Bombay, except the City of Bombay.

Local extent.

2. In Section 55 of the Bombay Land Revenue Code, 1879, for the words "or which has been made available in consequence of the construction, improvement or repair of any irrigational or other work by, or at the instance of Government," the words "and in respect of which no rate is leviable under the Bombay Irrigation Act, 1879," shall be substituted;

Sections 55, 101 and 105 of the Bombay Land Revenue Code, 1879, amended.

and in Section 101 of the said Code for the word "leviable" the word "levied" shall be substituted, and the words "or under the Bombay Irrigation Act, 1879," shall be inserted after the figures "55";

and to Section 105 of the said Code the words "or of the Bombay Irrigation Act, 1879," shall be added.

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

Interpretation section.

(1)—"canal" includes—

(a) all canals, channels, pipes, and reservoirs constructed, maintained, or controlled by Government for the supply or storage of water;

(b) all works, embankments, structures, and supply and escape channels connected with such canals, channels, pipes, or reservoirs, and all roads constructed for the purpose of facilitating the construction or maintenance of such canals, channels, pipes or reservoirs;

(c) all water-courses, drainage-works, and flood-embankments as hereinafter respectively defined;

(d) any part of a river, stream, lake, natural collection of water, or natural drainage-channel, to which the Governor in Council may apply the provisions of section five, or of which the water has been applied or used before the passing of this Act for the purpose of any existing canal;

(e) all land belonging to Government which is situate on a bank of any canal as hereinbefore defined, and which has been appropriated, under the orders of Government, for the purposes of such canal;

(2)—"water-course" means any channel or pipe not maintained at the cost of Govern-

"Water-course."

ment, which is supplied with water from a canal, and includes all subsidiary works connected with any such channel or pipe, except the sluice or outlet through which water is supplied from a canal to such channel or pipe ;

(3)—“ drainage-work ” means any work in connection with a
“ Drainage-work.” system of irrigation

or reclamation made or improved by the Government for the purpose of the drainage of the country, whether under the provisions of section fifteen or otherwise, and includes escape-channels from a canal, dams, weirs, embankments, sluices, groins, and other works connected therewith, but does not include works for the removal of sewage from towns ;

(4)—“ flood-embankment ” means any
“ Flood-embankment.” embankment constructed or maintained by Government in connection with any system of irrigation or reclamation works for the protection of lands from inundation, or which may be declared by the Governor in Council to be maintained in connection with any such system, and includes all groins, spurs, dams, and other protective works connected with such embankments ;

(5)—“ Collector ” means the head revenue officer of a
“ Collector.” district, and includes any officer appointed by the Governor in Council to exercise all or any of the powers of a Collector under this Act ;

(6)—“ canal officer ” means any officer
“ Canal Officer.” lawfully appointed or invested with powers under section four ;

(7)—“ owner ” includes every person
“ Owner.” having a joint interest in the ownership of the thing specified ; and all rights and obligations which attach to an owner under the provisions of this Act shall attach jointly and severally to every person having such joint interest in the ownership.

4. Government or, subject to such orders as may from time to time be passed by
Appointment of Canal Officers. Government, any officer of Government whom the Governor in Council empowers in this behalf, may

(a) appoint such officers with such designations, and assign to them respectively such powers and duties under this Act as Government or such officer may deem fit,

(b) invest any Government officer in any department, either personally, or in

right of his office, or any other person, with such powers, and impose upon him such duties, under this Act, as Government or such officer may deem fit :

Provided that any assignment of, or investment with, powers or duties made under this section may at any time be cancelled or varied by the authority who made it.

PART II.

OF THE CONSTRUCTION AND MAINTENANCE OF CANALS.

Application of Water for purposes of Canals.

5. Whenever it appears expedient to
Notification to issue the Governor in
when water-supply is to Council that the water
be applied for purposes of any river or stream
of any Canal. flowing in a natural
channel, or of any lake, or any other natural
collection of still water should be applied
or used by the Government for the purpose of any existing or projected canal ;

the Governor in Council may, by notification in the *Bombay Government Gazette*, declare that the said water will be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof.

Powers of Entry on Land, &c.

6. At any time after the day so named
Powers of canal any canal officer duly
officers for the purpose empowered in this
of so applying a water behalf may enter on
supply. any land, remove any
obstruction, close any channel, and do any other thing necessary for such application or use of the said water, and for such purpose may take with him, or depute, or employ, such subordinates and other persons as he deems fit.

7. Whenever it shall be necessary to
Entry for enquiry. make any enquiry or examination in connection with a projected canal, or with the maintenance of an existing canal, any canal officer duly empowered in this behalf and any person acting under the general or special order of any such canal officer, may

(a) enter upon such land as he may think necessary for the purpose, and

(b) exercise all powers and do all things in respect of such land as he might exercise and do if the Government had issued a notification under the provi-

sions of section four of the Land Acquisition Act, 1870, to the effect that land in that locality is likely to be needed for a public purpose, and

(c) set up and maintain water-gauges and do all other things necessary for the prosecution of such enquiry and examination.

8. Any canal officer duly empowered in this behalf and any person acting under the general or special order of any such canal officer, may enter upon any land, building, or water-course, on account of which any water-rate is chargeable, for the purpose of inspecting or regulating the use of the water supplied, or of measuring the land irrigated thereby or chargeable with a water-rate, and of doing all things necessary for the proper regulation and management of the canal from which such water is supplied.

9. In case of any accident being apprehended or happening to a canal, any canal officer duly empowered in this behalf and any person acting under the general or special order of any such canal officer, may enter upon any land adjacent to such canal and may take trees and other materials, and execute all works which may be necessary for the purpose of preventing such accident, or repairing any damage done.

10. When a canal officer or other person proposes, under the provisions of any of the three last preceding sections, to enter into any building or enclosed court or garden attached to a dwelling-house, not supplied with water from a canal, and not adjacent to a flood-embankment, he shall previously give to the occupier of such building, court, or garden such reasonable notice as the urgency of the case may allow.

Canal Crossings.

11. Suitable means of crossing canals shall be provided at such places as the Governor in Council thinks necessary for the reasonable convenience of the inhabitants of the adjacent land; and suitable bridges, culverts, or other works shall be constructed to prevent the drainage of the adjacent land being obstructed by any canal.

Removal of Obstructions to Drainage.

12. Whenever it appears to the Governor in Council that any drainage-work is necessary for the public health or for the improvement of the proper cultivation or irrigation of any land, or that protection from floods or other accumulations of water, or from erosion by a river, is required for any land, the Governor in Council may cause a scheme for such work to be drawn up and carried into execution, and the person authorized by the Governor in Council to draw up and execute such scheme may exercise in connection therewith the powers conferred on canal officers by

12. Whenever it appears to the Governor in Council that any drainage-work is necessary for the public health or for the improvement of the proper cultivation or irrigation of any land, or that protection from floods or other accumulations of water, or from erosion by a river, is required for any land, the Governor in Council may cause a scheme for such work to be drawn up and carried into execution, and the person authorized by the Governor in Council to draw up and execute such scheme may exercise in connection therewith the powers conferred on canal officers by

13. Any canal officer duly empowered in this behalf may, after such publication, issue an order to any person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in such order.

14. If, within the time so fixed, such person does not comply with the order, the canal officer may cause the obstruction to be removed or modified; and if the person to whom the order was issued does not, when called upon, pay the expenses of such removal or modification, such expenses shall be recoverable by the Collector as an arrear of land-revenue.

Construction of Drainage Works.

15. Whenever it appears to the Governor in Council that any drainage-work is necessary for the public health or for the improvement of the proper cultivation or irrigation of any land, or that protection from floods or other accumulations of water, or from erosion by a river, is required for any land, the Governor in Council may cause a scheme for such work to be drawn up and carried into execution,

and the person authorized by the Governor in Council to draw up and execute such scheme may exercise in connection therewith the powers conferred on canal officers by

sections seven, eight, and nine, and shall be liable to the obligations imposed upon canal officers by sections ten and thirty-four.

PART III.

OF WATER COURSES.

Construction of New Water Courses.

16. Any person may, with the permission of a canal officer duly empowered to grant such permission, construct a new water-course if he has obtained the consent of the holder of the land required therefor.

17. Any person desiring to construct a new water-course, but being unable or unwilling to construct it under a private arrangement with the holder of the land required for the same, may apply, in writing, to any canal officer duly empowered to receive such applications, stating

(1)—that he is ready to defray all the expenses necessary for acquiring the land and constructing such water-course ;

(2)—that he desires the said canal officer in his behalf and at his cost to do all things necessary for constructing such water-course.

18. If the canal officer considers the construction of such water-course expedient, he may call upon the applicant to deposit any part of the expense such officer may consider necessary,

and upon such deposit being made, shall cause enquiry to be made into the most suitable alignment for the said water-course,

and shall mark out the land which, in his opinion, it will be necessary to occupy for the construction thereof,

and shall forthwith publish a notification in every village through which the water-course is proposed to be taken, that so much of such land as is situated within such village has been so marked out,

and shall send a copy of such notification to the Collector of every district in which such land is situated for publication on such land.

The said notification shall also call upon any person who wishes to share in the ownership of such water-course to make his application within thirty days.

application in that respect to the canal officer within thirty days of the publication of such notification.

If any such applicant appears, and his application is admitted, he shall be liable to pay his share in the construction of such water-course, and in the cost of acquiring the land for the same, and shall be an owner of such water-course when constructed.

19. On receipt of copy of such notification, the Collector shall proceed to acquire such land under

the provisions of the Land Acquisition Act, 1870, as if a declaration had been issued by the Government for the acquisition thereof under section six of that Act, and as if the Government had thereupon directed the Collector to take order for the acquisition of such land under section seven of the said Act, and (if necessary) as if the Government had issued orders for summary possession being taken under section seventeen of the said Act.

20. On being put in possession of the land, the canal officer shall construct the required water-course ; and on its completion shall give to the owner notice thereof, and of any sum payable by him on account of the cost of acquiring the land and constructing the water-course. On such notice being given, such sum shall be due from the owner to the canal officer. On receipt of payment in full of all expenses incurred, the canal officer shall make over possession of such water-course to such owner.

Rights and Obligations of Owners of Water-courses.

21. Every owner of a water-course shall be bound—

- (a) to construct and maintain all works necessary for the passage across such water-course, of canals, water-courses, drainage-channels, and public roads existing at the time of its construction, and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the occupants of neighbouring lands ;
- (b) to maintain such water-course in a fit state of repair for the conveyance of water ;

(c) to allow the use of it to others or to admit other persons as joint owners thereof on such terms as may be prescribed under the provisions of section twenty-three;

and every owner of a water-course and every person duly authorized under the provisions hereinafter contained to use a water-course shall be entitled—

(d) to have a supply of water by such water-course at such rates and on such terms as may from time to time be prescribed under section forty-four and by the rules made by the Governor in Council under section seventy.

Provided always that any owner of a water-course and subject to the terms of any agreement between the parties, or to any condition imposed under section twenty-three, any such person as aforesaid may at any time by giving three months' previous notice in writing in this behalf to a canal officer duly empowered to receive such notices, resign his interest in such water-course.

22. Any person desiring to have a supply of water through a water-course, of which he is not an owner, may make a private arrangement with the owner for permitting the conveyance of water thereby, or may apply to a canal officer duly empowered to receive such applications for authority to use such water-course, or to be declared a joint owner thereof.

23. On receipt of any such application, the canal officer shall serve notice on the owner to show cause why such authority should not be granted, or such declaration should not be made, and, if no objection be raised, or if any objection be raised and be found insufficient or invalid, shall, subject to the approval of the Collector, either authorize the applicant to use the water-course, or declare him to be a joint owner thereof on such conditions as to the payment of compensation or rent or otherwise as may appear to him equitable.

24. No land acquired under this Part for a water-course shall be used for any other purpose without the previous consent

Land acquired for a water-course may not be used for other purpose.

iv.—43 b

of a canal officer duly empowered to grant such permission.

25. If any owner of a water-course fails to fulfil any obligation imposed upon him by clause (a) or (b) of section twenty-one; any canal officer duly empowered in this behalf may require him by notice to execute the necessary work or repair within a period to be prescribed in such notice, of not less than fifteen days, and, in the event of failure, may execute the same on his behalf; and, except as hereinafter provided in this section, all expenses incurred in the execution of such work or repair shall be a sum due by such owner to Government.

Every person other than an owner who uses any water-course in respect of which any repair has been executed by a canal officer under this section shall, in the absence of any agreement between the parties or of any condition imposed under section twenty-three at the time such person was authorized to use such water-course to the contrary, be liable to pay to Government such proportion of the expenses incurred in the execution of such repairs as shall be determined by the said canal officer.

Settlement of Disputes concerning Water-courses.

26. Whenever a dispute arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction, or maintenance of a water-course, or among joint owners of a water-course as to their respective shares of the expense of constructing or maintaining such water-course, or as to the amounts severally contributed by them towards such expense, or as to failure on the part of any owner to contribute his share,

any person interested in the matter of such dispute may apply, in writing, to any canal officer duly empowered to receive such applications, stating the matter in dispute.

Such officer shall thereupon give notice to the other persons interested that, on a day to be named in such notice, he will proceed to enquire into the said matter,

and if all the persons interested consent, in writing, to his being arbitrator, he may pass his order thereon;

failing such consent, he shall transfer the matter to the Collector, who shall enquire into and pass his order thereon.

Any order passed by the Collector under this section shall remain in force until set aside by a decree of a civil court.

PART IV.

OF THE SUPPLY OF WATER.

Applications for Supply.

27. Every person desiring to have a supply of water from a canal shall submit a written application to that effect to a canal officer duly empowered to receive such applications in such form as shall from time to time be prescribed by Government in this behalf.

If the application be for a supply of water to be used for purposes other than those of irrigation, the canal officer may, with the sanction of Government, give permission for water to be taken for such purposes under such special conditions and restrictions as to the limitation, control, and measurement of the supply as he shall be empowered by Government to impose in each case.

Provisions as to Supply.

28. The supply of water to any water-course or to any person who is entitled to such supply shall not be stopped except—

- (a) whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by competent authority ;
- (b) whenever and so long as any water-course by which such supply is received, is not maintained in such repair as to prevent the wasteful escape of water therefrom ;
- (c) whenever and so long as it is necessary to do so in order to supply in rotation the legitimate demands of other persons entitled to water ;
- (d) whenever and so long as it may be necessary to do so in order to prevent the wastage or misuse of water ;
- (e) within periods fixed from time to time by a canal officer duly empowered in this behalf, of which due notice shall be given.

29. When canal-water is supplied for the irrigation of one or more crops only, the

permission to use such water shall be held to continue only until such crop or crops shall come to maturity, and to apply only to such crop or crops.

30. Every agreement for the supply of canal-water to any land, building, or other immoveable property shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such land, building, or other immoveable property takes place.

No person entitled to the use of any work or land appertaining to any canal, and except in the case of any such agreement as aforesaid, no person entitled to use the water of any canal, shall sell, or sub-let, or otherwise transfer his right to such use without the permission of a canal officer duly empowered to grant such permission.

PART V.

OF THE AWARD OF COMPENSATION.

Compensation when claimable.

31. Compensation may be awarded in respect of any substantial damage caused by the exercise of any of the powers conferred by this Act, which is capable of being ascertained and estimated at the time of awarding such compensation :

Provided that no compensation shall be so awarded in respect of any damage arising from

- (a) deterioration of climate, or
- (b) stoppage of navigation, or the means of rafting timber, or of watering cattle, or
- (c) stoppage or diminution of any supply of water in consequence of the exercise of the power conferred by section five, if no use have been made of such supply within the five years next before the date of the issue of the notification under section thirty-seven, or
- (d) failure or stoppage of the water in a canal, when such failure or stoppage is due to—
 - (1) any cause beyond the control of Government,

- (2) the execution of any repairs, alterations or additions to the canal, or
 (3) any measures considered necessary by any canal officer duly empowered in this behalf for regulating the proper flow of water in the canal, or for maintaining the established course of irrigation;

but any person who suffers loss from any stoppage or diminution of his water-supply due to any of the causes named in clause (d) of this section shall be entitled to such remission of the water-rate payable by him as may be authorized by the Governor in Council.

32. No claim for compensation under this Act shall be entertained after the expiration of twelve months from the time when the damage complained of commenced unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

33. No compensation shall be claimable under this Act in respect of any work executed before it came into force, or of any damage caused by or in the execution of any such work.

Summary Decisions.

34. In every case of entry upon any land or building under section six, section seven, section eight, or section nine, the canal officer or person making the entry shall ascertain and record the extent of the damage, if any, caused by the entry, or in the execution of any work, to any crop, tree, building, or other property,

and within one month from the date of such entry compensation shall be tendered by a canal officer duly empowered in this behalf to the land-holder, or owner of the property damaged.

If such tender is not accepted, the canal officer shall forthwith refer the matter to the Collector for the purpose of making enquiry as to the amount of compensation and deciding the same.

35. If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in clause (d) of section thirty-one, the holder of such land may present a petition for compensation to the Collector for any loss arising from

such interruption, and the Collector, after consulting the canal officer, shall award to the petitioner reasonable compensation for such loss.

36. The decision of the Collector under either of the last two preceding sections as to the amount of compensation to be awarded, or, if in any rule framed under section seventy such decision shall be declared to be appealable, then the decision of the authority to whom the appeal lies, shall be conclusive.

Formal Adjudications.

37. As soon as practicable after the issue of a notification under section five, the Collector shall cause public notice to be given at convenient places, stating that the Government intend to apply or use the water as aforesaid, and that claims for compensation may be made before him.

A copy of sections thirty-one and thirty-two shall be annexed to every such notice.

38. All claims for compensation under this Act, other than claims of the nature provided for in sections thirty-four and thirty-five, must be made before the Collector of the district in which such claim arises.

39. The Collector shall enquire into every such claim and determine the amount of compensation, if any, which should in his opinion be given to the claimant, and sections eleven, twelve, fourteen, fifteen, eighteen to twenty-three (inclusive), twenty-six to forty (inclusive), fifty-one, and fifty-eight of the Land Acquisition Act, 1870, shall apply to such enquiries:

Provided that instead of the last clause of the said section twenty-six the following shall be read: "The provisions of this section and of sections thirty-one and forty of the Bombay Irrigation Act, 1879, shall be read to every assessor in a language which he understands before he gives his opinion as to the amount of compensation to be awarded."

40. In determining the amount of compensation under the last preceding section, regard shall be had to the diminution in the market-value, at the time of awarding

compensation, of the property in respect of which compensation is claimed ;

and where such market-value is not ascertainable, the amount shall be reckoned at twelve times the amount of the diminution of the annual net profits of such property, caused by the exercise of the powers conferred by this Act.

41. All sums of money payable for Compensation when compensation awarded. due. ed under section thirty-nine, shall become due three months after the claim for such compensation was made ;

and simple interest at the rate of six Interest. per centum per annum shall be allowed on any such sum remaining unpaid after the said three months, except when the non-payment of such sum is caused by the neglect or refusal of the claimant to apply for or receive the same.

Abatements of Land Revenue and Rent.

42. If compensation is awarded under section thirty-nine on account of a stoppage or diminution of supply of water to any land paying revenue to Government, and the amount of the revenue payable on account of such land has been fixed with reference to the water-advantages appertaining thereto, the holder of the said land shall be entitled to an abatement of the amount of revenue payable to such extent as shall be determined by the Collector.

43. Every inferior holder of any land in respect of which such compensation has been paid shall, if he receives no part of the said compensation, be entitled to an abatement of the rent previously payable by him to the superior holder thereof in proportion to the reduced value of the holding ;

but if a water-supply which increases the value of the holding is afterwards restored to the said land otherwise than at the cost of the inferior holder, the superior holder shall be entitled to enhance the rent in proportion to such increased value : provided that the enhanced rent shall not in any case exceed the rent payable by the inferior holder before the abatement, unless the superior holder shall, independently of the provisions of this section, be entitled so to enhance the previous rent.

PART VI.
OF WATER RATES.

Supply Rates.

44. Such rates shall be leviable for canal-water supplied for purposes of irrigation, or for any other purpose, as shall from time to time be determined by the Governor in Council.

If, owing to the construction of a new canal or to the improvement or extension of an existing canal, the amount or duration of any water-supply, in respect of which either no revenue, or a fixed amount of revenue has hitherto been paid to Government, is increased, rates shall be leviable under this section in respect of the increased water-supply only.

The said rates shall be payable by the person on whose application the supply was granted, or by any person who uses the water so supplied.

Occasional Rates.

45. If water supplied through a water-course be used in an unauthorized manner, and if the person by whose act or neglect such use has occurred cannot be identified, the person or all the persons on whose land such water has flowed, if such land has derived benefit therefrom,

or if no land has derived benefit therefrom, the person or all the persons chargeable in respect of the water supplied through such water-course,

shall be liable, or jointly liable, as the case may be, for the charges which shall be made for such use under the rules prescribed by the Governor in Council under section seventy.

46. If water supplied through a water-course be suffered to run to waste, and if, after enquiry, the person through whose act or neglect such water was suffered to run to waste cannot be discovered,

the person or all the persons chargeable in respect of the water supplied through such water-course shall be liable or jointly liable, as the case may be, for the charges which shall be made, in respect of the water so wasted, under the rules prescribed by the Governor in Council under section seventy.

All questions arising under this and the last preceding section shall, subject to the provisions of section sixty-seven, be decided by a canal officer duly empowered in this behalf.

47. All charges for the unauthorized use or for waste of water may be recovered, as water-rates, in addition to any penalties incurred on account of such use or waste.

Percolation and Leakage Rates.

48. If it shall appear to a canal officer duly empowered to enforce the provisions of this section, that any cultivated land within two hundred yards of any canal receives, by percolation or leakage from such canal, an advantage equivalent to that which would be given by a direct supply of canal-water for irrigation,

or that any cultivated land, wherever situate, derives by a surface-flow, or by means of a well sunk within two hundred yards of any canal after the admission of water into such canal, a supply of water which has percolated or leaked from such canal,

he may charge on such land a water-rate not exceeding that which would ordinarily have been charged for a similar direct supply to land similarly cultivated.

For the purposes of this Act, land charged under this section shall be deemed to be land irrigated from a canal.

Protection Rate.

49. If at the close of any financial year it shall appear to the Governor in Council that the gross revenue from water supplied from any canal, or from the completed portion of any canal, during the said year has not amounted to five per centum of the total capital expended in the construction of such canal, or of the completed portion thereof, he may direct the levy in the year then next ensuing of a rate not exceeding eight annas per acre on all cultivated land which is under command of such canal, but is not irrigated: Provided—

(1)—that the rate to be so levied in respect of any such land shall not in any case exceed one-fourth of the full dry-crop rate at which such land is at the time being assessed for the purposes of the land-revenue;

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(2)—that when the area of the land under command of the canal exceeds the area for which water is available therefrom for the irrigation during the monsoon months of such dry-crops as are ordinarily grown in the tract of country through which such canal passes, the maximum rate leviable under the foregoing proviso shall be reduced in the proportion which the area for which water is so available bears to the area under command.

For the purposes of this section the amount of the total capital expended on the construction of a canal, or of any completed portion of a canal, shall be ascertained and determined in such manner as Government shall direct. The proportion in which the maximum rate shall be reduced in respect of the lands under command of any canal to which the second proviso of this section is applicable, shall also be determined under the orders of Government.

50. The said rate shall not be leviable in respect of any land—

(a) which has not been irrigable from such canal for a period exceeding three years;

(b) if during the year for which such rate might otherwise be levied, water sufficient for the irrigation of such land has not been supplied when duly applied for by the holder thereof;

(c) unless the net annual value of the produce of such land, or the productive powers thereof will be increased by the irrigation thereof by canal-water, after deducting all necessary expenses incurred in cultivating the same, conveying the water thereto, and paying all Government charges in respect of such irrigation;

(d) unless a canal officer duly empowered in this behalf shall have offered to permit the person who would otherwise be liable to pay the said rate, to construct the water-course necessary for conveying the water to the said land under section sixteen, or, if the said person shall so prefer, to apply the provisions of sections eighteen, nineteen, and twenty, or of sections twenty-two and twenty-three, as the case may be, for the construction of a water-course, or for authorizing such person to use or to become a joint owner of some other water-course,

and shall have tendered an advance of money sufficient to provide for the construction of the said water-course or the acquisition of such authority or joint ownership, as the case may be; such advance to be repayable in conformity with the rules for recovering advances made under the Land Improvement Act, 1871.

If any question shall arise whether the aforesaid conditions have been complied with it shall be determined by the Collector.

Questions as to fulfilment of said conditions to be determined by the Collector.

51. If there are both superior and inferior holders of any land in respect of which the said rate is chargeable, the rate shall be payable by the superior holder, who shall be entitled to assistance in the recovery of the same from the inferior holder in accordance with the law at the time in force for assisting such superior holders in recovering land revenue demands from their inferior holders.

Responsibility for rate on whom to rest.

Procedure for determining Liability to Protection Rate.

52. Immediately on the issue of an order by the Governor in Council for the levy of a rate under section forty-nine, a general notice shall be published by the Collector of every district affected thereby, proclaiming the liability of all lands under command of the canal to the rate prescribed in the said order, unless such lands are irrigated, and setting forth the general boundaries within which the same will be leviable.

Collector to publish notice of liability of irrigable lands.

53. As soon as practicable after the issue of a notice under the last preceding section a canal officer duly empowered in this behalf shall prepare and submit to the Collector a sketch map showing clearly the extent and boundaries of the area under command of the canal, or of the completed portion of the canal, in his district.

Canal officer to prepare and submit to the Collector a sketch map.

54. The Collector shall by the aid of such sketch map, prepare a list of the land-holders whom he shall deem to be liable to the payment of the said rate.

Collector to prepare and publish list of persons liable to the rate.

The said list shall be published in such manner as the Collector deems fit in every village concerned, together with an intimation that all objections to any entry therein must be made to the Collector, in writing, within one month from the publication thereof.

55. All objections duly made within the said period shall be heard and determined by the Collector, or, if the Collector shall so direct, by the Assistant or Deputy Collector in charge of the taluka concerned, and the decision of the Collector, or of the Assistant or Deputy Collector, as the case may be, shall be final.

Hearing of objections.

56. A copy of the said list, as finally corrected, shall be given to the Pátel, or other officer empowered under section fifty-seven to collect the said rate, and shall be his warrant to collect the rate from the persons named therein.

Copy of list to be furnished to officer empowered to collect the rate.

Recovery of Water Rates and other Dues in Arrears.

57. Every water-rate leviable under this Act shall be payable in such instalments and on such dates and to such officers as shall from time to time be determined under the orders of the Governor in Council.

Water-rates when and to whom to be paid.

Any such rate, or instalment of the same, which is not paid on the day when it becomes due, and any sum due to Government or to a canal officer, whether on behalf of Government or of any other person, under Part III. of this Act which is not paid when demanded, shall be recoverable according to the law and under the rules for the time being in force for the recovery of arrears of land-revenue.

Arrears to be recoverable as land-revenue.

Rent payable to the owner of a water-course by a person authorized to use such water-course shall be payable in such instalments and on such dates as the canal officer duly empowered to act under section twenty-three shall direct, and may be recovered on behalf of the owner according to the law and rules aforesaid: Provided always that no more shall at any time be payable to the owner than is actually recovered from the said person.

Rent due to owners of water-courses to be recoverable as arrears of land-revenue.

PART VII.

OF OBTAINING LABOUR FOR CANALS ON EMERGENCIES.

58. Whenever it appears to a Canal Officer duly empowered to act under this section, that unless some work or repair is immediately executed, such serious damage will happen to any canal as to cause sudden and extensive public injury,

or, that, unless some clearance of a canal or other work which is necessary in order to maintain the established course of irrigation is immediately executed, serious public loss will occur,

and that the labourers necessary for the proper execution of such repair, clearance, or work cannot be obtained in the ordinary manner within the time that can be allowed for the execution of the same so as to prevent such injury or loss,

the said officer may, by order under his hand, direct that the provisions of this section shall be put into operation for the execution of such repair, clearance, or work; and thereupon every able-bodied person who resides or holds land in the vicinity of the locality where such repair, clearance, or work has to be executed, and whose name appears in the list hereinafter mentioned, shall, if required to do so by such officer or by any person authorized by him in this behalf, be bound to assist in the execution of such repair, clearance, or work by labouring thereat as such officer or any person authorized by him in this behalf may direct.

All persons so labouring shall be entitled to payment at rates which shall not be less than the highest rates for the time being paid in the neighbourhood for similar labour.

59. Subject to such rules as may from time to time be prescribed under section seventy in this behalf, the Collector shall prepare a list of the persons liable to be required to assist as aforesaid, and may from time to time add to or alter such list or any part thereof.

60. All orders made under section fifty-eight shall be immediately reported to the Collector for the information of the Commissioner of the division, and likewise to the Chief Engineer for Irrigation for the information of Government.

PART VIII.

OF PENALTIES.

61. Whoever voluntarily and without proper authority,

(1)—damages, alters, enlarges, or obstructs any canal;

(2)—interferes with, or increases or diminishes the supply of water in, or the flow of water from, through, over, or under any canal, or by any means raises or lowers the level of the water in any canal;

(3)—corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used;

(4)—destroys, defaces or moves any land or level mark or water-gauge fixed by the authority of a public servant;

(5)—destroys, tampers with, or removes, any apparatus, or part of any apparatus, for controlling, regulating, or measuring the flow of water in any canal;

(6)—passes, or causes animals or vehicles to pass in or across any of the works, banks, or channels of a canal contrary to rules made under section seventy, after he has been desired to desist therefrom;

(7)—causes or knowingly and wilfully permits cattle to graze upon any canal or flood-embankment, or tethers, or causes, or knowingly and wilfully permits cattle to be tethered upon any such canal or embankment, or roots up any grass, or other vegetation growing on any such canal or embankment, or removes, cuts, or in any way injures or causes to be removed, cut, or otherwise injured any tree, bush, grass, or hedge intended for the protection of such canal or embankment;

(8)—neglects, without reasonable cause, to assist or to continue to assist in the execution of any repair, clearance, or work, when lawfully bound so to do under section fifty-eight;

(9)—violates any rule made under section seventy for breach whereof the Governor in Council shall, in such rules, direct that a penalty may be incurred;

and whoever—

(10)—being responsible for the maintenance of a water-course, or using a water-course, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the authorized distribution of the water therefrom, or uses such water in an unauthorized manner, or prevents or interferes with the lawful use of such water-course by any person authorized to use the same or declared to be a

joint owner thereof under section twenty-three;

shall, when such act shall not amount to the offence of committing mischief within the meaning of the Indian Penal Code, on conviction before a Magistrate, be punished for each such offence with fine which may extend to fifty rupees, or with imprisonment of either description within the meaning of the said Code, for a term which may extend to one month, or with both.

For endangering stability of a canal, &c. 62. Whoever without proper authority,

(1)—pierces or cuts through, or attempts to pierce or cut through, or otherwise to damage, destroy, or endanger the stability of any canal;

(2)—opens, shuts or obstructs, or attempts to open, shut or obstruct any sluice in any canal;

(3)—makes any dam or obstruction for the purpose of diverting or opposing the current of a river, or canal on the bank whereof there is a flood-embankment, or refuses or neglects to remove any such dam or obstruction when lawfully required so to do;

shall, when such act shall not amount to the offence of committing mischief within the meaning of the Indian Penal Code, on conviction before a Magistrate of the First or Second Class, be punished for each such offence with fine which may extend to two hundred rupees, or with imprisonment of either description within the meaning of the said Code, for a term which may extend to six months, or with both.

63. Whenever any person is convicted under either of the last two preceding sections, the convicting Magistrate may order that he shall remove the obstruction, or repair the damage in respect of which the conviction is held within a period to be fixed in such order. If such person neglects or refuses to obey such order within the period so fixed, any Canal Officer duly empowered in this behalf may remove such obstruction, or repair such damage, and the cost of such removal or repair, as certified by the said officer, shall be leviable from such person by the Collector as an arrear of land-revenue.

64. Any person in charge of, or employed upon any canal, may remove from the lands or buildings belonging thereto, or may take into custody, without a warrant,

and take forthwith before a Magistrate or to the nearest Police Station, to be dealt with according to law, any person who within his view—

(1)—wilfully damages, obstructs, or fouls any canal, or

(2)—without proper authority interferes with the supply or flow of water, in or from any canal, or in any river or stream, so as to endanger, damage, make dangerous or render less useful any canal.

65. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission made punishable by this Act: provided that no person shall be punished twice in respect of one and the same act or omission.

66. Whenever any person is fined for an offence under this Act, the Court which imposes such fine, or which confirms in appeal or revision a sentence of such fine, or a sentence of which such fine forms part, may direct that the whole or any part of such fine may be paid by way of award to any person who gave information leading to the detection of such offence or to the conviction of the offender.

If the fine be awarded by a Court whose decision is subject to appeal or revision, the amount awarded shall not be paid until the period prescribed for presentation of the appeal has elapsed, or, if an appeal be presented, till after the decision of the appeal.

PART IX.

MISCELLANEOUS.

67. Every order passed by a canal officer under sections thirteen, eighteen, twenty-five, thirty, forty-five, forty-six and forty-eight shall be appealable to the Collector, provided that the appeal be presented within thirty days of the date on which the order appealed against was communicated to the appellant.

All orders and proceedings of a Collector under this Act shall be subject to the supervision and control of the Commissioner of the division.

68. Any officer empowered under this Act to conduct any enquiry, may exercise all such powers connected with the summoning and examining of witnesses and the production of documents as are conferred on Civil

Courts by the Code of Civil Procedure; and every such enquiry shall be deemed a judicial proceeding.

69. Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed by the officer therein mentioned. Whenever it may be practicable the service of the notice shall be made on the person therein named. When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business; and if such person has no ordinary place of residence within the district, service of any notice may be made by sending copy of such notice by post in a registered cover addressed to such person at his usual place of residence.

70. The Governor in Council may from time to time make and cancel rules, rules not inconsistent with this Act to regulate the following matters:—

(a) the proceedings of any officer who, under any provision of this Act, is

required or empowered to take action in any matter;

(b) the cases in which, the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable;

(c) the person by whom, the time, place, or manner at or in which, anything for the doing of which provision is made in this Act, shall be done;

(d) the amount of any charge to be made under this Act,

(e) and generally to carry out the provisions of this Act.

The Governor in Council may, from time to time, alter or cancel any rules so made.

Such rules, alterations, and cancellments shall be published in the *Bombay Government Gazette*, and shall thereupon have the force of law.

71. Nothing in this Act shall be deemed to apply to any canal, channel, reservoir, lake, or other collection of water vesting in any municipality.

By order of His Excellency the Honourable the Governor in Council,

C. G. W. MACPHERSON,

Acting Under Secretary to Government.

Poona, 30th September 1879.



Bombay Government Gazette.

Published by Authority.

THURSDAY, 9TH OCTOBER 1879.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 30th September 1879, and was promulgated for general information in the *Gazette of India* on the 4th October 1879 :—

Act No. XVI. of 1879.

An Act to restrict the transport of Salt by Sea.

Whereas it is expedient to restrict the transport of salt by sea in manner hereinafter appearing; It is hereby enacted as follows :—

1. This Act may be called "The Transport of Salt Act, 1879":
Short title.

It extends to the western coast of British India north of Cochin and to the sea within a distance of a marine league from such coast;

and it shall come into force at once.

2. When any salt is carried by sea in any vessel other than a vessel of the burden of three hundred tons and upwards, the owner and master of such vessel shall each be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

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Exceptions.

3. Nothing in section two applies to—

(a) salt covered by a permit granted under section twenty-eight or section thirty-one of the Act of the Governor of Bombay in Council No. VII. of 1873, or by a *rawāna* granted under Madras Regulation I. of 1805, section eleven, clause third;

(b) salt covered by a pass granted by any officer whom the Governor of Bombay in Council may appoint in this behalf;

(c) such amount of salt carried on board any vessel for consumption by her crew or by the passengers or animals (if any) on board as the Governor of Bombay in Council may, from time to time, exempt from the operation of section two.

4. When any officer empowered by the Governor of Bombay in Council whether by name or office, to act under this section has reason to believe, from personal knowledge or from information taken down in writing, that any salt is being carried, or has within the twenty-four hours next before the requirement first hereinafter mentioned been carried, in any vessel so as to render the owner or master of such vessel liable to the penalties prescribed by Section two, he may require such vessel to be brought-to, and thereupon may—

(a) enter and search the same;

(b) require the master of such vessel to produce any documents in his possession relating to such vessel or the cargo thereof;

(c) seize such vessel if the said officer has reason to believe it liable to confiscation under this Act, and cause it to be brought with its crew and cargo into any port in British India; and

(d) where salt is found on board such vessel, search and arrest without a warrant any person on board the same who such officer has reason to believe is punishable under section two.

5. Any master of a vessel refusing or neglecting to bring to or to produce his papers when required to do so by an officer acting under section four,

and any person obstructing any such officer in the performance of his duty,

may be arrested by such officer without a warrant, and shall be punished with fine which may extend to one thousand Rupees, or with imprisonment for a term which may extend to six months, or with both.

6. Every vessel in which salt is carried so as to render the owner or master of such vessel liable to the penalties prescribed by section two, the cargo on board such vessel and all salt in respect of which an offence under this Act has been committed shall be liable to confiscation.

The confiscation of any vessel under this section shall include her tackle, apparel, and furniture.

Confiscations under this section may be adjudged by the Chief Customs Authority, or by such

other officer as the Local Government may, from time to time, appoint in this behalf.

Whenever any Customs-officer is satisfied that any article is liable to confiscation under this section, he may seize such article, and shall at once report the seizure to his superior officer for the information of the Chief Customs Authority or such other officer as aforesaid, and such authority or officer may, if satisfied on such report, or after making such enquiry as it or he thinks fit, that the article so seized is liable to confiscation, either declare it to be confiscated or impose a fine in lieu thereof not exceeding the value of the article.

7. For the purpose of the adjudication of penalties under section two or section five, every offence thereunder may be deemed to have been committed within the limits of the jurisdiction of the Magistrate of any place where the offender is found, or to which, if arrested under section four or section five, he may be brought.

8. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, exempt the carriage of salt within any local limits or in any class of vessels from the operation of this Act, and, by like notification, again subject such carriage to the operation of this Act.

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

[Published with the "Bombay Government Gazette" on the 16th October 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 4th August 1879, and the assent of His Excellency the Viceroy and Governor General on the 19th September, 1879, and is published for general information:—

Bombay Act No. VII. of 1879.

An Act to provide for Irrigation in the Bombay Presidency.

WHEREAS it is necessary to make provision for the construction, maintenance, and regulation of canals, for the supply of water therefrom, and for the levy of rates for water so supplied, in the Bombay Presidency; It is enacted as follows:—

PART I.

PRELIMINARY.

1. This Act may be called "The Bombay Irrigation Act, 1879."

It extends to the whole of the Presidency of Bombay, except the City of Bombay.

2. In Section 55 of the Bombay Land Revenue Code, 1879, for the words "which has been made available in consequence of the construction, improvement or repair of any irrigational or other work by, or at the instance of Government," the words "and in respect of which no rate is leviable under the Bombay Irrigation Act, 1879," shall be substituted;

and in Section 101 of the said Code for the word "leviable" the word "levied" shall be substituted, and the words "or under the Bombay Irrigation Act, 1879," shall be inserted after the figures "55";

and to Section 105 of the said Code the words, "or of the Bombay Irrigation Act, 1879," shall be added.

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

(1)—"canal" includes—

- (a) all canals, channels, pipes, and reservoirs constructed, maintained, or controlled by Government for the supply or storage of water;
- (b) all works, embankments, structures, and supply and escape channels connected with such canals, channels, pipes, or reservoirs, and all roads constructed for the purpose of facilitating the construction or maintenance of such canals, channels, pipes or reservoirs;
- (c) all water-courses, drainage-works, and flood-embankments as hereinafter respectively defined;
- (d) any part of a river, stream, lake, natural collection of water, or natural drainage-channel, to which the Governor in Council may apply the provisions of section five, or of which the water has been applied or used before the passing of this Act for the purpose of any existing canal;
- (e) all land belonging to Government which is situate on a bank of any canal as hereinbefore defined, and which has been appropriated, under the orders of Government, for the purposes of such canal;

(2)—"water-course" means any channel or pipe not maintained at the cost of Govern-

ment, which is supplied with water from a canal, and includes all subsidiary works connected with any such channel or pipe, except the sluice or outlet through which water is supplied from a canal to such channel or pipe ;

(3)—“ drainage-work ” means any work in connection with a “ Drainage-work.” system of irrigation or reclamation made or improved by the Government for the purpose of the drainage of the country, whether under the provisions of section fifteen or otherwise, and includes escape-channels from a canal, dams, weirs, embankments, sluices, groins, and other works connected therewith, but does not include works for the removal of sewage from towns ;

(4)—“ flood-embankment ” means any “ Flood-embankment.” embankment constructed or maintained by Government in connection with any system of irrigation or reclamation works for the protection of lands from inundation, or which may be declared by the Governor in Council to be maintained in connection with any such system, and includes all groins, spurs, dams, and other protective works connected with such embankments ;

(5)—“ Collector ” means the head revenue officer of a “ Collector.” district, and includes any officer appointed by the Governor in Council to exercise all or any of the powers of a Collector under this Act ;

(6)—“ canal officer ” means any officer lawfully appointed or “ Canal Officer.” invested with powers under section four ;

(7)—“ owner ” includes every person “ Owner.” having a joint interest in the ownership of the thing specified ; and all rights and obligations which attach to an owner under the provisions of this Act shall attach jointly and severally to every person having such joint interest in the ownership.

4. Government or, subject to such orders as may from time to time be passed by Appointment of Canal Officers. Government, any officer of Government whom the Governor in Council empowers in this behalf, may

(a) appoint such officers with such designations, and assign to them respectively such powers and duties under this Act as Government or such officer may deem fit,

(b) invest any Government officer in any department, either personally, or in

right of his office, or any other person, with such powers, and impose upon him such duties, under this Act, as Government or such officer may deem fit :

Provided that any assignment of, or investment with, powers or duties made under this section may at any time be cancelled or varied by the authority who made it.

PART II.

OF THE CONSTRUCTION AND MAINTENANCE OF CANALS.

Application of Water for purposes of Canals.

5. Whenever it appears expedient to Notification to issue the Governor in Council that the water be applied for purposes of any river or stream of any Canal. flowing in a natural channel, or of any lake, or any other natural collection of still water should be applied or used by the Government for the purpose of any existing or projected canal ;

the Governor in Council may, by notification in the *Bombay Government Gazette*, declare that the said water will be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof.

Powers of Entry on Land, &c.

6. At any time after the day so named Powers of canal officers for the purpose of so applying a water supply. any canal officer duly empowered in this behalf may enter on any land, remove any obstruction, close any channel, and do any other thing necessary for such application or use of the said water, and for such purpose may take with him, or depute, or employ, such subordinates and other persons as he deems fit.

7. Whenever it shall be necessary to Entry for enquiry. make any enquiry or examination in connection with a projected canal, or with the maintenance of an existing canal, any canal officer duly empowered in this behalf and any person acting under the general or special order of any such canal officer, may

(a) enter upon such land as he may think necessary for the purpose, and

(b) exercise all powers and do all things in respect of such land as he might exercise and do if the Government had issued a notification under the provi-

sions of section four of the Land Acquisition Act, 1870, to the effect that land in that locality is likely to be needed for a public purpose, and

(c) set up and maintain water-gauges and do all other things necessary for the prosecution of such enquiry and examination.

8. Any canal officer duly empowered in this behalf and any person acting under the general or special order of any such canal officer, may enter upon any land, building, or water-course, on account of which any water-rate is chargeable, for the purpose of inspecting or regulating the use of the water supplied, or of measuring the land irrigated thereby or chargeable with a water-rate, and of doing all things necessary for the proper regulation and management of the canal from which such water is supplied.

9. In case of any accident being apprehended or happening to a canal, any canal officer duly empowered in this behalf and any person acting under the general or special order of any such canal officer, may enter upon any land adjacent to such canal and may take trees and other materials, and execute all works which may be necessary for the purpose of preventing such accident, or repairing any damage done.

10. When a canal officer or other person proposes, under the provisions of any of the three last preceding sections, to enter into any building or enclosed court or garden attached to a dwelling-house, not supplied with water from a canal, and not adjacent to a flood-embankment, he shall previously give to the occupier of such building, court, or garden such reasonable notice as the urgency of the case may allow.

Canal Crossings.

11. Suitable means of crossing canals shall be provided at such places as the Governor in Council thinks necessary for the reasonable convenience of the inhabitants of the adjacent land; and suitable bridges, culverts, or other works shall be constructed to prevent the drainage of the adjacent land being obstructed by any canal.

Removal of Obstructions to Drainage.

12. Whenever it appears to the Governor in Council that any drainage-work is necessary for the public health or for the improvement of the proper cultivation or irrigation of any land, or that protection from floods or other accumulations of water, or from erosion by a river, is required for any land, the Governor in Council may cause a scheme for such work to be drawn up and carried into execution,

and the person authorized by the Governor in Council to draw up and execute such scheme may exercise in connection therewith the powers conferred on canal officers by

13. Any canal officer duly empowered in this behalf may, after such publication, issue an order to any person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in such order.

14. If, within the time so fixed, such person does not comply with the order, the canal officer may cause the obstruction to be removed or modified; and if the person to whom the order was issued does not, when called upon, pay the expenses of such removal or modification, such expenses shall be recoverable by the Collector as an arrear of land-revenue.

Construction of Drainage Works.

15. Whenever it appears to the Governor in Council that any drainage-work is necessary for the public health or for the improvement of the proper cultivation or irrigation of any land, or that protection from floods or other accumulations of water, or from erosion by a river, is required for any land, the Governor in Council may cause a scheme for such work to be drawn up and carried into execution,

and the person authorized by the Governor in Council to draw up and execute such scheme may exercise in connection therewith the powers conferred on canal officers by

sections seven, eight, and nine, and shall be liable to the obligations imposed upon canal officers by sections ten and thirty-four.

PART III.

OF WATER COURSES.

Construction of New Water Courses.

16. Any person may, with the permission of a canal officer duly empowered to grant such permission, construct a new water-course if he has obtained the consent of the holder of the land required therefor.

17. Any person desiring to construct a new water-course, but being unable or unwilling to construct it under a private arrangement with the holder of the land required for the same, may apply, in writing, to any canal officer duly empowered to receive such applications, stating

(1)—that he is ready to defray all the expenses necessary for acquiring the land and constructing such water-course;

(2)—that he desires the said canal officer in his behalf and at his cost to do all things necessary for constructing such water-course.

18. If the canal officer considers the construction of such water-course expedient, he may call upon the applicant to deposit any part of the expense such officer may consider necessary,

and upon such deposit being made, shall cause enquiry to be made into the most suitable alignment for the said water-course,

and shall mark out the land which, in his opinion, it will be necessary to occupy for the construction thereof,

and shall forthwith publish a notification in every village through which the water-course is proposed to be taken, that so much of such land as is situated within such village has been so marked out,

and shall send a copy of such notification to the Collector of every district in which such land is situated for publication on such land.

The said notification shall also call upon any person who wishes to share in the ownership of such water-course to make his

application in that respect to the canal officer within thirty days of the publication of such notification.

If any such applicant appears, and his application is admitted, he shall be liable to pay his share in the construction of such water-course, and in the cost of acquiring the land for the same, and shall be an owner of such water-course when constructed.

19. On receipt of copy of such notification, the Collector shall proceed to acquire such land under the provisions of the Land Acquisition Act, 1870, as if a declaration had been issued by the Government for the acquisition thereof under section six of that Act, and as if the Government had thereupon directed the Collector to take order for the acquisition of such land under section seven of the said Act, and (if necessary) as if the Government had issued orders for summary possession being taken under section seventeen of the said Act.

20. On being put in possession of the land, the canal officer shall construct the required water-course; and on its completion shall give to the owner notice thereof, and of any sum payable by him on account of the cost of acquiring the land and constructing the water-course. On such notice being given, such sum shall be due from the owner to the canal officer. On receipt of payment in full of all expenses incurred, the canal officer shall make over possession of such water-course to such owner.

Rights and Obligations of Owners of Water-courses.

21. Every owner of a water-course shall be bound—

(a) to construct and maintain all works necessary for the passage across such water-course, of canals, water-courses, drainage-channels, and public roads existing at the time of its construction, and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the occupants of neighbouring lands;

(b) to maintain such water-course in a fit state of repair for the conveyance of water;

(c) to allow the use of it to others or to admit other persons as joint owners thereof on such terms as may be prescribed under the provisions of section twenty-three;

and every owner of a water-course and every person duly authorized under the provisions hereinafter

Rights of owners and users of water-courses.

contained to use a water-course shall be entitled—

(d) to have a supply of water by such water-course at such rates and on such terms as may from time to time be prescribed under section forty-four and by the rules made by the Governor in Council under section seventy.

Provided always that any owner of a water-course and subject to the terms of any agreement between the parties, or to any condition imposed under section twenty-three, any such person as aforesaid may at any time by giving three months' previous notice in writing in this behalf to a canal officer duly empowered to receive such notices, resign his interest in such water-course.

22. Any person desiring to have a supply of water through

Person other than owner may arrange with owner to have supply of water through water-course, or may apply to canal officer to authorize supply or declare him a joint owner.

a water-course, of which he is not an owner, may make a private arrangement with the owner permitting the conveyance of water thereby, or may apply to a canal officer duly empowered to receive such applications for authority to use such water-course, or to be declared a joint owner thereof.

23. On receipt of any such application,

Canal officer after enquiry may authorize supply, or declare applicant to be a joint owner.

the canal officer shall serve notice on the owner to show cause why such authority should not be granted, or such declaration should not be made, and, if no objection be raised, or if any objection be raised and be found insufficient or invalid, shall, subject to the approval of the Collector, either authorize the applicant to use the water-course, or declare him to be a joint owner thereof on such conditions as to the payment of compensation or rent or otherwise as may appear to him equitable.

24. No land acquired under this Part

Land acquired for a water-course may not be used for other purpose.

shall be used for any other purpose without the previous consent

of a canal officer duly empowered to grant such permission.

25. If any owner of a water-course

If owner fails to execute work, or to repair his water-course, canal officer may execute the same on his behalf.

fails to fulfil any obligation imposed upon him by clause (a) or (b) of section twenty-

one; any canal officer duly empowered in this behalf may require him, by notice to execute the necessary work or repair within a period to be prescribed in such notice, of not less than fifteen days, and, in the event of failure, may execute the same on his behalf; and, except as hereinafter provided in this section, all expenses incurred in the execution of such work or repair shall be a sum due by such owner to Government.

Every person other than an owner who

Person who uses the water-course to pay a share of the expenses of repair.

uses any water-course in respect of which any repair has been executed by a canal

officer under this section shall, in the absence of any agreement between the parties or of any condition imposed under section twenty-three at the time such person was authorized to use such water-course to the contrary, be liable to pay to Government such proportion of the expenses incurred in the execution of such repairs as shall be determined by the said canal officer.

Settlement of Disputes concerning Water-courses.

26. Whenever a dispute arises between

Settlement of disputes as to mutual rights and liabilities of persons interested in a water-course.

two or more persons in regard to their mutual rights or liabilities in respect of the

use, construction, or maintenance of a water-course, or among joint owners of a water-course as to their respective shares of the expense of constructing or maintaining such water-course, or as to the amounts severally contributed by them towards such expense, or as to failure on the part of any owner to contribute his share,

any person interested in the matter of such dispute may apply, in writing, to any canal officer duly empowered to receive such applications, stating the matter in dispute.

Such officer shall thereupon give notice to the other persons interested that, on a day to be named in such notice, he will proceed to enquire into the said matter,

and if all the persons interested consent, in writing, to his being arbitrator, he may pass his order thereon;

failing such consent, he shall transfer the matter to the Collector, who shall enquire into and pass his order thereon.

Any order passed by the Collector under this section shall remain in force until set aside by a decree of a civil court.

PART IV.

OF THE SUPPLY OF WATER.

Applications for Supply.

27. Every person desiring to have a supply of water from a canal shall submit a written application to that effect to a canal officer duly empowered to receive such applications in such form as shall from time to time be prescribed by Government in this behalf.

If the application be for a supply of water to be used for purposes other than those of irrigation, the canal officer may, with the sanction of Government, give permission for water to be taken for such purposes under such special conditions and restrictions as to the limitation, control, and measurement of the supply as he shall be empowered by Government to impose in each case.

Provisions as to Supply.

28. The supply of water to any water-course or to any person who is entitled to such supply shall not be stopped except—

- (a) whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by competent authority ;
- (b) whenever and so long as any water-course by which such supply is received, is not maintained in such repair as to prevent the wasteful escape of water therefrom ;
- (c) whenever and so long as it is necessary to do so in order to supply in rotation the legitimate demands of other persons entitled to water ;
- (d) whenever and so long as it may be necessary to do so in order to prevent the wastage or misuse of water ;
- (e) within periods fixed from time to time by a canal officer duly empowered in this behalf, of which due notice shall be given.

29. When canal-water is supplied for the irrigation of one or more crops only, the

permission to use such water shall be held to continue only until such crop or crops shall come to maturity, and to apply only to such crop or crops.

30. Every agreement for the supply of

canal-water to any land, building, or other immoveable property shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such land, building, or other immoveable property takes place.

No person entitled to the use of any work or land appertaining to any canal, and except in the case of any such agreement as aforesaid, no person entitled to use the water of any canal, shall sell, or sub-let, or otherwise transfer his right to such use without the permission of a canal officer duly empowered to grant such permission.

PART V.

OF THE AWARD OF COMPENSATION.

Compensation when claimable.

31. Compensation may be awarded in respect of any substantial damage caused by the exercise of any of the powers conferred by this Act, which is capable of being ascertained and estimated at the time of awarding such compensation :

Provided that no compensation shall be so awarded in respect of any damage arising from

- (a) deterioration of climate, or
- (b) stoppage of navigation, or the means of rafting timber, or of watering cattle, or
- (c) stoppage or diminution of any supply of water in consequence of the exercise of the power conferred by section five, if no use have been made of such supply within the five years next before the date of the issue of the notification under section thirty-seven, or
- (d) failure or stoppage of the water in a canal, when such failure or stoppage is due to—
 - (1) any cause beyond the control of Government,

- (2) the execution of any repairs, alterations or additions to the canal, or
 (3) any measures considered necessary by any canal officer duly empowered in this behalf for regulating the proper flow of water in the canal, or for maintaining the established course of irrigation;

but any person who suffers loss from any stoppage or diminution of his water-supply due to any of the causes named in clause (d) of this section shall be entitled to such remission of the water-rate payable by him as may be authorized by the Governor in Council.

32. No claim for compensation under this Act shall be entertained after the expiration of twelve months from the time when the damage complained of commenced unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

33. No compensation shall be claimable under this Act in respect of any work executed before it came into force, or of any damage caused by or in the execution of any such work.

Summary Decisions.

34. In every case of entry upon any land or building under section six, section seven, section eight, or section nine, the canal officer or person making the entry shall ascertain and record the extent of the damage, if any, caused by the entry, or in the execution of any work, to any crop, tree, building, or other property,

and within one month from the date of such entry compensation shall be tendered by a canal officer duly empowered in this behalf to the land-holder, or owner of the property damaged.

If such tender is not accepted, the canal officer shall forthwith refer the matter to the Collector for the purpose of making enquiry as to the amount of compensation and deciding the same.

35. If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in clause (d) of section thirty-one, the holder of such land may present a petition for compensation to the Collector for any loss arising from

such interruption, and the Collector, after consulting the canal officer, shall award to the petitioner reasonable compensation for such loss.

36. The decision of the Collector under either of the last two preceding sections as to the amount of compensation to be awarded, or, if in any rule framed under section seventy such decision shall be declared to be appealable, then the decision of the authority to whom the appeal lies, shall be conclusive.

Formal Adjudications.

37. As soon as practicable after the issue of a notification under section five, the Collector shall cause public notice to be given at convenient places, stating that the Government intend to apply or use the water as aforesaid, and that claims for compensation may be made before him.

A copy of sections thirty-one and thirty-two shall be annexed to every such notice.

38. All claims for compensation under this Act, other than claims of the nature provided for in sections thirty-four and thirty-five, must be made before the Collector of the district in which such claim arises.

39. The Collector shall enquire into every such claim and determine the amount of compensation, if any, which should in his opinion be given to the claimant, and sections eleven, twelve, fourteen, fifteen, eighteen to twenty-three (inclusive), twenty-six to forty (inclusive), fifty-one, and fifty-eight of the Land Acquisition Act, 1870, shall apply to such enquiries:

Provided that instead of the last clause of the said section twenty-six the following shall be read: "The provisions of this section and of sections thirty-one and forty of the Bombay Irrigation Act, 1879, shall be read to every assessor in a language which he understands before he gives his opinion as to the amount of compensation to be awarded."

40. In determining the amount of compensation under the last preceding section, regard shall be had to the diminution in the market-value, at the time of awarding

compensation, of the property in respect of which compensation is claimed ;

and where such market-value is not ascertainable, the amount shall be reckoned at twelve times the amount of the diminution of the annual net profits of such property, caused by the exercise of the powers conferred by this Act.

41. All sums of money payable for Compensation when awarded under section thirty-nine, shall become due three months after the claim for such compensation was made ;

and simple interest at the rate of six per centum per annum shall be allowed on any such sum remaining unpaid after the said three months, except when the non-payment of such sum is caused by the neglect or refusal of the claimant to apply for or receive the same.

Abatements of Land Revenue and Rent.

42. If compensation is awarded under section thirty-nine on account of a stoppage or diminution of supply of water to any land paying revenue to Government, and the amount of the revenue payable on account of such land has been fixed with reference to the water-advantages appertaining thereto, the holder of the said land shall be entitled to an abatement of the amount of revenue payable to such extent as shall be determined by the Collector.

43. Every inferior holder of any land in respect of which such compensation has been paid shall, if he receives no part of the said compensation, be entitled to an abatement of the rent previously payable by him to the superior holder thereof in proportion to the reduced value of the holding ;

but if a water-supply which increases the value of the holding is afterwards restored to the said land otherwise than at the cost of the inferior holder, the superior holder shall be entitled to enhance the rent in proportion to such increased value ; provided that the enhanced rent shall not in any case exceed the rent payable by the inferior holder before the abatement, unless the superior holder shall, independently of the provisions of this section, be entitled so to enhance the previous rent.

PART VI.
OF WATER RATES.

Supply Rates.

44. Such rates shall be leviable for canal-water supplied for purposes of irrigation, or for any other purpose, as shall from time to time be determined by the Governor in Council.

If, owing to the construction of a new canal or to the improvement or extension of an existing canal, the amount or duration of any water-supply, in respect of which either no revenue, or a fixed amount of revenue has hitherto been paid to Government, is increased, rates shall be leviable under this section in respect of the increased water-supply only.

The said rates shall be payable by the person on whose application the supply was granted, or by any person who uses the water so supplied.

Occasional Rates.

45. If water supplied through a water-course be used in an unauthorized manner, and if the person by whose act or neglect such use has occurred cannot be identified, the person or all the persons on whose land such water has flowed, if such land has derived benefit therefrom,

or if no land has derived benefit therefrom, the person or all the persons chargeable in respect of the water supplied through such water-course,

shall be liable, or jointly liable, as the case may be, for the charges which shall be made for such use under the rules prescribed by the Governor in Council under section seventy.

46. If water supplied through a water-course be suffered to run to waste, and if, after enquiry, the person through whose act or neglect such water was suffered to run to waste cannot be discovered,

the person or all the persons chargeable in respect of the water supplied through such water-course shall be liable or jointly liable, as the case may be, for the charges which shall be made, in respect of the water so wasted, under the rules prescribed by the Governor in Council under section seventy.

All questions arising under this and the last preceding section shall, subject to the provisions of section sixty-seven, be decided by a canal officer duly empowered in this behalf.

47. All charges for the unauthorized use or for waste of water may be recovered, as water-rates, in addition to any penalties incurred on account of such use or waste.

Charges recoverable in addition to penalties.

Percolation and Leakage Rates.

48. If it shall appear to a canal officer duly empowered to enforce the provisions of this section, that any cultivated land within two hundred yards of any canal receives, by percolation or leakage from such canal, an advantage equivalent to that which would be given by a direct supply of canal-water for irrigation,

or that any cultivated land, wherever situate, derives by a surface-flow, or by means of a well sunk within two hundred yards of any canal after the admission of water into such canal, a supply of water which has percolated or leaked from such canal,

he may charge on such land a water-rate not exceeding that which would ordinarily have been charged for a similar direct supply to land similarly cultivated.

For the purposes of this Act, land charged under this section shall be deemed to be land irrigated from a canal.

Protection Rate.

49. If at the close of any financial year it shall appear to the Governor in Council that the gross revenue from water supplied from any canal, or from the completed portion of any canal, during the said year has not amounted to five per centum of the total capital expended in the construction of such canal, or of the completed portion thereof, he may direct the levy in the year then next ensuing of a rate not exceeding eight annas per acre on all cultivated land which is under command of such canal, but is not irrigated: Provided—

(1)—that the rate to be so levied in respect of any such land shall not in any case exceed one-fourth of the full dry-crop rate at which such land is at the time being assessed for the purposes of the land-revenue;

Proviso.

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(2)—that when the area of the land under command of the canal exceeds the area for which water is available therefrom for the irrigation during the monsoon months of such dry-crops as are ordinarily grown in the tract of country through which such canal passes, the maximum rate leviable under the foregoing proviso shall be reduced in the proportion which the area for which water is so available bears to the area under command.

For the purposes of this section the amount of the total capital expended on the construction of a canal, or of any completed portion of a canal, shall be ascertained and determined in such manner as Government shall direct. The proportion in which the maximum rate shall be reduced in respect of the lands under command of any canal to which the second proviso of this section is applicable, shall also be determined under the orders of Government.

50. The said rate shall not be leviable in respect of any land—

Conditions on which the said rate shall be leviable.

- (a) which has not been irrigable from such canal for a period exceeding three years;
- (b) if during the year for which such rate might otherwise be levied, water sufficient for the irrigation of such land has not been supplied when duly applied for by the holder thereof;
- (c) unless the net annual value of the produce of such land, or the productive powers thereof will be increased by the irrigation thereof by canal-water, after deducting all necessary expenses incurred in cultivating the same, conveying the water thereto, and paying all Government charges in respect of such irrigation;
- (d) unless a canal officer duly empowered in this behalf shall have offered to permit the person who would otherwise be liable to pay the said rate, to construct the water-course necessary for conveying the water to the said land under section sixteen, or, if the said person shall so prefer, to apply the provisions of sections eighteen, nineteen, and twenty, or of sections twenty-two and twenty-three, as the case may be, for the construction of a water-course, or for authorizing such person to use or to become a joint owner of some other water-course,

and shall have tendered an advance of money sufficient to provide for the construction of the said water-course or the acquisition of such authority or joint ownership, as the case may be; such advance to be repayable in conformity with the rules for recovering advances made under the Land Improvement Act, 1871.

If any question shall arise whether the aforesaid conditions have been complied with it shall be determined by the Collector.

Questions as to fulfilment of said conditions to be determined by the Collector.

51. If there are both superior and inferior holders of any land in respect of which the said rate is chargeable, the rate shall be payable by the superior holder, who shall be entitled to assistance in the recovery of the same from the inferior holder in accordance with the law at the time in force for assisting such superior holders in recovering land revenue demands from their inferior holders.

Procedure for determining Liability to Protection Rate.

52. Immediately on the issue of an order by the Governor in Council for the levy of a rate under section forty-nine, a general notice shall be published by the Collector of every district affected thereby, proclaiming the liability of all lands under command of the canal to the rate prescribed in the said order, unless such lands are irrigated, and setting forth the general boundaries within which the same will be leviable.

53. As soon as practicable after the issue of a notice under the last preceding section a canal officer duly empowered in this behalf shall prepare and submit to the Collector a sketch map showing clearly the extent and boundaries of the area under command of the canal, or of the completed portion of the canal, in his district.

54. The Collector shall by the aid of such sketch map, prepare a list of the land-holders whom he shall deem to be liable to the payment of the said rate.

The said list shall be published in such manner as the Collector deems fit in every village concerned, together with an intimation that all objections to any entry therein must be made to the Collector, in writing, within one month from the publication thereof.

55. All objections duly made within the said period shall be heard and determined by the Collector, or, if the Collector shall so direct, by the Assistant or Deputy Collector in charge of the taluka concerned, and the decision of the Collector, or of the Assistant or Deputy Collector, as the case may be, shall be final.

56. A copy of the said list, as finally corrected, shall be given to the Pátel, or other officer empowered under section fifty-seven to collect the said rate, and shall be his warrant to collect the rate from the persons named therein.

Recovery of Water Rates and other Dues in Arrears.

57. Every water-rate leviable under this Act shall be payable in such instalments and on such dates and to such officers as shall from time to time be determined under the orders of the Governor in Council.

Any such rate, or instalment of the same, which is not paid on the day when it becomes due, and any sum due to Government or to a canal officer, whether on behalf of Government or of any other person, under Part III. of this Act which is not paid when demanded, shall be recoverable according to the law and under the rules for the time being in force for the recovery of arrears of land-revenue.

Rent payable to the owner of a water-course by a person authorized to use such water-course shall be payable in such instalments and on such dates as the canal officer duly empowered to act under section twenty-three shall direct, and may be recovered on behalf of the owner according to the law and rules aforesaid: Provided always that no more shall at any time be payable to the owner than is actually recovered from the said person.

PART VII.

OF OBTAINING LABOUR FOR CANALS ON EMERGENCIES.

58. Whenever it appears to a Canal Officer duly empowered to act under this section, that unless some work or repair is immediately executed, such serious damage will happen to any canal as to cause sudden and extensive public injury,

or, that, unless some clearance of a canal or other work which is necessary in order to maintain the established course of irrigation is immediately executed, serious public loss will occur,

and that the labourers necessary for the proper execution of such repair, clearance, or work cannot be obtained in the ordinary manner within the time that can be allowed for the execution of the same so as to prevent such injury or loss,

the said officer may, by order under his hand, direct that the provisions of this section shall be put into operation for the execution of such repair, clearance, or work; and thereupon every able-bodied person who resides or holds land in the vicinity of the locality where such repair, clearance, or work has to be executed, and whose name appears in the list hereinafter mentioned, shall, if required to do so by such officer or by any person authorized by him in this behalf, be bound to assist in the execution of such repair, clearance, or work by labouring thereat as such officer or any person authorized by him in this behalf may direct.

All persons so labouring shall be entitled to payment at rates which shall not be less than the highest rates for the time being paid in the neighbourhood for similar labour.

59. Subject to such rules as may from time to time be prescribed under section seventy in this behalf, the Collector shall prepare a list of the persons liable to be required to assist as aforesaid, and may from time to time add to or alter such list or any part thereof.

60. All orders made under section fifty-eight shall be immediately reported to the Collector for the information of the Commissioner of the division, and likewise to the Chief Engineer for Irrigation for the information of Government.

PART VIII.

OF PENALTIES.

61. Whoever voluntarily and without proper authority,

(1)—damages, alters, enlarges, or obstructs any canal;

(2)—interferes with, or increases or diminishes the supply of water in, or the flow of water from, through, over, or under any canal, or by any means raises or lowers the level of the water in any canal;

(3)—corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used;

(4)—destroys, defaces or moves any land or level mark or water-gauge fixed by the authority of a public servant;

(5)—destroys, tampers with, or removes any apparatus, or part of any apparatus, for controlling, regulating, or measuring the flow of water in any canal;

(6)—passes, or causes animals or vehicles to pass in or across any of the works, banks, or channels of a canal contrary to rules made under section seventy, after he has been desired to desist therefrom;

(7)—causes or knowingly and wilfully permits cattle to graze upon any canal or flood-embankment, or tethers, or causes, or knowingly and wilfully permits cattle to be tethered upon any such canal or embankment, or roots up any grass, or other vegetation growing on any such canal or embankment, or removes, cuts, or in any way injures or causes to be removed, cut, or otherwise injured any tree, bush, grass, or hedge intended for the protection of such canal or embankment;

(8)—neglects, without reasonable cause, to assist or to continue to assist in the execution of any repair, clearance, or work, when lawfully bound so to do under section fifty-eight;

(9)—violates any rule made under section seventy for breach whereof the Governor in Council shall, in such rules, direct that a penalty may be incurred;

and whoever—

(10)—being responsible for the maintenance of a water-course, or using a water-course, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the authorized distribution of the water therefrom, or uses such water in an unauthorized manner, or prevents or interferes with the lawful use of such water-course by any person authorized to use the same or declared to be a

joint owner thereof under section twenty-three;

shall, when such act shall not amount to the offence of committing mischief within the meaning of the Indian Penal Code, on conviction before a Magistrate, be punished for each such offence with fine which may extend to fifty rupees, or with imprisonment of either description within the meaning of the said Code, for a term which may extend to one month, or with both.

For endangering stability of a canal, &c. 62. Whoever without proper authority,

(1)—pierces or cuts through, or attempts to pierce or cut through, or otherwise to damage, destroy, or endanger the stability of any canal;

(2)—opens, shuts or obstructs, or attempts to open, shut or obstruct any sluice in any canal;

(3)—makes any dam or obstruction for the purpose of diverting or opposing the current of a river, or canal on the bank whereof there is a flood-embankment, or refuses or neglects to remove any such dam or obstruction when lawfully required so to do;

shall, when such act shall not amount to the offence of committing mischief within the meaning of the Indian Penal Code, on conviction before a Magistrate of the First or Second Class, be punished for each such offence with fine which may extend to two hundred rupees, or with imprisonment of either description within the meaning of the said Code, for a term which may extend to six months, or with both.

63. Whenever any person is convicted under either of the last

Obstruction to be removed and damage repaired. two preceding sections, the convicting Magistrate may order that he

shall remove the obstruction, or repair the damage in respect of which the conviction is held within a period to be fixed in such order. If such person neglects or refuses to obey such order within the period so fixed, any Canal Officer duly empowered in this behalf may remove such obstruction, or repair such damage, and the cost of such removal or repair, as certified by the said officer, shall be leviable from such person by the Collector, as an arrear of land-revenue.

64. Any person in charge of, or employed upon any canal,

Persons employed on canal may take offenders into custody. may remove from the lands or buildings belonging thereto, or

may take into custody without a warrant,

and take forthwith before a Magistrate or to the nearest Police Station, to be dealt with according to law, any person who within his view—

(1)—wilfully damages, obstructs, or fouls any canal, or

(2)—without proper authority interferes with the supply or flow of water, in or from any canal, or in any river or stream, so as to endanger, damage, make dangerous or render less useful any canal.

65. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission made punishable by this Act: provided that no person shall be punished twice in respect of one and the same act or omission.

66. Whenever any person is fined for an offence under this Act, the Court which imposes such fine, or which confirms in appeal or revision a sentence of such fine, or a sentence of which such fine forms part, may direct that the whole or any part of such fine may be paid by way of award to any person who gave information leading to the detection of such offence or to the conviction of the offender.

If the fine be awarded by a Court whose decision is subject to appeal or revision, the amount awarded shall not be paid until the period prescribed for presentation of the appeal has elapsed, or, if an appeal be presented, till after the decision of the appeal.

PART IX.

MISCELLANEOUS.

67. Every order passed by a canal officer under sections thirteen, eighteen, twenty-five, thirty, forty-five, forty-six and forty-eight shall be appealable to the Collector, provided that the appeal be presented within thirty days of the date on which the order appealed against was communicated to the appellant.

All orders and proceedings of a Collector under this Act shall be subject to the supervision and control of the Commissioner of the division.

68. Any officer empowered under this Act to conduct any enquiry, may exercise all such powers connected with the summoning and examining of witnesses and the production of documents as are conferred on Civil

Courts by the Code of Civil Procedure; and every such enquiry shall be deemed a judicial proceeding.

69. Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed by the officer therein mentioned. Whenever it may be practicable the service of the notice shall be made on the person therein named. When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business; and if such person has no ordinary place of residence within the district, service of any notice may be made by sending copy of such notice by post in a registered cover addressed to such person at his usual place of residence.

70. The Governor in Council may from time to time make rules not inconsistent with this Act to regulate the following matters:—

(a) the proceedings of any officer who, under any provision of this Act, is

required or empowered to take action in any matter;

(b) the cases in which, the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable;

(c) the person by whom, the time, place, or manner at or in which, anything for the doing of which provision is made in this Act, shall be done;

(d) the amount of any charge to be made under this Act,

(e) and generally to carry out the provisions of this Act.

The Governor in Council may, from time to time, alter or cancel any rules so made.

Such rules, alterations, and cancellments shall be published in the *Bombay Government Gazette*, and shall thereupon have the force of law.

71. Nothing in this Act shall be deemed to apply to any canal, channel, reservoir, lake, or other collection of water vesting in any municipality.

By order of His Excellency the Honourable the Governor in Council,

C. G. W. MACPHERSON,

Acting Under Secretary to Government.

Poona, 30th September 1879.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 30th September 1879, and was promulgated for general information in the *Gazette of India* on the 4th October 1879 :—

Act No. XVI. of 1879.

An Act to restrict the transport of Salt by Sea.

Whereas it is expedient to restrict the transport of salt by sea in manner hereinafter appearing ; It is hereby enacted as follows :—

1. This Act may be called "The Transport of Salt Act, 1879":

It extends to the western coast of British India north of Cochin and to the sea within a distance of a marine league from such coast ;

and it shall come into force at once.

2. When any salt is carried by sea in any vessel other than a vessel of the burden of three hundred tons and upwards, the owner and master of such vessel shall each be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

3. Nothing in section two applies to—

(a) salt covered by a permit granted under section twenty-eight or section thirty-one of the Act of the Governor of Bombay in Council No. VII. of 1873, or by a *rawána* granted under Madras Regulation I. of 1895, section eleven, clause third ;

(b) salt covered by a pass granted by any officer whom the Governor of Bombay in Council may appoint in this behalf ;

(c) such amount of salt carried on board any vessel for consumption by her crew or by the passengers or animals (if any) on board as the Governor of Bombay in Council may, from time to time, exempt from the operation of section two.

4. When any officer empowered by the Governor of Bombay in Council whether by name or office, to act under this section has reason to believe, from personal knowledge or from information taken down in writing, that any salt is being carried, or has within the twenty-four hours next before the requirement first hereinafter mentioned been carried, in any vessel so as to render the owner or master of such vessel liable to the penalties prescribed by Section two, he may require such vessel to be brought-to, and thereupon may—

(a) enter and search the same ;

(b) require the master of such vessel to produce any documents in his possession relating to such vessel or the cargo thereof ;

(c) seize such vessel if the said officer has reason to believe it liable to confiscation under this Act, and cause it to be brought with its crew and cargo into any port in British India ; and

(d) where salt is found on board such vessel, search and arrest without a warrant any person on board the same who such officer has reason to believe is punishable under section two.

5. Any master of a vessel refusing or neglecting to bring-to or to produce his papers when required to do so by an officer acting under section four,

and any person obstructing any such officer in the performance of his duty,

may be arrested by such officer without a warrant, and shall be punished with fine which may extend to one thousand Rupees, or with imprisonment for a term which may extend to six months, or with both.

6. Every vessel in which salt is carried so as to render the owner or master of such vessel liable to the penalties prescribed by section two, the cargo on board such vessel and all salt in respect of which an offence under this Act has been committed shall be liable to confiscation.

The confiscation of any vessel under this section shall include her tackle, apparel, and furniture.

Confiscations under this section may be adjudged by the Chief Customs Authority, or by such other officer as the Local Government may, from time to time, appoint in this behalf.

Whenever any Customs-officer is satisfied that any article is liable to confiscation under this section, he may seize such article, and shall at once report the seizure to his superior officer for the information of the Chief Customs Authority or such other officer as aforesaid, and such authority or officer may, if satisfied on such report, or after making such enquiry as it or he thinks fit, that the article so seized is liable to confiscation, either declare it to be confiscated or impose a fine in lieu thereof not exceeding the value of the article.

7. For the purpose of the adjudication of penalties under section two or section five, every offence thereunder may be deemed to have been committed within the limits of the jurisdiction of the Magistrate of any place where the offender is found, or to which, if arrested under section four or section five, he may be brought.

8. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, exempt the carriage of salt within any local limits or in any class of vessels from the operation of this Act, and, by like notification, again subject such carriage to the operation of this Act.

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

[Published with the "Bombay Government Gazette" on the 23rd October 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 30th September 1879, and was promulgated for general information in the *Gazette of India* on the 4th October 1879 :—

Act No. XVI. of 1879.

An Act to restrict the transport of Salt by Sea.

Whereas it is expedient to restrict the transport of salt by sea in manner hereinafter appearing ; It is hereby enacted as follows :—

Short title. 1. This Act may be called "The Transport of Salt Act, 1879" :

Local extent. It extends to the western coast of British India north of Cochin and to the sea within a distance of a marine league from such coast ;

Commencement. and it shall come into force at once.

2. When any salt is carried by sea in any vessel other than a vessel of the burden of three hundred tons and upwards, the owner and master of such vessel shall each be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

Exceptions. 3. Nothing in section two applies to—
(a) salt covered by a permit granted under section twenty-eight or section thirty-one of the Act of the Governor of Bombay in Council No. VII. of 1873, or by a *rawana* granted under Madras Regulation I. of 1895, section eleven, clause third ;

(b) salt covered by a pass granted by any officer whom the Governor of Bombay in Council may appoint in this behalf ;

(c) such amount of salt carried on board any vessel for consumption by her crew or by the passengers or animals (if any) on board as the Governor of Bombay in Council may, from time to time, exempt from the operation of section two.

4. When any officer empowered by the Governor of Bombay in Council, whether by name or office, search, and arrest,

to act under this section has reason to believe, from personal knowledge or from information taken down in writing, that any salt is being carried, or has within the twenty-four hours next before the requirement first hereinafter mentioned been carried, in any vessel so as to render the owner or master of such vessel liable to the penalties prescribed by Section two, he may require such vessel to be brought-to, and thereupon may—

(a) enter and search the same ;

(b) require the master of such vessel to produce any documents in his possession relating to such vessel or the cargo thereof ;

(c) seize such vessel if the said officer has reason to believe it liable to confiscation under this Act, and cause it to be brought with its crew and cargo into any port in British India ; and

(d) where salt is found on board such vessel, search and arrest without a warrant any person on board the same who such officer has reason to believe is punishable under section two.

5. Any master of a vessel refusing or neglecting to bring-to or to produce his papers when required to do so by an officer acting under section four,

and any person obstructing any such officer in the performance of his duty,

may be arrested by such officer without a warrant, and shall be punished with fine which may extend to one thousand Rupees, or with imprisonment for a term which may extend to six months, or with both.

6. Every vessel in which salt is carried so as to render the owner or master of such vessel liable to the penalties prescribed by section two, the cargo on board such vessel and all salt in respect of which an offence under this Act has been committed, shall be liable to confiscation.

The confiscation of any vessel under this section shall include her tackle, apparel, and furniture.

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tion, he may seize such article, and shall at once report the seizure to his superior officer for the information of the Chief Customs Authority or such other officer as aforesaid, and such authority or officer may, if satisfied on such report, or after making such enquiry as it or he thinks fit, that the article so seized is liable to confiscation, either declare it to be confiscated or impose a fine in lieu thereof not exceeding the value of the article.

7. For the purpose of the adjudication of penalties under section two or section five, every offence thereunder may be deemed to have been committed within the limits of the jurisdiction of the Magistrate of any place where the offender is

found, or to which, if arrested under section four or section five, he may be brought.

8. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, exempt the carriage of salt within any local limits or in any class of vessels from the operation of this Act, and, by like notification, again subject such carriage to the operation of this Act.

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

THE



Bombay Government Gazette.

Published by Authority.

THURSDAY, 30TH OCTOBER 1879.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

LEGISLATIVE DEPARTMENT.

No. 355.—*Errata*.—In line 2 of clause (a) of Section 114 of “The Bombay Land Revenue Code, 1879,” as published in the *Government Gazettes* of the 17th, 24th and 31st July 1879, insert the word “the” between the words “in” and “estate.”

In line 7 of para. 3 of Section 136, for “inferior” read “superior.”

In line 11 of Section 140, for “thereinafter” read “hereinafter.”

In line 8 of Section 160 insert the word “are” between the words “as” and “interested.”

By order of His Excellency the Honourable the Governor in Council,

C. G. W. MACPHERSON,
Acting Under Secretary to Government.

Poona, 23rd October 1879.

[Published with the "Bombay Government Gazette" on the 6th November 1879.]

PART IV:

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

LEGISLATIVE DEPARTMENT.

No. 355.—*Errata*.—In line 2 of clause (a) of Section 114 of "The Bombay Land Revenue Code, 1879," as published in the *Government Gazettes* of the 17th, 24th and 31st July 1879, insert the word "the" between the words "in" and "estate."

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In line 11 of Section 140, for "thereinafter" read "hereinafter."

In line 8 of Section 160 insert the word "are" between the words "as" and "interested."

By order of His Excellency the Honourable the Governor in Council,

C. G. W. MACPHERSON,

Acting Under Secretary to Government.

Poona, 23rd October 1879.

[Published with the "Bombay Government Gazette" on the 13th November 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

LEGISLATIVE DEPARTMENT.

No. 355.—*Errata*.—In line 2 of clause (a) of Section 114 of "The Bombay Land Revenue Code, 1879," as published in the *Government Gazettes* of the 17th, 24th and 31st July 1879, insert the word "the" between the words "in" and "estate."

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Acting Under Secretary to Government.

Poona, 23rd October 1879.

S PASSED BY THE GOVERNMENT OF INDIA.

Act of the Governor General of India received the assent of His Majesty the Governor General on the 29th day of November 1879 and was promulgated for general effect in the *Gazette of India* on the 1st November 1879.

(No. XVII of 1879.)

KHAN AGRICULTURIST-RELIEF ACT, 1879.

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42. Conciliator to hear statements of witnesses, &c.

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The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 29th October 1879, and was promulgated for general information in the *Gazette of India* on the 1st November 1879:—

Act No. XVII of 1879.

THE DEKKHAN AGRICULTURISTS RELIEF ACT, 1879.

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An Act for the Relief of Indebted Agriculturists in certain parts of the Dekkhan.

WHEREAS it is expedient to relieve the agricultural classes in certain parts of the Dekkhan from indebtedness; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be cited as "The Dekkhan Agriculturists Relief Act, 1879":

and it shall come into force on the first day of November, 1879.

Sections eleven, fifty-six, sixty and sixty-two extend to the whole of British India. The rest of this Act extends only to the districts of Puna, Satara, Sholapur and Ahmadnagar.

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

(1) "money" includes agricultural produce, implements and stock:

(2) "agriculturist" means a person who earns his livelihood wholly or principally by agriculture carried on within the limits of the said districts; and every agriculturist shall be deemed to "reside" where he so earns his livelihood.

CHAPTER II.

OF THE HEARING OF CERTAIN SUITS BY SUBORDINATE JUDGES.

Application of this chapter. 3. The provisions of this chapter shall apply to—

(a) suits for an account instituted on or after the first day of November, 1879, by an agriculturist in the Court of a Subordinate Judge under the provisions hereinafter contained, and

(b) suits of the descriptions next hereinafter mentioned and instituted on or after the same date—

(1) when such suits are heard by Subordinate Judges of the first class and the subject-matter thereof does not exceed in amount or value five hundred rupees, or

(2) when such suits are heard by Subordinate Judges of the second class and the subject-matter thereof does not exceed in amount or value one hundred rupees, or

(3) when such suits are heard by Subordinate Judges of the second class and the subject-matter thereof exceeds one hundred rupees, but does not exceed five hundred rupees, in amount or value, and the parties to the suits agree that such provisions shall apply thereto.

The descriptions of suits referred to in clause (b) are the following (namely):—

(w) suits for the recovery of money alleged to be due to the plaintiff—

on account of money lent or advanced to, or paid for, the defendant, or

as the price of goods sold, or

on an account stated between the plaintiff and defendant, or

on a written or unwritten engagement for the payment of money not hereinbefore provided for ;

(x) suits for the recovery of money due on contracts other than the above and suits for rent or for moveable property, or for the value of such property, or for damages ; and

(y) suits for foreclosure or for the possession of mortgaged property, or for sale of such property, or foreclosure or sale, when the defendant, or any one of the defendants not being merely a surety for the principal debtor, is an agriculturist ; and

(z) suits for the redemption of mortgaged property when the plaintiff, or, where there are several plaintiffs, any one of the plaintiffs, is an agriculturist.

4. Where a Subordinate Judge of the first class and a Subordinate Judge of the second class have ordinary jurisdiction in the same local area,

every suit referred to in section three, clause (b), and instituted in such local area shall, if the amount or value of the subject-matter of such suit exceeds one hundred rupees and does not exceed five hundred rupees, be instituted in the Court of the Subordinate Judge of the first class.

5. Notwithstanding anything contained in the Bombay Civil Courts Act, 1869, section 28, no Subordinate Judge shall be invested with the jurisdiction of a Judge of a Court of Small Causes ; and any such jurisdiction heretofore conferred on any Subordinate Judge shall be deemed, except as regards suits instituted before the said first day of November, 1879, to have been withdrawn.

6. The Local Government may, from time to time, by notification in the local Gazette, direct that any class of suits which a Subordinate Judge would be precluded from hearing by section 12 of Act XI of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) shall be heard and determined by him and not otherwise, and may, by a like notification, cancel any such direction.

7. In every case in which it seems to the Court possible to dispose of a suit at the first hearing, the summons shall be for the final disposal of the suit.

In every suit the Court shall examine the defendant as a witness, less, for reasons to be recorded by it in writing, it deems it unnecessary so to do.

8. In suits of the descriptions mentioned in section three, clauses (w) and (x), no party shall be entitled without the permission of the Court to file a written statement.

9. When the subject-matter of any suit does not exceed ten rupees in amount or value, it shall not be necessary to take down the evidence or make a memorandum thereof in manner provided by the Code of Civil Procedure ; but in cases where the evidence is not so taken down and no memorandum is so made, the substance of the evidence shall be stated in the judgment.

10. No appeal shall lie from any decree or order passed in any suit to which this chapter applies.

CHAPTER III.

OF SUITS AND OTHER PROCEEDINGS TO WHICH AGRICULTURISTS ARE PARTIES.

11. Every suit of the description mentioned in section three, clause (w), may, if the defendant, or, when there are several defendants, one only of such defendants, is an agriculturist, be instituted and tried in a Court within the local limits of whose jurisdiction such defendant resides and not elsewhere.

Every such suit in which there are several defendants who are agriculturists may be instituted and tried in a Court within the local limits of whose jurisdiction any one of such defendants resides and not elsewhere.

Nothing herein contained shall affect sections 22 to 25 (both inclusive) of the Code of Civil Procedure.

12. In any suit of the description mentioned in section three, clause (w) in which the defendant or any one of the defendants, not being merely a surety of the principal debtor, is an agriculturist,

History of transactions with agriculturist debtors to be investigated.

and in any suit of the descriptions mentioned in section three, clause (y) or clause (z),

the Court shall, if the amount of the creditor's claim is disputed, enquire into the history and merits of the case, from the commencement of the transactions between the parties and the persons (if any) through whom they claim out of which the suit has arisen, first, with a view to ascertaining whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise, and secondly, with a view to taking an account between such parties in manner hereinafter provided.

When the amount of the claim is admitted and the Court for reasons to be recorded by it in writing believes that such admission is true and is made by the debtor with a full knowledge of his legal rights as against the creditor, the Court shall not be bound to enquire, but may do so if it thinks fit,

In other cases in which the amount of the claim is admitted the Court shall be bound to enquire as aforesaid.

Section IX, clause first, of Bombay Regulation V of 1827 is repealed so far as regards any suit to which this section applies.

Nothing herein contained shall affect the right of the parties to require that any matter in difference between them be referred to arbitration.

13. When the Court enquires into the history and merits of a case under section twelve, it shall—

Mode of taking account, notwithstanding any agreement between the parties or the persons (if any) through whom they claim as to allowing compound interest or setting off the profits of mortgaged property without an account in lieu of interest or otherwise determining the manner of taking the account,

and notwithstanding any statement or settlement of account or any contract purporting to close previous dealings and create a new obligation,

open the account between the parties from the commencement of the transactions and take that account according to the following rules (that is to say) :—

(a) separate accounts of principal and interest shall be taken :

(b) in the account of principal there shall be debited to the debtor such money as may from time to time have been actually received by him or on his account from the creditor and the price of goods, if any, sold to him by the creditor as part of the transactions ;

(c) in the account of principal there shall not be debited to the debtor any money which he may have agreed to pay in contravention of section 257A of the Code of Civil Procedure :

(d) in the account of principal there shall not be debited to the debtor any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made in the course of the transactions, unless the Court, for reasons to be recorded by it in writing, deemed such debit to be reasonable ;

(e) in the account of interest there shall be debited to the debtor monthly simple interest on the balance of principal for the time being outstanding at the rate allowed by the Court as hereinafter provided :

(f) all money paid by or on account of the debtor to the creditor or on his account, and all profits, service or other advantages of every description, received by the creditor in the course of the transactions (estimated, if necessary, at such money value as the Court in its discretion, or with the aid of arbitrators appointed by it, may determine) shall be credited first in the account of interest ; and when any payment is more than sufficient to discharge the balance of interest due at the time it is made, the residue of such payment shall be credited to the debtor in the account of principal :

(g) the accounts of principal and interest shall be made up to the date of instituting the suit, and the aggregate of the balances (if any) appearing due on both such accounts against the debtor on that date shall be deemed to be the amount due at that date except when the balance appearing due on the interest account exceeds that appearing due on the principal account, in which case double the latter balance shall be deemed to be the amount then due.

14. The interest to be awarded in taking an account according to the rules set forth in section thirteen shall be—

(a) the rate, if any, agreed upon between the parties, or the persons (if any) through whom they claim, unless such rate is deemed by the Court to be unreasonable ; or

(b) if such rate is deemed by the Court unreasonable, or if no rate was agreed upon, or when any agreement between the parties, or the persons (if any) through whom they claim, to set-off profits without an account in lieu of interest has been set aside by the Court, such rate as the Court deems reasonable.

15. Instead of enquiring into the history and merits of a case under section twelve, or if upon so enquiring the Court is unable to satisfy itself as to the amount which should be allowed on account of principal or interest or both, the Court may, of its own motion, direct that such amount be ascertained by arbitration.

Reference to arbitration in certain cases.

If the parties are willing to nominate arbitrators, the arbitrators shall be nominated by them in such manner as may be agreed upon between them : if the parties are unwilling to nominate arbitrators or cannot agree in respect of such nomination, the Court shall appoint any three persons it thinks fit ;

Provided that if all the parties reside in the same village, town or city, and, in the opinion of the Court, three fit persons can be found among the residents of such village, town or city, it shall appoint residents of such village, town or city.

The provisions of sections 508 to 522 (both inclusive) of the Code of Civil Procedure shall apply to every reference to arbitration under this section.

16. Any agriculturist may sue for an account of money lent or advanced to or paid for him by a creditor or due by him to the creditor as the price of goods sold or on a written or unwritten engagement for the payment of money and of money paid by him to the creditor, and for a decree declaring the amount, if any, still payable by him to the creditor.

When any such suit is brought, the amount (if any) payable by the plaintiff shall be determined under the same rules as would be applicable under this Act if the creditor had him sued for recovery of the debt.

17. A decree passed under section sixteen may, besides declaring the amount due, direct that such amount shall be paid by instalments, with or without interest; and, when any such decree so directs, the plaintiff may pay the amount of such decree, or the amount of each instalment fixed by such decree, as it falls due, into court, in default whereof execution of the decree may be enforced by the defendant in the same manner as if he had obtained the decree in a suit to recover the debt.

18. The plaintiff in any suit instituted under section sixteen may at any stage of such suit deposit in court such sum of money as he considers a satisfaction in full of the defendant's claim against him.

Notice of the deposit shall be given by the Court to the defendant, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the defendant on his application.

No interest shall be allowed to the defendant on any sum so deposited from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

19. When a decree has been passed, whether before or after this Act, which any sum less than fifty rupees is recoverable from an agriculturist, the Court may, either in the course of execution of such decree or otherwise, if it is satisfied that there is no other claim against him and that he is unable to pay the whole of such sum, direct the payment of such portion of the same, as it considers him able to pay, and grant him a discharge from the balance.

IV.—50 c

When the sum payable under the decree amounts to fifty rupees or upwards, or when there are other debts due by the debtor which together with such sum amount to fifty rupees or upwards, the Court may direct proceedings to be taken with respect to him as nearly as may be as if he had applied to be declared an insolvent under the provisions hereinafter contained.

20. The Court may at any time direct that the amount of any decree passed, whether before or after this Act comes into force, against an agriculturist or the portion of the same which it directs under section nineteen to be paid, shall be paid by instalments with or without interest.

21. No agriculturist shall be arrested or imprisoned in execution of a decree for money.

22. No agriculturist's immoveable property shall be attached or sold in execution of any decree or order unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists.

But the Court may, when passing a decree against an agriculturist or at any subsequent time, direct the Collector to take possession, for any period not exceeding seven years, of any such property of the judgment-debtor to the possession of which he is entitled, and which, in the opinion of the Collector, is not required for his support and the support of the members of his family dependent on him, and the Collector shall thereupon take possession of such property and deal with the same for the benefit of the decree-holder in manner provided by section twenty-nine.

The provisions of section thirty-one shall *mutatis mutandis* apply to any property so dealt with.

23. No provision of this chapter shall apply to the proceedings in the Courts of Village-Munsifs unless such provision has been specially extended thereto, under the power hereinafter conferred.

CHAPTER IV.

OF INSOLVENCY.

24. Every Subordinate Judge shall have the powers conferred by sections 344 to 359 (both inclusive) of the Code of Civil Procedure, as modified by the provisions next hereinafter contained, for the purpose of dealing with applications under the Code of Civil Procedure or under this Act to have agriculturists residing within the local limits of his ordinary jurisdiction declared insolvent and proceedings taken under orders passed under the second clause of section nineteen; and, except as provided in chapter VII of

Nothing herein contained shall affect sections 22 to 25 (both inclusive) of the Code of Civil Procedure.

12. In any suit of the description mentioned in section three, clause (w) in which the defendant or any one of the defendants, not being merely a surety of the principal debtor, is an agriculturist,

History of transactions with agriculturist debtors to be investigated.

and in any suit of the descriptions mentioned in section three, clause (y) or clause (z),

the Court shall, if the amount of the creditor's claim is disputed, enquire into the history and merits of the case, from the commencement of the transactions between the parties and the persons (if any) through whom they claim out of which the suit has arisen, first, with a view to ascertaining whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise, and secondly, with a view to taking an account between such parties in manner hereinafter provided.

When the amount of the claim is admitted and the Court for reasons to be recorded by it in writing believes that such admission is true and is made by the debtor with a full knowledge of his legal rights as against the creditor, the Court shall not be bound so to enquire, but may do so if it thinks fit.

In other cases in which the amount of the claim is admitted the Court shall be bound to enquire as aforesaid.

Section IX, clause first, of Bombay Regulation V of 1827 is repealed so far as regards any suit to which this section applies.

Nothing herein contained shall affect the right of the parties to require that any matter in difference between them be referred to arbitration.

13. When the Court enquires into the history and merits of a case under section twelve, it shall—

notwithstanding any agreement between the parties or the persons (if any) through whom they claim as to allowing compound interest or setting off the profits of mortgaged property without an account in lieu of interest or otherwise determining the manner of taking the account,

and notwithstanding any statement or settlement of account or any contract purporting to close previous dealings and create a new obligation,

open the account between the parties from the commencement of the transactions and take that account according to the following rules (that is to say) :—

(a) separate accounts of principal and interest shall be taken :

(b) in the account of principal there shall be debited to the debtor such money as may from time to time have been actually received by him or on his account from the creditor and the price of goods, if any, sold to him by the creditor as part of the transactions ;

(c) in the account of principal there shall not be debited to the debtor any money which he may have agreed to pay in contravention of section 257A of the Code of Civil Procedure :

(d) in the account of principal there shall not be debited to the debtor any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made in the course of the transactions, unless the Court, for reasons to be recorded by it in writing, deemed such debit to be reasonable :

(e) in the account of interest there shall be debited to the debtor monthly simple interest on the balance of principal for the time being outstanding at the rate allowed by the Court as hereinafter provided :

(f) all money paid by or on account of the debtor to the creditor or on his account, and all profits, service or other advantages of every description, received by the creditor in the course of the transactions (estimated, if necessary, at such money value as the Court in its discretion, or with the aid of arbitrators appointed by it, may determine) shall be credited first in the account of interest ; and when any payment is more than sufficient to discharge the balance of interest due at the time it is made, the residue of such payment shall be credited to the debtor in the account of principal :

(g) the accounts of principal and interest shall be made up to the date of instituting the suit, and the aggregate of the balances (if any) appearing due on both such accounts against the debtor on that date shall be deemed to be the amount due at that date except when the balance appearing due on the interest account exceeds that appearing due on the principal account, in which case double the latter balance shall be deemed to be the amount then due.

14. The interest to be awarded in taking an account according to the rules set forth in section thirteen shall be—

(a) the rate, if any, agreed upon between the parties, or the persons (if any) through whom they claim, unless such rate is deemed by the Court to be unreasonable ; or

(b) if such rate is deemed by the Court unreasonable, or if no rate was agreed upon, or when any agreement between the parties, or the persons (if any) through whom they claim, to set-off profits without an account in lieu of interest has been set aside by the Court, such rate as the Court deems reasonable.

15. Instead of enquiring into the history and merits of a case under section twelve, or if upon so enquiring the Court is unable to satisfy itself as to the amount which should be allowed on account of principal or interest or both, the Court may, of its own motion, direct that such amount be ascertained by arbitration.

If the parties are willing to nominate arbitrators, the arbitrators shall be nominated by them in such manner as may be agreed upon between them : if the parties are unwilling to nominate arbitrators or cannot agree in respect of such nomination, the Court shall appoint any three persons it thinks fit ;

Provided that if all the parties reside in the same village, town or city, and, in the opinion of the Court, three fit persons can be found among the residents of such village, town or city, it shall appoint residents of such village, town or city.

The provisions of sections 508 to 522 (both inclusive) of the Code of Civil Procedure shall apply to every reference to arbitration under this section.

16. Any agriculturist may sue for an account of money lent or advanced to or paid for him by a creditor or due by him to the creditor as the price of goods sold or on a written or unwritten engagement for the payment of money and of money paid by him to the creditor, and for a decree declaring the amount, if any, still payable by him to the creditor.

When any such suit is brought, the amount (if any) payable by the plaintiff shall be determined under the same rules as would be applicable under this Act if the creditor had him sued for recovery of the debt.

17. A decree passed under section sixteen may, besides declaring the amount due, direct that such amount shall be paid by instalments, with or without interest; and, when any such decree so directs, the plaintiff may pay the amount of such decree, or the amount of each instalment fixed by such decree, as it falls due, into court, in default whereof execution of the decree may be enforced by the defendant in the same manner as if he had obtained the decree in a suit to recover the debt.

18. The plaintiff in any suit instituted under section sixteen may at any stage of such suit deposit in court such sum of money as he considers a satisfaction in full of the defendant's claim against him.

Notice of the deposit shall be given by the Court to the defendant, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the defendant on his application.

No interest shall be allowed to the defendant on any sum so deposited from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

19. When a decree has been passed, whether before or after this Act comes into force, under which any sum less than fifty rupees is recoverable from an agriculturist, the Court may, either in the course of execution of such decree or otherwise, if it is satisfied that there is no other claim against him and that he is unable to pay the whole of such sum, direct the payment of such portion of the same, as it considers him able to pay, and grant him a discharge from the balance.

IV.—50 c

When the sum payable under the decree amounts to fifty rupees or upwards, or when there are other debts due by the debtor which together with such sum amount to fifty rupees or upwards, the Court may direct proceedings to be taken with respect to him as nearly as may be as if he had applied to be declared an insolvent under the provisions hereinafter contained.

20. The Court may at any time direct that the amount of any decree passed, whether before or after this Act comes into force, against an agriculturist or the portion of the same which it directs under section nineteen to be paid, shall be paid by instalments with or without interest.

21. No agriculturist shall be arrested or imprisoned in execution of a decree for money.

22. No agriculturist's immoveable property shall be attached or sold in execution of any decree or order unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists.

But the Court may, when passing a decree against an agriculturist or at any subsequent time, direct the Collector to take possession, for any period not exceeding seven years, of any such property of the judgment-debtor to the possession of which he is entitled, and which, in the opinion of the Collector, is not required for his support and the support of the members of his family dependent on him, and the Collector shall thereupon take possession of such property and deal with the same for the benefit of the decree-holder in manner provided by section twenty-nine.

The provisions of section thirty-one shall *mutatis mutandis* apply to any property so dealt with.

23. No provision of this chapter shall apply to the proceedings in the Courts of Village-Munsifs unless such provision has been specially extended thereto under the power hereinafter conferred.

CHAPTER IV.

OF INSOLVENCY.

24. Every Subordinate Judge shall have the powers conferred by sections 344 to 359 (both inclusive) of the Code of Civil Procedure, as modified by the provisions next hereinafter contained, for the purpose of dealing with applications under the Code of Civil Procedure or under this Act to have agriculturists residing within the local limits of his ordinary jurisdiction declared insolvent and proceedings taken under orders passed under the second clause of section nineteen; and, except as provided in chapter VII of

Power to direct institution of insolvency proceedings.

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sum amount to fifty rupees or upwards, the Court may direct proceedings to be taken with respect to him as nearly as may be as if he had applied to be declared an insolvent under the provisions hereinafter contained.

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Agriculturist debtors may sue for accounts.

of money lent or advanced to or paid for him by a creditor or due by him

to the creditor as the price of goods sold or on a written or unwritten engagement for the payment of money and of money paid by him to the creditor, and for a decree declaring the amount, if any, still payable by him to the creditor.

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18. The plaintiff in any suit instituted under section sixteen may at any stage of such suit deposit in court such sum of money as he considers a satisfaction in full of the defendant's claim against him.

Notice of the deposit shall be given by the Court to the defendant, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the defendant on his application.

No interest shall be allowed to the defendant on any sum so deposited from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

19. When a decree has been passed, whether before or after this Act comes into force, under which any sum less than fifty rupees is recoverable from an agriculturist, the Court may, either in the course of execution of such decree or otherwise, if it is satisfied that there is no other claim against him and that he is unable to pay the whole of such sum, direct the payment of such portion of the same, as it considers him able to pay, and grant him a discharge from the balance.

Power to fix instalments in execution.

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into force, against an agriculturist or the portion of the same which it directs under section nineteen to be paid, shall be paid by instalments with or without interest.

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But the Court may, when passing a decree against an agriculturist or at any subsequent time, direct the Collector to take possession, for any period not exceeding seven years, of any such property of the judgment-debtor to the possession of which he is entitled, and which, in the opinion of the Collector, is not required for his support and the support of the members of his family dependent on him, and the Collector shall thereupon take possession of such property and deal with the same for the benefit of the decree-holder in manner provided by section twenty-nine.

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of money lent or advanced to or paid for him by a creditor or due by him

to the creditor as the price of goods sold or on a written or unwritten engagement for the payment of money and of money paid by him to the creditor, and for a decree declaring the amount, if any, still payable by him to the creditor.

When any such suit is brought, the amount (if any) payable by the plaintiff shall be determined under the same rules as would be applicable under this Act if the creditor had him sued for recovery of the debt.

17. A decree passed under section sixteen may, besides declaring the amount due, direct that such amount shall be paid by instalments, with or without interest; and, when any such decree so directs, the plaintiff may pay the amount of such decree, or the amount of each instalment fixed by such decree, as it falls due, into court, in default whereof execution of the decree may be enforced by the defendant in the same manner as if he had obtained the decree in a suit to recover the debt.

18. The plaintiff in any suit instituted under section sixteen may at any stage of such suit deposit in court such sum of money as he considers a satisfaction in full of the defendant's claim against him.

Notice of the deposit shall be given by the Court to the defendant, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the defendant on his application.

No interest shall be allowed to the defendant on any sum so deposited from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

19. When a decree has been passed, whether before or after this Act comes into force, under which any sum less than fifty rupees is recoverable from an agriculturist, the Court may, either in the course of execution of such decree or otherwise, if it is satisfied that there is no other claim against him and that he is unable to pay the whole of such sum, direct the payment of such portion of the same, as it considers him able to pay, and grant him a discharge from the balance.

Power to fix instalments in execution.

the amount of any decree passed, whether before or after this Act comes

into force, against an agriculturist or the portion of the same which it directs under section nineteen to be paid, shall be paid by instalments with or without interest.

21. No agriculturist shall be arrested or imprisoned in execution of a decree for money.

22. No agriculturist's immoveable property shall be attached or sold in execution of any decree or order unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists.

But the Court may, when passing a decree against an agriculturist or at any subsequent time, direct the Collector to take possession, for any period not exceeding seven years, of any such property of the judgment-debtor to the possession of which he is entitled, and which, in the opinion of the Collector, is not required for his support and the support of the members of his family dependent on him, and the Collector shall thereupon take possession of such property and deal with the same for the benefit of the decree-holder in manner provided by section twenty-nine.

The provisions of section thirty-one shall *mutatis mutandis* apply to any property so dealt with.

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24. Every Subordinate Judge shall have the powers conferred by sections 344 to 359 (both inclusive) of the Code of Civil Procedure, as modified by the provisions next hereinafter contained, for the purpose of dealing with applications under the Code of Civil Procedure or under this Act to have agriculturists residing within the local limits of his ordinary jurisdiction declared insolvent and proceedings taken under orders passed under the second clause of section nineteen; and, except as provided in chapter VII of

this Act, no such application or proceeding shall be dealt with by any other Court.

25. Any agriculturist whose debts (if any) amount to fifty rupees or upwards may apply to any Subordinate Judge within the local limits of whose ordinary jurisdiction he resides to be declared an insolvent, though he has not been arrested or imprisoned, and though no order of attachment has issued against his property, in execution of a decree.

26. Notwithstanding anything contained in section 351 of the Code of Civil Procedure, the Court shall declare an agriculturist an insolvent if it is satisfied that he is in insolvent circumstances, and that the application to have him declared an insolvent has been properly made under section 344 of the said Code or section twenty-five of this Act.

27. No person other than the Názir of the Court shall be appointed as receiver, and no receiver shall be entitled to commission.

28. In determining under section 352 of the said Code the amount of any claim of the nature referred to in section twelve of this Act due by an insolvent agriculturist, the Court shall proceed in the manner prescribed by sections twelve to fifteen of this Act, both inclusive.

29. No immoveable property of the insolvent shall vest in the receiver; but the Court may direct the Collector to take into his possession, for any period not exceeding seven years from the date on which the receiver has been appointed, any immoveable property to the possession of which the insolvent is entitled, and which, in the opinion of the Collector, is not required for the support of the insolvent and the members of his family dependent on him, and, subject to any rules the Local Government may from time to time make in this behalf, to manage the same for the benefit of the creditors, by letting it on lease or otherwise:

Provided that if the insolvent or his representative in interest at any time pays into court the balance of the scheduled debts then unpaid, he shall, subject to any rights created in favour of other persons by the Collector, be entitled to recover possession of such property.

A Collector managing property under this section shall during the management have all the powers which the owner might as such have legally exercised, and shall receive and recover all rents and profits of such property, and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by an owner, all powers possessed by a Collector for securing and recovering the land-revenue due to Government except the powers mentioned in the Bombay Land-Revenue Code, 1879, section 150, clauses (b), (d) and (e).

Nothing in this section shall authorize the Court to direct the Collector to take into his possession any houses or other buildings belonging to and occupied by an agriculturist.

30. When any scheduled debt is secured by a mortgage of any portion of the insolvent's immoveable property, the Court may direct the Collector, if he can obtain a premium equal to the amount of such debt by letting such property for a term not exceeding twenty years, to let such property, and, if he cannot so obtain such premium, to sell such property under section 325 of the Code of Civil Procedure.

Where property is let under this section, the premium shall be applied to the payment of the debt, and the rent, if any, shall for a period of seven years from the date of such letting be paid to the receiver and thereafter to the insolvent or his representative in interest.

When property is sold under this section, the sale proceeds shall be applied, first, to the payment of the debt; and the balance, if any, shall be paid to the receiver.

31. So long as any management under section twenty-nine or letting under section thirty continues, the insolvent and his representative in interest shall be incompetent to mortgage, charge, lease or alienate the property managed or let or any part thereof.

32. When the balance available for distribution among the scheduled creditors under section 356 of the said Code has been distributed, the claims of such creditors shall be deemed to have been discharged, except as regards the right to share in the profits of any property managed by the Collector under section twenty-nine or let by him under section thirty.

33. No appeal shall lie from any order passed under this chapter except orders passed in exercise of the power conferred by section 359 of the Code of Civil Procedure.

CHAPTER V.

OF VILLAGE-MUNSIFS.

34. The Local Government may from time to time appoint any Patel of a village or any other person possessing local influence in a village to be a Village-Munsif for such village or for such village and for any other villages, the sites of which are situate in the same district not more than two miles from the site of such village, and may cancel any such appointment.

35. Every Village-Munsif so appointed shall take cognizance of suits of the description mentioned in section three, clause (w), when the subject-matter thereof does not exceed ten rupees in amount or value, and all the defendants at the time of the commencement of the suit actually

and voluntarily reside or carry on business or personally work for gain within the local area of which such Village-Munsif is appointed.

Notwithstanding anything hereinbefore contained, a suit cognizable by a Village-Munsif shall not be heard by any other Court:

Provided that the District Judge may, from time to time, transfer any suit instituted before a Village-Munsif to his own Court or any other Civil Court in the district for trial:

Provided also that no Village-Munsif shall try any suit to or in which he is a party or is personally interested, or shall adjudicate upon any proceeding connected with or arising out of such suit.

36. The District Judge may on a petition being presented within thirty days from the date of any decree or order of a Village-Munsif by any party deeming himself aggrieved by such decree or order, set aside such decree or order on the ground of corruption, gross partiality or misconduct of the Village-Munsif and pass such other decree or order as he thinks fit.

Except as provided in this Act and in section 622 of the Code of Civil Procedure, every decree and order of a Village-Munsif shall be final.

37. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act for regulating the procedure of Village-Munsifs and for conferring on them or any of them all or any of the powers for the trial of suits or the execution of decrees exercised by a Civil Court under the Code of Civil Procedure or any other enactment for the time being in force.

CHAPTER VI.

OF CONCILIATION.

38. The Local Government may from time to time appoint any person other than an officer of police to be a Conciliator and may cancel any such appointment.

Every Conciliator appointed under this section shall appointed only for a term not exceeding three years, but may on the expiration of the period for which he has been appointed be again appointed for a further term not exceeding three years.

Every Conciliator so appointed shall exercise his functions under this Act in respect of matters affecting agriculturists residing within such local area as the Local Government may, from time to time, prescribe.

39. When any dispute arises as to, or there is a prospect of litigation regarding, any matter within the cognizance of a Civil Court between two or more parties, one of whom is an agriculturist residing within any

local area for which a Conciliator has been appointed, or when application for execution of any decree in any suit to which any such agriculturist is a party, and which was passed before the date on which this Act comes into force is contemplated, any of the parties may apply to such Conciliator to effect an amicable settlement between them.

40. If the application be made by one of the parties only, the Conciliator shall take down, or cause to be taken down, in writing a concise statement of the applicant's case, and shall thereupon, by summons or by such other means as he deems fit, invite the person against whom such application is made to attend before him at a time and place to be fixed for this purpose, and shall direct the applicant also to be present at such time and place.

If the said person fails to appear at the time first fixed, the Conciliator may, if he thinks fit, from time to time extend the period for his appearance.

41. Whenever all the parties are present, the Conciliator shall call upon each in turn to explain his case regarding the matter in question; and shall use his best endeavours to induce them to agree to an amicable settlement or to submit such matter to arbitration.

42. The Conciliator shall hear but shall not record the statement of witnesses, any witness and shall peruse any book of account or other document produced by the parties, or so much thereof as may be necessary, and, if any party or witness consents in writing to affirm any statement upon oath in any form not repugnant to justice or decency and not purporting to affect any third person, shall provide for such oath being duly taken in the presence of all the parties.

43. If on the day on which the case is first heard by the Conciliator or on any subsequent day to which he may adjourn the hearing, the parties come to any agreement, either finally disposing of the matter or for referring it to arbitration, such agreement shall be forthwith reduced to writing, and shall be read and explained to the parties, and shall be signed or otherwise authenticated by the Conciliator and the parties respectively.

Explanation.—A Conciliator may be appointed arbitrator under this section.

44. When the agreement is one finally disposing of the matter, the Conciliator shall forward the same in original to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place where the agriculturist who is a party thereto resides;

and shall at the same time deliver to each of the parties a written notice to show cause before such Judge, within one month from the date of such delivery, why such agreement ought not to be filed in such Court.

The Court which receives the agreement shall after the expiry of the said period of one month, unless cause has been shown as aforesaid, order such agreement to be filed; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed and from which no appeal lies.

45. When the agreement is one for referring the matter to arbitration, the Conciliator shall forward it to the Court having jurisdiction in the matter, and such Court shall cause it to be filed and proceed thereon in manner provided by sections 523 and 524 of the Code of Civil Procedure.

46. If the person against whom any application is made before a Conciliator cannot be found, or if he refuses or neglects, after a reasonable period has been allowed for his appearance, to appear before the Conciliator, or if he appears but the endeavour to induce the parties to agree to an amicable settlement or to submit the matter in question to arbitration fails, the Conciliator shall, on demand, give to the applicant, or when there are several applicants to each applicant, a certificate under his hand to that effect.

47. No suit and no application for execution of a decree passed before the date on which this Act comes into force to which any agriculturist residing within any local area for which a Conciliator has been appointed is a party shall be entertained by any Civil Court, unless the plaintiff produces such certificate as aforesaid in reference thereto.

48. In computing the period of limitation prescribed for any such suit the time intervening between the application made by the plaintiff under section thirty-nine and the grant of the certificate under section forty-six shall be excluded.

49. The Local Government may from time to time make rules—

- (a) regulating the procedure before Conciliators in matters not provided for by this Act;
- (b) fixing the charges to be made by Conciliators for anything done by them under this chapter; and
- (c) determining what record and accounts shall be kept by Conciliators and what returns shall be framed and furnished by them.

CHAPTER VII.

SUPERINTENDENCE AND REVISION.

50. The District Judge shall inspect, supervise and control the proceedings, under chapter II and chapter IV of this Act, of all Subordinate Judges and the proceedings of all Village-Munsifs and Conciliators.

51. The District Judge may—

(a) transfer to his own file, any suit or other matter pending before the Court of any Subordinate Judge under chapter II or chapter IV of this Act, and may dispose of the same as if he were a Subordinate Judge; or

(b) stay the proceedings in any such suit or matter, and sit together with such Judge as a Bench for trial with such Judge as a Bench to dispose of such suit or matter in accordance with the provisions of this Act.

If the members of any Bench sitting under this section differ in opinion, the opinion of the District Judge shall prevail.

52. The Local Government shall appoint an Assistant or Subordinate Judge to inspect and supervise, subject to the control of the District Judge, the proceedings of all Subordinate Judges, under chapter II and chapter IV of this Act, and of all Village-Munsifs and Conciliators in each of the said districts of Poona, Sátára, Sholápur and Ahmednagar:

Provided that, if the local Government thinks fit, the same Assistant or Subordinate Judge may be so appointed for two or more such districts.

Any Assistant or Subordinate Judge appointed under this section may in any district for which he is so appointed, if the District Judge so directs, exercise the powers of the District Judge under section fifty-one of this Act, and transfer any suit under section twenty-five of the Code of Civil Procedure.

53. The District Judge may, for the purpose of satisfying himself of the legality or propriety of any decree or order passed by a Subordinate Judge in any suit or other matter under chapter II or chapter IV of this Act, and as to the regularity of the proceedings therein, call for and examine the record of such suit or matter, and pass such decree or order thereon as he thinks fit; and any Assistant Judge or Subordinate Judge appointed by the Local Government under section fifty-two may similarly, in any district for which he is appointed, call for and examine the record of any such suit or matter, and if he see cause therefor, may refer the same, with his remarks thereon, to the District Judge and the District Judge may pass such decree or order on the case as he thinks fit:

Provided that no decree or order shall be reversed or altered for any error or defect, or otherwise, unless a failure of justice appears to have taken place.

54. The Local Government from time to time may, and if the Government of India so direct, shall appoint an officer, as Special Judge, to discharge in the place of the District Judge all the functions of the District Judge under this Act, in respect of the proceedings of all Subordinate Judges, Village-Munsifs and Conciliators, and may cancel any such appointment.

Such Special Judge shall not, without the previous sanction of the Government of India, discharge any public function, except those which he is empowered by this Act to discharge.

If any conflict of authority arises between the Special Judge and the District Judge the High Court shall pass such order thereon consistent with this Act as it thinks fit.

No appeal shall lie from any decree or order passed by the District Judge under this chapter, or by the Special Judge, or by an Assistant or Subordinate Judge appointed under section fifty-two, or by a Bench, in any suit or proceeding under this Act.

CHAPTER VIII.

REGISTRATION BY VILLAGE-REGISTRARS.

55. The Local Government may, from time to time,—

(a) appoint such persons as it thinks fit, whether public officers or not, to be Village-Registrars, for such local areas as it may from time to time prescribe ;

(b) direct that the Village-Registrar for any local area to discharge the functions of a Village-Registrar for any other local areas concurrently with the Village-Registrars of such other local areas ; and

(c) delegate to any person by name or in virtue of his office the powers conferred on it by this section ; and may cancel any such appointment, direction, or delegation.

56. No instrument which purports to create, modify, transfer, evidence or extinguish an obligation for the payment of money or a charge upon any property, or to be a conveyance or lease, and which is executed after this Act comes into force by an agriculturist residing in any local area for which a Village-Registrar has been appointed, shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon by any such person or by any public officer unless such instrument is written by, or under the superintendence of, and is attested by a Village-Registrar ;

Provided that nothing herein contained shall prevent the admission of any instrument in evidence in any criminal proceeding.

57. When any persons, one of whom is an agriculturist residing in any such local area, desire to execute any such instrument, they shall present themselves before the Village-Registrar appointed by the Local Government for the area in which such agriculturist, or, when there are several such agriculturists, any one of such agriculturists, resides, and such Registrar, after satisfying himself in such manner as he deems fit as to the identity of the parties and

receiving from them the fee (if any) prescribed by the Local Government in this behalf and the stamp (if any) which may be required by law, shall write the instrument, or cause the same to be written under his superintendence, and after reading the same aloud or causing it to be so read in the hearing of the parties shall require them to execute it in his presence.

Every instrument so written and executed shall at the time of execution be attested by the Village-Registrar, and also, if any of the parties thereto is unable to read such instrument, by two respectable witnesses.

58. Every Village-Registrar shall keep a register of instruments executed before him in such form as shall, from time to time, be prescribed by the Inspector-General of Registration.

As soon as all the parties to any instrument have executed it before a Village-Registrar, he shall make a copy of it or cause a copy of it to be made in his register, and shall deliver the original instrument to the party entitled to the custody of the same, and a certified copy thereof to the other party, or to each of the other parties if there be more than one.

Previous to delivery, the original instrument and each such copy shall be endorsed under the Village-Registrar's signature with the date of registration, the name and residence of the Village-Registrar and the volume and page of the register in which the instrument has been registered.

59. In every instrument written by or under the superintendence of the Village-Registrar, the amount and nature of the consideration, if any, shall be fully stated.

The Village-Registrar shall also endorse upon the instrument a note under his hand, recording whether or not the transfer of the consideration stated therein, or of any part thereof, took place in his presence.

If the instrument modifies, or wholly or partly supersedes, a previous instrument, such previous instrument shall be produced before the Village-Registrar and shall be fully described in the instrument to be executed, and shall be marked by the Village-Registrar under his hand for identification.

60. Every instrument executed and registered in accordance with the foregoing provisions shall be deemed to have been duly registered under the provisions of the Indian Registration Act, 1877 ; and no instrument which ought to have been executed before a Village-Registrar but has been otherwise executed shall be registered by any officer acting under the said Act, or in any public office, or shall be authenticated by any public officer.

61. The Inspector-General of Registration shall exercise, by himself and his subordinates, a general superintendence over all Village-Registrars, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act for regulating their proceedings and for providing for the custody of their records.

Village-Registrars to be subordinate to the Inspector-General of Registration.

62. Nothing in this Act shall be deemed to require any instrument to which the Government or any officer of Government in his official capacity is a party to be executed before a Village-Registrar.

Exemption of instruments to which Government or any officer of Government is a party.

63. The Local Government may, from time to time, make rules regulating the appointment, suspension, dismissal and remuneration of Village-Registrars, and prescribing the fees to be levied by them.

Power of Local Government to make rules.

CHAPTER IX.

OF RECEIPTS AND STATEMENTS OF ACCOUNT.

64. The person to whom any agriculturist makes any payment of money in liquidation of a debt shall, at the time of such payment, tender to such agriculturist, whether he demand the same or not, a written receipt for the amount of such payment.

Agriculturists to be entitled to written receipts:

If such payment is made under any instrument executed before a Village-Registrar, the receipt shall, if the agriculturist so require, be endorsed on the copy of the instrument furnished to him under section fifty-eight.

65. Any agriculturist by whom any money is due under any instrument shall, on such date in each year as the Local Government, having regard to local custom, may from time to time, by notification in the official Gazette, fix, be entitled to receive, on demand, from the person claiming under such instrument, a statement up to that date of his account under such instrument.

To annual statements of account:

66. Any agriculturist in whose name an account is kept by any trader or money-lender shall be entitled to receive from such trader or money-lender, on demand, a pass-book, and to require, from time to time, that his account up to date be written therein and authenticated by the signature or mark of the said trader or money-lender.

To have account made up from time to time in a pass-book.

An entry so made in any such pass-book of any payment made to the trader or money-lender shall be deemed to be equivalent, for the purposes of section sixty-four, to the grant of a receipt for the amount so entered.

No person whose account has been written in a pass-book as required by this section shall be entitled also to demand an account under section sixty-five.

67. Any person who, in contravention of section sixty-four, sixty-five or sixty-six, refuses or neglects to tender a receipt or a statement of account or a pass-book, or to write, or cause to be written, any account or any part of an account in a pass-book, or to attest the same when so written, shall be punished for each such offence with fine which may extend to one hundred rupees.

Penalty for contravention of sections 64 to 66.

CHAPTER X.

LEGAL PRACTITIONERS.

68. No pleader, vakil, or mukhtár, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any case before a Conciliator or a Village-Munsif, or to any case cognizable by a Subordinate Judge under this Act, the subject-matter whereof does not exceed in amount or value one hundred rupees:

Pleaders, &c., excluded in certain cases.

Provided that any party to any such case may be permitted, on reasonable cause being shown to the satisfaction of the Conciliator, Village-Munsif or Subordinate Judge, to employ any relative, servant or dependent who is not, and has not previously been, a pleader, vakil or mukhtár, or an advocate or attorney of a High Court, to appear either conjointly with, or in lieu of, such party:

Provided also that a Subordinate Judge may permit a pleader, vakil or mukhtár, or an advocate or attorney of a High Court, to appear before him on behalf of any party to any case of the description aforesaid in which, for reasons to be recorded by him in writing, he deems it desirable that the party should have such assistance.

When a relative, servant or dependent appears in lieu of a party, he shall be furnished by him with a power-of-attorney defining the extent to which he is empowered to act.

69. When in any suit or proceeding before a Subordinate Judge under this Act to which an agriculturist is a party any pleader, vakil or mukhtár, or any advocate or attorney of a High Court, appears on behalf of any party opposed to such agriculturist, the Subordinate Judge, if he is of opinion that such agriculturist has not the means of obtaining proper professional assistance, may, with the consent of such agriculturist, direct the Government pleader or any other fit person (who is willing so to do) to appear on his behalf.

Power of Court to appoint pleader for agriculturist.

CHAPTER XI.

MISCELLANEOUS.

70. No mortgage, lien or charge of or upon any immoveable property belonging to an agriculturist shall be valid unless it is created by an instrument in writing under the hand of the person creating such mortgage, lien or charge.

Mortgages, &c., to be valid only when written.

Nothing in this section shall apply to any mortgage, lien or charge created by mere opera-

tion of law, or in favour of the Government or of any officer of the Government in his official capacity.

71. Every instrument executed before this Act comes into force and purporting to create any mortgage, lien or charge of or upon any immoveable property belonging to an agriculturist shall be deemed to be an instrument required by section 17 of the Indian Registration Act, 1877, to be registered; and any such instrument which before the passing of this Act was not so required to be registered may, notwithstanding anything contained in the said Indian Registration Act, 1877, be registered under that Act within one year from the date on which this Act comes into force.

Every Village-Registrar appointed under this Act shall be deemed to be a Sub-Registrar for the purpose of so registering such instruments; and the local area for which he is appointed shall be deemed for such purpose to be his sub-district.

Nothing in this section applies to an instrument purporting to create a mortgage, lien or charge in favour of the Government or of any officer of the Government in his official capacity.

72. In any suit against an agriculturist under this Act for the recovery of money the following periods of limitation shall be deemed to be substituted for those prescribed in the second column of the second schedule annexed to the Indian Limitation Act, 1877 (that is to say) :—

(a) when such suit is based on a written instrument registered under this Act or any law in force at the date of the execution of such instrument,—twelve years;

(b) in any other case,—six years :

Provided that nothing herein contained shall revive the right to bring any suit which would have been barred by limitation if it had been instituted immediately before this Act comes into force.

73. The decision of any Court of first instance that any person is or is not an agriculturist shall for the purposes of this Act be final.

74. Except in so far as it is inconsistent with this Act, the Code of Civil Procedure shall apply in all suits and proceedings before Subordinate Judges under this Act.

75. The Local Government may, from time to time, make all such rules as it may deem necessary for carrying out the provisions herein contained.

76. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall thereupon, in so far as they are consistent with this Act, have the force of law.

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

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 29th October, 1879, and was promulgated for general information in the *Gazette of India* on the 1st November 1879 :—

Act No. XVIII. of 1879.
THE LEGAL PRACTITIONERS
ACT, 1879.

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An Act to consolidate and amend the law relating to Legal Practitioners.

WHEREAS it is expedient to consolidate and amend the law relating to Legal Practitioners in the Lower Provinces of Bengal, the North-Western Provinces, the Panjáb, Oudh, the Central Provinces and Assam, and to empower each of the Local Governments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit; It is hereby enacted as follows :—

CHAPTER I.—Preliminary.

1. This Act may be called "The Legal Practitioners Act, 1879": and shall come into force on the first day of January 1880.

Preamble. amend the law relating to
Legal Practitioners in the
Lower Provinces of Bengal, the North-Western
Provinces, the Panjáb, Oudh, the Central Pro-
vinces and Assam, and to empower each of the
Local Governments of the rest of British India
to extend to the territories administered by it
such portions of this Act as such Government
may think fit; It is hereby enacted as follows :—

Local extent. This section and section two extend to the whole of British India.

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces and Assam. But any other Local Government may, from time to time, by notification in the official Gazette, extend all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.

2. On and from the first day of January 1880, the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified therein.

All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given and orders passed under any enactment hereby repealed shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given and passed under this Act.

All references made to any enactment hereby repealed, in any Act or Regulation passed, or notification published, shall be read as if made to the corresponding provisions of this Act.

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

“Judge” means the presiding judicial officer in every civil and criminal Court, by whatever title he is designated :

“Subordinate Court” means all Courts subordinate to the High Court, including Courts of small causes established under Act No. IX of 1850 or Act No. XI of 1865 :

“Revenue-office” includes all Courts (other than civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents :

“Legal practitioner” means an Advocate, Vakíl or Attorney of any High Court, a Pleader, Mukhtár or Revenue-agent.

CHAPTER II.—Of Advocates, Vakíls and Attorneys.

4. Every person now or hereafter entered as an Advocate or Vakíl on the roll of any High Court under the Letters Patent constituting such Court, or as an Advocate on the roll of the Chief Court of the Panjáb, shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all Revenue-offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by Pleaders or Revenue-agents ; and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or, with the permission of the Court, in any High Court on whose roll he is not entered, and in any Revenue-office :

Provided that no such Vakíl shall be entitled to practise under this section before a Judge of the High Court, Division Court or High Court exercising original jurisdiction in a Presidency-town.

5. Every person now or hereafter entered as an Attorney on the roll of any High Court shall be entitled to practise in all the Courts subordinate to such High Court and in all Revenue-offices situate within the local limits of the appellate jurisdiction of such High Court, and every person so entered who ordinarily practises in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered, and in any Revenue-office.

The High Court of the Province in which an Attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of an Attorney so practising.

CHAPTER III.—Of Pleaders and Mukhtárs.

6. The High Court may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

(a) the qualifications, admission and certificates of proper persons to be Pleaders of the subordinate Courts, and of the Revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court ;

(b) the qualifications, admission and certificates of proper persons to be Mukhtárs of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, of such Court ;

(c) the fees to be paid for the examination and admission of such persons ; and

(d) the suspension and dismissal of such Pleaders and Mukhtárs.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law : Provided that in the case of rules made by a High Court not established by Royal Charter such rules have been previously approved by the Local Government.

7. On the admission, under section six, of any person as a Pleader or Mukhtár, the High Court shall cause a certificate, signed by such officer as the Court from time to time appoints in this behalf, to be issued to such person authorizing him to practise up to the end of the current year in the Courts, and, in the case of a Pleader, also the Revenue-offices specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the

High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificate then in possession of such Pleader or Mukhtár shall be cancelled and retained by such Judge or officer.

Every certificate so renewed, shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

8. Every Pleader holding a certificate issued under section seven may apply to be enrolled in any Court or Revenue-office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted; and, subject to such rules consistent with this Act as the High Court or the Chief Controlling Revenue authority may, from time to time, make, in this behalf, the presiding Judge or officer shall enrol him accordingly; and thereupon he may appear, plead and act in such Court or office and in any Court or Revenue-office subordinate thereto.

9. Every Mukhtár holding a certificate issued under section seven may apply to be enrolled in any civil or criminal Court mentioned therein and situate within the same limits; and, subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly; and thereupon he may practise as a Mukhtár in any such civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure) appear, plead and act in any such criminal Court and any Court subordinate thereto.

10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a Pleader or Mukhtár in any Court not established by Royal Charter unless he holds a certificate issued under section seven and has been enrolled in such Court or in some Court to which it is subordinate:

Provided that persons who have been admitted as Revenue-agents before the first day of January 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal may be enrolled in manner provided by section nine in any Munsif's Court in the said territories, and on being so enrolled may appear, plead and act in such Court in suits under Bengal Act No. VIII of 1869 (to amend the procedure in suits between Landlord and Tenant) or under any other Act for the time being in force regulating

the procedure in suits between landholders and their tenants and agents.

11. Notwithstanding anything contained in the Code of Civil Procedure, the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of Mukhtárs practising in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court.

12. The High Court may suspend or dismiss any Pleader or Mukhtár holding a certificate issued under section seven who is convicted of any criminal offence implying a defect of character which unfits him to be a Pleader or Mukhtár, as the case may be.

13. The High Court may also, after such enquiry as it thinks fit, suspend or dismiss

any Pleader holding a certificate as aforesaid who takes instructions in any case except from the party on whose behalf he is retained, or a private servant of such party, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure, or

any Pleader or Mukhtár holding a certificate as aforesaid who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

14. If any such Pleader or Mukhtár practising in any subordinate Court or in any Revenue-office is charged in such Court or office with taking instructions except as aforesaid or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the Pleader or Mukhtár at least fifteen days before the day so appointed.

On such day or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the Pleader or Mukhtár, and shall proceed to adjudicate on the charge.

If such officer finds the charge established and considers that the Pleader or Mukhtár should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend or dismiss the Pleader or Mukhtár.

Any District Judge, or with his sanction any Judge subordinate to him, any District Magistrate, or with his sanction any Magistrate subordinate to him, and any Revenue

Suspension pending investigation.

authority not inferior to a Collector, or with the Collector's sanction any Revenue-officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practise any Pleader or Mukhtár charged before him or it under this section.

Every report made to the High Court under this section shall

(a) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;

(b) when made by a Magistrate subordinate to the Magistrate of the District, be made through the Magistrate of the District and the Sessions Judge;

(c) when made by the Magistrate of the District, be made through the Sessions Judge;

(d) when made by any Revenue-officer subordinate to the Chief Controlling Revenue Authority, be made through such Revenue authorities as the Chief Controlling Revenue Authority may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue authority through whom or which it is made.

15. The High Court, in any case in which a Pleader or Mukhtár has been acquitted under section 14, other than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit.

16. Notwithstanding anything contained in any Letters Patent or in the Code of Civil Procedure, section 37, clause

(a), any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

(a) the qualifications and admission of proper persons to be Mukhtárs practising on the Appellate side of such Court;

(b) the fees to be paid for the examination and admission of such persons;

(c) the security which they may be required to give for their honesty and good conduct.

(d) the suspension and dismissal of such Mukhtárs; and

(e) declaring what shall be deemed to be their functions, powers and duties;

and may prescribe and impose fines for the infringement of such rules not exceeding in any case five hundred rupees; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

CHAPTER IV.—Of Revenue-agents.

17. The Chief Controlling Revenue Authority may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

(a) the qualifications, admission and certificates of proper persons to be Revenue-agents;

(b) the fees to be paid for the examination and admission of such persons;

(c) the suspension and dismissal of such Revenue-agents; and

(d) declaring what shall be deemed to be their functions, powers and duties.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

18. On the admission of any person as a Revenue-agent under section seventeen, the Chief Controlling Revenue Authority shall cause a certificate, signed by such officer as such authority from time to time appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such Revenue-offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue Authority, or by any other officer authorized by such authority in that behalf.

On every such renewal, the certificate then in the possession of such Revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer and shall continue in force to the end of the current year.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue Authority.

19. Every Revenue-agent holding a certificate issued under section eighteen may apply to be enrolled in any Revenue-office mentioned therein and situate within the limits of the territory under the Chief Controlling Revenue Authority; and, subject to such rules as the Chief Controlling Revenue Authority may, from time to time, make in this behalf, the officer presiding in such office shall enrol him accordingly, and thereupon he may practice as a Revenue-agent in such office and in any Revenue-office subordinate thereto.

20. Except as provided by this Act or any other enactment for the time being in force, no person, other than a Pleader duly qualified under the provisions hereinbefore contained, shall practise as a Revenue-agent in any Revenue-office, unless he holds a certificate issued under section eighteen and has been enrolled in such office or some other office to which it is subordinate;

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue Authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his principal may be concerned in any Revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the Authority or officer granting the same.

21. The Chief Controlling Revenue Authority may suspend or dismiss any Revenue-agent holding a certificate issued under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a Revenue-agent.

22. The Chief Controlling Revenue Authority may also, after making such enquiry as it thinks fit, suspend or dismiss any Revenue-agent holding a certificate issued under this Act who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

23. If any Revenue-agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue Authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue authority; and such Authority shall proceed to acquit, suspend, or dismiss him.

Any Revenue officer not inferior to a Collector, and with the Collector's sanction, any Revenue-officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue Authority suspend from practice any Revenue-agent charged before him under this section.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

24. The Chief Controlling Revenue authority, in any case in which a Revenue-agent has been acquitted under section twenty-three otherwise than by an order of the Chief Controlling Re-

venue authority, may call for the record and pass such order thereon as seems fit.

CHAPTER V.—Of Certificates.

25. Every certificate, whether original or renewed, issued under this Act shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed:

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed.

26. When any Pleader, Mukhtár or Revenue-agent is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue Authority (as the case may be) orders him to deliver the same.

CHAPTER VI.—Of the Remuneration of Pleaders, Mukhtárs and Revenue-agents.

27. The High Court shall, from time to time, fix and regulate the fees payable by any party in respect of the fees of his adversary's Advocate, Pleader, Vakíl, Mukhtár or Attorney upon all proceedings (a) on the Appellate Side of such Court, (b) in the case of a High Court not established by Royal Charter, on its Original Side, and (c) in subordinate Courts.

The Chief Controlling Revenue Authority shall, from time to time, fix and regulate the fees payable upon all proceedings in the Revenue-offices by any party in respect of the fees of his adversary's Advocate, Pleader, Vakíl, Attorney, Mukhtár or Revenue-agent.

Tables of the fees so fixed shall be published in the local official Gazette.

Nothing in this section applies to the Agents mentioned in the proviso to section 20.

28. No agreement entered into by any Pleader, Mukhtár or Revenue-agent with any person retaining or employing him respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of business done or to be done by such Pleader, Mukhtár or Revenue-agent, shall be valid unless it is made in writing signed by such person, and is, within fifteen days from the day on which it is executed, filed in the District Court or in some Court in which some portion of the business in respect of which it has been executed has been or is to be done.

29. Where a suit is brought to enforce any such agreement, if the agreement is not proved to be fair and reasonable, the Court may reduce the amount payable thereunder or order it to be cancelled, and the costs, fees, charges and disbursements, in respect of the

business done to be ascertained in the same manner as if no such agreement had been made.

30. Such an agreement shall exclude any further claim of the Pleader, Mukhtár or Revenue-agent beyond the terms of the agreement with respect to any services, fees, charges or disbursements in relation to the conduct and completion of the business in respect of which the agreement is made, except such services, fees, charges or disbursements, if any, as are expressly excepted by the agreement.

31. A provision in any such agreement that the Pleader, Mukhtár or Revenue-agent shall not be liable for negligence or that he shall be relieved from any responsibility to which he would otherwise be subject as such Pleader, Mukhtár or Revenue-agent, shall be wholly void.

CHAPTER VII.—Penalties.

32. Any person who practises in any Court or Revenue-office in contravention of the provisions of section ten or section twenty shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made by him as Pleader, Mukhtár or Revenue-agent whilst he has been contravening the provisions of either of such sections.

33. Any Pleader, Mukhtár or Revenue-agent failing to deliver up his certificate as required by section twenty-six shall be liable, by order of the Court, Authority or officer to which or to whom, or according to whose orders the delivery should be made, to a fine not exceeding two hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to three months.

34. Any Pleader, Mukhtár or Revenue-agent who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a Pleader, Mukhtár or Revenue-agent in any Court or Revenue-office, shall be liable by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

35. Every order under section thirty-two, thirty-three or thirty-four shall be subject to revision of fines.

sion by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue authority where the order has been passed by an officer subordinate to such Authority.

36. Whoever commits any of the following offences:—

(a) solicits or receives from any legal practitioner any gratification in consideration of procuring or having procured his employment in any legal business;

(b) retains any gratification out of remuneration paid or delivered or agreed to be paid or delivered to any legal practitioner for such employment;

(c) being a legal practitioner, tenders, gives or consents to the retention of any gratification for procuring or having procured the employment in any legal business of himself or any other legal practitioner,

shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.—Miscellaneous.

37. To facilitate the ascertainment of the qualifications mentioned in sections six and seventeen respectively, the Local Government shall, from time to time, appoint persons to be examined for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations.

38. Except as provided by sections four, five, six, seven, twenty-seven, thirty-two and thirty-six, nothing in this Act applies to Advocates, Vakils and Attorneys admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, or to Mukhtárs practising in such Court, or to Advocates enrolled by the Chief Court of the Panjáb.

39. When any person who holds a certificate as a Mukhtár under section seven and a certificate as a Revenue-agent under section eighteen is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed, as the case may be, also in the other.

40. Notwithstanding anything hereinbefore contained, no Pleader, Mukhtár or Revenue-agent shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the authority suspending or dismissing him.

41. In the Panjab Courts Act, 1877, after section forty-one, the following shall be inserted (that is to say):—

“42. The Chief Court may, from time to time, with the previous sanction of the Local Govern-

ment, make rules as to the qualifications and admission of proper persons to be Advocates of such Court.

Subject to such rules, the Chief Court may admit and enrol such and so many Advocates as it thinks fit; and such Advocates shall be entitled to appear for the suitors of such Court, and to plead or to act, or to plead and act, for such suitors according as such Court may by its rules determine, and subject to such rules.

The Chief Court may dismiss any Advocate so enrolled or suspend him from practice :

Provided that no such Advocate shall be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the Chief Court."

FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and date of enactments.	Title.	Extent of repeal.
Act XX of 1865...	To amend the law relating to Pleaders and Mukhtárs.	The whole.
Act XXIX of 1865	To amend the Pleaders, Mukhtárs and Revenue-agents Act, 1865.	So much as has not been repealed.
Act IX of 1866...	To extend to the Sudder Court of the North-Western Provinces certain provisions of "The Pleaders, Mukhtárs and Revenue-agents Act, 1865," and of Act No. XXIX of 1865.	The whole.
Act IV of 1876 ...	To authorize Revenue-agents to practise in certain suits in the Munsifs' Courts of the Lower Provinces of Bengal.	The whole.
Act XVII of 1877	The Panjáb Courts Act, 1877.	Sections forty-two, forty-three, forty-four and forty-five.

SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES.

(See section 25.)

I.

For a certificate authorizing the holder to practise as a Pleader—

(a) In the High Court and any subordinate Court—rupees fifty :

(b) In any Court of Small Causes in a Presidency-town—rupees twenty-five :

(c) In all other subordinate Courts—rupees twenty-five :

(d) In the Courts of Subordinate Judges Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildárs, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees fifteen :

(e) In the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

II.

For a certificate authorizing the holder to practise as a Mukhtár—

(f) In the High Court and any subordinate Court—rupees twenty-five :

(g) In any Court of Small Causes in a Presidency-town—rupees fifteen :

(h) In all other subordinate Courts—rupees fifteen :

(i) In the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildárs, in Courts of Small Causes outside the Presidency-towns—and in all Criminal Courts subordinate to the High Court—rupees ten :

(j) In the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

III.

For a certificate authorizing the holder to practise as a Revenue-agent—

(k) In the office of the Chief Controlling Revenue Authority and in any Revenue-office subordinate to such Authority—rupees fifteen :

(l) In the office of a Commissioner and in any Revenue-office subordinate to a Commissioner—rupees ten :

(m) In the office of a Collector and in any Revenue-office subordinate to a Collector—rupees five.

D. FITZPATRICK,

Secy. to the Govt. of India,
Legislative Department.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 29th October, 1879, and was promulgated for general information in the *Gazette of India* on the 1st November 1879 :—

Act No. XVIII. of 1879.
THE LEGAL PRACTITIONERS
ACT, 1879.

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An Act to consolidate and amend the law relating to Legal Practitioners.

WHEREAS it is expedient to consolidate and amend the law relating to Legal Practitioners in the Lower Provinces of Bengal, the North-Western Provinces, the Panjáb, Oudh, the Central Provinces and Assam, and to empower each of the Local Governments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit; It is hereby enacted as follows :—

CHAPTER I.—Preliminary.

1. This Act may be called "The Legal Practitioners Act, 1879": and shall come into force on the first day of January 1880.

This section and section two extend to the whole of British India.

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces and Assam. But any other Local Government may, from time to time, by notification in the official Gazette, extend all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.

2. On and from the first day of January 1880, the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified therein.

All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given and orders passed under any enactment hereby repealed shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given and passed under this Act.

All references made to any enactment hereby repealed, in any Act or Regulation passed, or notification published, shall be read as if made to the corresponding provisions of this Act.

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

“Judge” means the presiding judicial officer in every civil and criminal Court, by whatever title he is designated:

“Subordinate Court” means all Courts subordinate to the High Court, including Courts of small causes established under Act No. IX of 1850 or Act No. XI of 1865:

“Revenue-office” includes all Courts (other than civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents:

“Legal practitioner” means an Advocate, Vakíl or Attorney of any High Court, a Pleader, Mukhtár or Revenue-agent.

CHAPTER II.—Of Advocates, Vakíls and Attorneys.

4. Every person now or hereafter entered as an Advocate or Vakíl on the roll of any High Court under the Letters Patent constituting such Court, or as an Advocate on the roll of the Chief Court of the Panjáb, shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all Revenue-offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by Pleaders or Revenue-agents; and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or, with the permission of the Court, in any High Court on whose roll he is not entered, and in any Revenue-office:

Provided that no such Vakíl shall be entitled to practise under this section before a Judge of the High Court, Division Court or High Court exercising original jurisdiction in a Presidency-town.

5. Every person now or hereafter entered as an Attorney on the roll of any High Court shall be entitled to practise in all the Courts subordinate to such High Court and in all Revenue-offices situate within the local limits of the appellate jurisdiction of such High Court, and every person so entered who ordinarily practises in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered, and, in any Revenue-office.

The High Court of the Province in which an Attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of an Attorney so practising.

CHAPTER III.—Of Pleaders and Mukhtárs.

6. The High Court may, from time to time, make rules consistent with this Act as to the following matters (namely):—

(a) the qualifications, admission and certificates of proper persons to be Pleaders of the subordinate Courts, and of the Revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court;

(b) the qualifications, admission and certificates of proper persons to be Mukhtárs of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, of such Court;

(c) the fees to be paid for the examination and admission of such persons; and

(d) the suspension and dismissal of such Pleaders and Mukhtárs.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law: Provided that in the case of rules made by a High Court not established by Royal Charter such rules have been previously approved by the Local Government.

7. On the admission, under section six, of any person as a Pleader or Mukhtár, the High Court shall cause a certificate, signed by such officer as the Court from time to time appoints in this behalf, to be issued to such person authorizing him to practise up to the end of the current year in the Courts, and, in the case of a Pleader, also the Revenue-offices specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the

High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificate then in possession of such Pleader or Mukhtár shall be cancelled and retained by such Judge or officer.

Every certificate so renewed, shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

8. Every Pleader holding a certificate issued under section seven may apply to be enrolled in any Court or Revenue-office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted; and, subject to such rules consistent with this Act as the High Court or the Chief Controlling Revenue authority may, from time to time, make, in this behalf, the presiding Judge or officer shall enrol him accordingly; and thereupon he may appear, plead and act in such Court or office and in any Court or Revenue-office subordinate thereto.

9. Every Mukhtár holding a certificate issued under section seven may apply to be enrolled in any civil or criminal Court mentioned therein and situate within the same limits; and, subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly; and thereupon he may practise as a Mukhtár in any such civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure) appear, plead and act in any such criminal Court and any Court subordinate thereto.

10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a Pleader or Mukhtár in any Court not established by Royal Charter unless he holds a certificate issued under section seven and has been enrolled in such Court or in some Court to which it is subordinate:

Provided that persons who have been admitted as Revenue-agents before the first day of January 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal may be enrolled in manner provided by section nine in any Munsif's Court in the said territories, and on being so enrolled may appear, plead and act in such Court in suits under Bengal Act No. VIII of 1869 (to amend the procedure in suits between Landlord and Tenant) or under any other Act for the time being in force regulating

the procedure in suits between landholders and their tenants and agents.

11. Notwithstanding anything contained in the Code of Civil Procedure, the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of Mukhtárs practising in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court.

12. The High Court may suspend or dismiss any Pleader or Mukhtár holding a certificate issued under section seven who is convicted of any criminal offence implying a defect of character which unfits him to be a Pleader or Mukhtár, as the case may be.

13. The High Court may also, after such enquiry as it thinks fit, suspend or dismiss

any Pleader holding a certificate as aforesaid who takes instructions in any case except from the party on whose behalf he is retained, or a private servant of such party, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure, or

any Pleader or Mukhtár holding a certificate as aforesaid who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

14. If any such Pleader or Mukhtár practising in any subordinate Court or in any Revenue-office is charged in such Court or office with taking instructions except as aforesaid or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the Pleader or Mukhtár at least fifteen days before the day so appointed.

On such day or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the Pleader or Mukhtár, and shall proceed to adjudicate on the charge.

If such officer finds the charge established and considers that the Pleader or Mukhtár should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend or dismiss the Pleader or Mukhtár.

Any District Judge, or with his sanction any Judge subordinate to him, any District Magistrate, or with his sanction any Magistrate subordinate to him; and any Revenue

authority not inferior to a Collector, or with the Collector's sanction any Revenue-officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practise any Pleader or Mukhtár charged before him or it under this section.

Every report made to the High Court under this section shall

(a) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;

(b) when made by a Magistrate subordinate to the Magistrate of the District, be made through the Magistrate of the District and the Sessions Judge;

(c) when made by the Magistrate of the District, be made through the Sessions Judge;

(d) when made by any Revenue-officer subordinate to the Chief Controlling Revenue Authority, be made through such Revenue authorities as the Chief Controlling Revenue Authority may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue authority through whom or which it is made.

15. The High Court, in any case in which a Pleader or Mukhtár has been acquitted under section 14, may call for the record and pass such order thereon as it thinks fit.

16. Notwithstanding anything contained in any Letters Patent or in the Code of Civil Procedure, section 37, clause

(a), any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to the following matters (namely):—

(a) the qualifications and admission of proper persons to be Mukhtárs practising on the Appellate side of such Court;

(b) the fees to be paid for the examination and admission of such persons;

(c) the security which they may be required to give for their honesty and good conduct;

(d) the suspension and dismissal of such Mukhtárs; and

(e) declaring what shall be deemed to be their functions, powers and duties;

and may prescribe and impose fines for the infringement of such rules not exceeding in any case five hundred rupees; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

CHAPTER IV.—*Of Revenue-agents.*

17. The Chief Controlling Revenue Authority may, from time to time, make rules consistent with this Act as to the following matters (namely):—

(a) the qualifications, admission and certificates of proper persons to be Revenue-agents;

(b) the fees to be paid for the examination and admission of such persons;

(c) the suspension and dismissal of such Revenue-agents; and

(d) declaring what shall be deemed to be their functions, powers and duties.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

18. On the admission of any person as a Revenue-agent under section seventeen, the Chief Controlling Revenue Authority shall cause a certificate, signed by such officer as such authority from time to time appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such Revenue-offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue Authority, or by any other officer authorized by such authority in that behalf.

On every such renewal, the certificate then in the possession of such Revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer and shall continue in force to the end of the current year.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue Authority.

19. Every Revenue-agent holding a certificate issued under section eighteen may apply to be enrolled in any Revenue-office mentioned therein and situate within the limits of the territory under the Chief Controlling Revenue Authority; and, subject to such rules as the Chief Controlling Revenue Authority may, from time to time, make in this behalf, the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a Revenue-agent in such office and in any Revenue-office subordinate thereto.

20. Except as provided by this Act or any other enactment for the time being in force, no person, other than a Pleader duly qualified under the provisions hereinbefore contained, shall practise as a Revenue-agent in any Revenue-office, unless he holds a certificate issued under section eighteen and has been enrolled in such office or some other office to which it is subordinate;

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue Authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his principal may be concerned in any Revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the Authority or officer granting the same.

21. The Chief Controlling Revenue Authority may suspend or dismiss any Revenue-agent holding a certificate issued under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a Revenue-agent.

22. The Chief Controlling Revenue Authority may also, after making such enquiry as it thinks fit, suspend or dismiss any Revenue-agent holding a certificate issued under this Act who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

23. If any Revenue-agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue Authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue authority; and such Authority shall proceed to acquit, suspend, or dismiss him.

Any Revenue officer not inferior to a Collector, and with the Collector's sanction, any Revenue-officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue Authority suspend from practice any Revenue-agent charged before him under this section.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

24. The Chief Controlling Revenue authority, in any case in which a Revenue-agent has been acquitted under section twenty-three otherwise than by an order of the Chief Controlling Re-

venue authority, may call for the record and pass such order thereon as seems fit.

CHAPTER V.—Of Certificates.

25. Every certificate, whether original or renewed, issued under this Act shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed:

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed.

26. When any Pleader, Mukhtár or Revenue-agent is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue Authority (as the case may be) orders him to deliver the same.

CHAPTER VI.—Of the Remuneration of Pleaders, Mukhtárs and Revenue-agents.

27. The High Court shall, from time to time, fix and regulate the fees payable by any party in respect of the fees of his adversary's Advocate, Pleader, Vakíl, Mukhtár or Attorney upon all proceedings (a) on the Appellate Side of such Court, (b) in the case of a High Court not established by Royal Charter, on its Original Side, and (c) in subordinate Courts.

The Chief Controlling Revenue Authority shall, from time to time, fix and regulate the fees payable upon all proceedings in the Revenue-offices by any party in respect of the fees of his adversary's Advocate, Pleader, Vakíl, Attorney, Mukhtár or Revenue-agent.

Tables of the fees so fixed shall be published in the local official Gazette.

Nothing in this section applies to the Agents mentioned in the proviso to section twenty.

28. No agreement entered into by any Pleader, Mukhtár or Revenue-agent with any person retaining or employing him respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of business done or to be done by such Pleader, Mukhtár or Revenue-agent, shall be valid unless it is made in writing signed by such person, and is, within fifteen days from the day on which it is executed, filed in the District Court or in some Court in which some portion of the business in respect of which it has been executed has been or is to be done.

29. Where a suit is brought to enforce any such agreement, if the agreement is not proved to be fair and reasonable, the Court may reduce the amount payable thereunder or order it to be cancelled, and the costs, fees, charges and disbursements, in respect of the

ment, make rules as to the qualifications and admission of proper persons to be Advocates of such Court.

Subject to such rules, the Chief Court may admit and enrol such and so many Advocates as it thinks fit; and such Advocates shall be entitled to appear for the suitors of such Court, and to plead or to act, or to plead and act, for such suitors according as such Court may by its rules determine, and subject to such rules.

The Chief Court may dismiss any Advocate so enrolled or suspend him from practice :

Provided that no such Advocate shall be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the Chief Court."

FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and date of enactments.	Title.	Extent of repeal.
Act XX of 1865...	To amend the law relating to Pleaders and Mukhtárs.	The whole.
Act XXIX of 1865	To amend the Pleaders, Mukhtárs and Revenue-agents Act, 1865.	So much as has not been repealed.
Act IX of 1866...	To extend to the Sudder Court of the North-Western Provinces certain provisions of "The Pleaders, Mukhtárs and Revenue-agents Act, 1865," and of Act No. XXIX of 1865.	The whole.
Act IV of 1876 ...	To authorize Revenue-agents to practise in certain suits in the Munsifs' Courts of the Lower Provinces of Bengal.	The whole.
Act XVII of 1877	The Panjáb Courts Act, 1877.	Sections forty-two, forty-three, forty-four and forty-five.

SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES.

(See section 25.)

I.

For a certificate authorizing the holder to practise as a Pleader—

(a) In the High Court and any subordinate Court—rupees fifty :

(b) In any Court of Small Causes in a Presidency-town—rupees twenty-five :

(c) In all other subordinate Courts—rupees twenty-five :

(d) In the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildárs, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees fifteen :

(e) In the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

II.

For a certificate authorizing the holder to practise as a Mukhtár—

(f) In the High Court and any subordinate Court—rupees twenty-five :

(g) In any Court of Small Causes in a Presidency-town—rupees fifteen :

(h) In all other subordinate Courts—rupees fifteen :

(i) In the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildárs, in Courts of Small Causes outside the Presidency-towns—and in all Criminal Courts subordinate to the High Court—rupees ten :

(j) In the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

III.

For a certificate authorizing the holder to practise as a Revenue-agent—

(k) In the office of the Chief Controlling Revenue Authority and in any Revenue-office subordinate to such Authority—rupees fifteen :

(l) In the office of a Commissioner and in any Revenue-office subordinate to a Commissioner—rupees ten :

(m) In the office of a Collector and in any Revenue-office subordinate to a Collector—rupees five.

D. FITZPATRICK,

Secy. to the Govt. of India,
Legislative Department.

[Published with the "Bombay Government Gazette" on the 20th November 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 29th October 1879, and was promulgated for general information in the *Gazette of India* on the 1st November 1879:—

Act No. XVII of 1879.

THE DEKKHAN AGRICULTURISTS RELIEF ACT, 1879.

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An Act for the Relief of Indebted Agriculturists in certain parts of the Dekkhan.

WHEREAS it is expedient to relieve the agricultural classes in certain parts of the Dekkhan from indebtedness; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be cited as "The Dekkhan Agriculturists Relief Act, 1879":
- Short title.
- Commencement. and it shall come into force on the first day of November, 1879.
- Sections eleven, fifty-six, sixty and sixty-two extend to the whole of British India. The rest of this Act extends only to the districts of Puna, Satara, Sholapur and Ahmadnagar.
- Local extent.
2. In this Act, unless there is something repugnant in the subject or context,—
- Interpretation-clause.
- (1) "money" includes agricultural produce, implements and stock:
- "money":
- (2) "agriculturist" means a person who earns his livelihood wholly or principally by agriculture carried on within the limits of the said districts; and every agriculturist shall be deemed to "reside" where he so earns his livelihood.

CHAPTER II.

OF THE HEARING OF CERTAIN SUITS BY SUBORDINATE JUDGES.

Application of this chapter. 3. The provisions of this chapter shall apply to—

(a) suits for an account instituted on or after the first day of November, 1879, by an agriculturist in the Court of a Subordinate Judge under the provisions hereinafter contained, and

(b) suits of the descriptions next hereinafter mentioned and instituted on or after the same date—

(1) when such suits are heard by Subordinate Judges of the first class and the subject-matter thereof does not exceed in amount or value five hundred rupees, or

(2) when such suits are heard by Subordinate Judges of the second class and the subject-matter thereof does not exceed in amount or value one hundred rupees, or

(3) when such suits are heard by Subordinate Judges of the second class and the subject-matter thereof exceeds one hundred rupees, but does not exceed five hundred rupees, in amount or value, and the parties to the suits agree that such provisions shall apply thereto.

The descriptions of suits referred to in clause (b) are the following (namely) :—

(w) suits for the recovery of money alleged to be due to the plaintiff—

on account of money lent or advanced to, or paid for, the defendant, or,

as the price of goods sold; or

on an account stated between the plaintiff and defendant, or

on a written or unwritten engagement for the payment of money not hereinbefore provided for ;

(x) suits for the recovery of money due on contracts other than the above and suits for rent or for moveable property, or for the value of such property, or for damages; and

(y) suits for foreclosure or for the possession of mortgaged property, or for sale of such property, or foreclosure or sale, when the defendant, or any one of the defendants not being merely a surety for the principal debtor, is an agriculturist; and

(z) suits for the redemption of mortgaged property when the plaintiff, or, where there are several plaintiffs, any one of the plaintiffs, is an agriculturist.

4. Where a Subordinate Judge of the first class and a Subordinate Judge of the second class have ordinary jurisdiction in the same local area, every suit referred to in section three, clause (b), and instituted in such local area shall, if the amount or value of the subject-matter of such suit exceeds one hundred rupees and does not exceed five hundred rupees, be instituted in the Court of the Subordinate Judge of the first class.

5. Notwithstanding anything contained in the Bombay Civil Courts Act, 1869, section 28, no Subordinate Judge shall be invested with the jurisdiction of a Judge of a Court of Small Causes; and any such jurisdiction heretofore conferred on any Subordinate Judge shall be deemed, except as regards suits instituted before the said first day of November, 1879, to have been withdrawn.

6. The Local Government may, from time to time, by notification in the local Gazette, direct that any class of suits which a Subordinate Judge would be precluded from hearing by section 12 of Act XI of 1865 (to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature) shall be heard and determined by him and not otherwise, and may, by a like notification, cancel any such direction.

7. In every case in which it seems to the Court possible to dispose of a suit at the first hearing, the summons shall be for the final disposal of the suit.

In every suit the Court shall examine the defendant as a witness unless, for reasons to be recorded by it in writing, it deems it unnecessary so to do.

8. In suits of the descriptions mentioned in section three, clauses (w) and (x), no party shall be entitled without the permission of the Court to file a written statement.

9. When the subject-matter of any suit does not exceed ten rupees in amount or value, it shall not be necessary to take down the evidence or make a memorandum thereof in manner provided by the Code of Civil Procedure; but in cases where the evidence is not so taken down and no memorandum is so made, the substance of the evidence shall be stated in the judgment.

10. No appeal shall lie from any decree or order passed in any suit to which this chapter applies.

CHAPTER III.

OF SUITS AND OTHER PROCEEDINGS TO WHICH AGRICULTURISTS ARE PARTIES.

11. Every suit of the description mentioned in section three, clause (w), may, if the defendant, or, when there are several defendants, one only of such defendants, is an agriculturist, be instituted and tried in a Court within the local limits of whose jurisdiction such defendant resides and not elsewhere.

Every such suit in which there are several defendants who are agriculturists may be instituted and tried in a Court within the local limits of whose jurisdiction any one of such defendants resides and not elsewhere.

Nothing herein contained shall affect sections 22 to 25 (both inclusive) of the Code of Civil Procedure.

12. In any suit of the description mentioned in section three, clause (w) in which the defendant or any one of the defendants, not being merely a surety of the principal debtor, is an agriculturist,

and in any suit of the descriptions mentioned in section three, clause (y) or clause (z),

the Court shall, if the amount of the creditor's claim is disputed, enquire into the history and merits of the case, from the commencement of the transactions between the parties and the persons (if any) through whom they claim out of which the suit has arisen, first, with a view to ascertaining whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise, and secondly, with a view to taking an account between such parties in manner hereinafter provided.

When the amount of the claim is admitted and the Court for reasons to be recorded by it in writing believes that such admission is true and is made by the debtor with a full knowledge of his legal rights as against the creditor, the Court shall not be bound so to enquire, but may do so if it thinks fit.

In other cases in which the amount of the claim is admitted the Court shall be bound to enquire as aforesaid.

Section IX, clause first, of Bombay Regulation V of 1827 is repealed so far as regards any suit to which this section applies.

Nothing herein contained shall affect the right of the parties to require that any matter in difference between them be referred to arbitration.

13. When the Court enquires into the history and merits of a case under section twelve, it shall—

notwithstanding any agreement between the parties or the persons (if any) through whom they claim as to allowing compound interest or setting off the profits of mortgaged property without an account in lieu of interest or otherwise determining the manner of taking the account,

and notwithstanding any statement or settlement of account or any contract purporting to close previous dealings and create a new obligation,

open the account between the parties from the commencement of the transactions and take that account according to the following rules (that is to say) :—

(a) separate accounts of principal and interest shall be taken :

(b) in the account of principal there shall be debited to the debtor such money as may from time to time have been actually received by him or on his account from the creditor and the price of goods, if any, sold to him by the creditor as part of the transactions ;

(c) in the account of principal there shall not be debited to the debtor any money which he may have agreed to pay in contravention of section 257A of the Code of Civil Procedure :

(d) in the account of principal there shall not be debited to the debtor any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made in the course of the transactions, unless the Court, for reasons to be recorded by it in writing, deemed such debit to be reasonable :

(e) in the account of interest there shall be debited to the debtor monthly simple interest on the balance of principal for the time being outstanding at the rate allowed by the Court as hereinafter provided :

(f) all money paid by or on account of the debtor to the creditor or on his account, and all profits, service or other advantages of every description, received by the creditor in the course of the transactions (estimated, if necessary, at such money value as the Court in its discretion, or with the aid of arbitrators appointed by it, may determine) shall be credited first in the account of interest ; and when any payment is more than sufficient to discharge the balance of interest due at the time it is made, the residue of such payment shall be credited to the debtor in the account of principal :

(g) the accounts of principal and interest shall be made up to the date of instituting the suit, and the aggregate of the balances (if any) appearing due on both such accounts against the debtor on that date shall be deemed to be the amount due at that date except when the balance appearing due on the interest account exceeds that appearing due on the principal account, in which case double the latter balance shall be deemed to be the amount then due.

14. The interest to be awarded in taking an account according to the rules set forth in section thirteen shall be—

(a) the rate, if any, agreed upon between the parties, or the persons (if any) through whom they claim, unless such rate is deemed by the Court to be unreasonable ; or

(b) if such rate is deemed by the Court unreasonable, or if no rate was agreed upon, or when any agreement between the parties, or the persons (if any) through whom they claim, to set-off profits without an account in lieu of interest has been set aside by the Court, such rate as the Court deems reasonable.

15. Instead of enquiring into the history and merits of a case under section twelve, or if upon so enquiring the Court is unable to satisfy itself as to the amount which should be allowed on account of principal or interest or both, the Court may, of its own motion, direct that such amount be ascertained by arbitration.

If the parties are willing to nominate arbitrators, the arbitrators shall be nominated by them in such manner as may be agreed upon between them : if the parties are unwilling to nominate arbitrators or cannot agree in respect of such nomination, the Court shall appoint any three persons it thinks fit :

Provided that if all the parties reside in the same village, town or city, and, in the opinion of the Court, three fit persons can be found among the residents of such village, town or city, it shall appoint residents of such village, town or city.

The provisions of sections 508 to 522 (both inclusive) of the Code of Civil Procedure shall apply to every reference to arbitration under this section.

16. Any agriculturist may sue for an account of money lent or advanced to or paid for him by a creditor or due by him to the creditor as the price of goods sold or on a written or unwritten engagement for the payment of money and of money paid by him to the creditor, and for a decree declaring the amount, if any, still payable by him to the creditor.

When any such suit is brought, the amount (if any) payable by the plaintiff shall be determined under the same rules as would be applicable under this Act if the creditor had him sued for recovery of the debt.

17. A decree passed under section sixteen may, besides declaring the amount due, direct that such amount shall be paid by instalments, with or without interest; and, when any such decree so directs, the plaintiff may pay the amount of such decree, or the amount of each instalment fixed by such decree, as it falls due, into court, in default whereof execution of the decree may be enforced by the defendant in the same manner as if he had obtained the decree in a suit to recover the debt.

18. The plaintiff in any suit instituted under section sixteen may at any stage of such suit deposit in court such sum of money as he considers a satisfaction in full of the defendant's claim against him.

Notice of the deposit shall be given by the Court to the defendant, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the defendant on his application.

No interest shall be allowed to the defendant on any sum so deposited from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

19. When a decree has been passed, whether before or after this Act comes into force, under which any sum less than fifty rupees is recoverable from an agriculturist, the Court may, either in the course of execution of such decree or otherwise, if it is satisfied that there is no other claim against him and that he is unable to pay the whole of such sum, direct the payment of such portion of the same, as it considers him able to pay, and grant him a discharge from the balance.

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When the sum payable under the decree amounts to fifty rupees or upwards, or when there are other debts due by the debtor which together with such sum amount to fifty rupees or upwards, the Court may direct proceedings to be taken with respect to him as nearly as may be as if he had applied to be declared an insolvent under the provisions hereinafter contained.

20. The Court may at any time direct that the amount of any decree passed, whether before or after this Act comes into force, against an agriculturist or the portion of the same which it directs under section nineteen to be paid, shall be paid by instalments with or without interest.

21. No agriculturist shall be arrested or imprisoned in execution of a decree for money.

22. No agriculturist's immoveable property shall be attached or sold in execution of any decree or order unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists.

But the Court may, when passing a decree against an agriculturist or at any subsequent time, direct the Collector to take possession, for any period not exceeding seven years, of any such property of the judgment-debtor to the possession of which he is entitled, and which, in the opinion of the Collector, is not required for his support and the support of the members of his family dependent on him, and the Collector shall thereupon take possession of such property and deal with the same for the benefit of the decree-holder in manner provided by section twenty-nine.

The provisions of section thirty-one shall *mutatis mutandis* apply to any property so dealt with.

23. No provision of this chapter shall apply to the proceedings in the Courts of Village-Munsifs unless such provision has been specially extended thereto under the power hereinafter conferred.

CHAPTER IV.

OF INSOLVENCY.

24. Every Subordinate Judge shall have the powers conferred by sections 344 to 359 (both inclusive) of the Code of Civil Procedure, as modified by the provisions next hereinafter contained, for the purpose of dealing with applications under the Code of Civil Procedure or under this Act to have agriculturists residing within the local limits of his ordinary jurisdiction declared insolvent and proceedings taken under orders passed under the second clause of section nineteen; and, except as provided in chapter VII of

this Act, no such application or proceeding shall be dealt with by any other Court.

25. Any agriculturist whose debts (if any) amount to fifty rupees or upwards may apply to any Subordinate Judge within the local limits of whose ordinary jurisdiction he resides to be declared an insolvent, though he has not been arrested or imprisoned, and though no order of attachment has issued against his property, in execution of a decree.

26. Notwithstanding anything contained in section 351 of the Code of Civil Procedure, the Court shall declare an agriculturist an insolvent if it is satisfied that he is in insolvent circumstances, and that the application to have him declared an insolvent has been properly made under section 344 of the said Code or section twenty-five of this Act.

27. No person other than the Nazir of the Court shall be appointed as receiver, and no receiver shall be entitled to commission.

28. In determining under section 352 of the said Code the amount of any claim of the nature referred to in section twelve of this Act due by an insolvent agriculturist, the Court shall proceed in the manner prescribed by sections twelve to fifteen of this Act, both inclusive.

29. No immoveable property of the insolvent shall vest in the receiver; but the Court may direct the Collector to take into his possession, for any period not exceeding seven years from the date on which the receiver has been appointed, any immoveable property to the possession of which the insolvent is entitled, and which, in the opinion of the Collector, is not required for the support of the insolvent and the members of his family dependent on him, and, subject to any rules the Local Government may from time to time make in this behalf, to manage the same for the benefit of the creditors, by letting it on lease or otherwise:

Provided that if the insolvent or his representative in interest at any time pays into court the balance of the scheduled debts then unpaid, he shall, subject to any rights created in favour of other persons by the Collector, be entitled to recover possession of such property.

A Collector managing property under this section shall during the management have all the powers which the owner might as such have legally exercised, and shall receive and recover all rents and profits of such property, and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by an owner, all powers possessed by a Collector for securing and recovering the land-revenue due to Government except the powers mentioned in the Bombay Land-Revenue Code, 1879, section 150, clauses (b), (d) and (e).

Nothing in this section shall authorize the Court to direct the Collector to take into his possession any houses or other buildings belonging to and occupied by an agriculturist.

30. When any scheduled debt is secured by a mortgage of any portion of the insolvent's immoveable property, the Court may direct the Collector, if he can obtain a premium equal to the amount of such debt by letting such property for a term not exceeding twenty years, to let such property, and, if he cannot so obtain such premium, to sell such property under section 325 of the Code of Civil Procedure.

Where property is let under this section, the premium shall be applied to the payment of the debt, and the rent, if any, shall for a period of seven years from the date of such letting be paid to the receiver and thereafter to the insolvent or his representative in interest.

When property is sold under this section, the sale proceeds shall be applied, first, to the payment of the debt; and the balance, if any, shall be paid to the receiver.

31. So long as any management under section twenty-nine or letting under section thirty continues, the insolvent and his representative in interest shall be incompetent to mortgage, charge, lease or alienate the property managed or let or any part thereof.

32. When the balance available for distribution among the scheduled creditors under section 356 of the said Code has been distributed, the claims of such creditors shall be deemed to have been discharged, except as regards the right to share in the profits of any property managed by the Collector under section twenty-nine or let by him under section thirty.

33. No appeal shall lie from any order passed under this chapter except orders passed in exercise of the power conferred by section 359 of the Code of Civil Procedure.

CHAPTER V.

OF VILLAGE-MUNSIFS.

34. The Local Government may from time to time appoint any Patel of a village or any other person possessing local influence in a village to be a Village-Munsif for such village or for such village and for any other villages, the sites of which are situate in the same district not more than two miles from the site of such village, and may cancel any such appointment.

35. Every Village-Munsif so appointed shall take cognizance of suits of the description mentioned in section three, clause (w), when the subject-matter thereof does not exceed ten rupees in amount or value, and all the defendants at the time of the commencement of the suit actually

and voluntarily reside or carry on business or personally work for gain within the local area of which such Village-Munsif is appointed.

Notwithstanding anything hereinbefore contained, a suit cognizable by a Village-Munsif shall not be heard by any other Court:

Provided that the District Judge may, from time to time, transfer any suit instituted before a Village-Munsif to his own Court or any other Civil Court in the district for trial:

Provided also that no Village-Munsif shall try any suit to or in which he is a party or is personally interested, or shall adjudicate upon any proceeding connected with or arising out of such suit.

36. The District Judge may on a petition being presented within thirty days from the date of any decree or order of a Village-Munsif by any party deeming himself aggrieved by such decree or order, set aside such decree or order on the ground of corruption, gross partiality or misconduct of the Village-Munsif and pass such other decree or order as he thinks fit.

Except as provided in this Act and in section 622 of the Code of Civil Procedure, every decree and order of a Village-Munsif shall be final.

37. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act for regulating the procedure of Village-Munsifs and for conferring on them or any of them all or any of the powers for the trial of suits or the execution of decrees exercised by a Civil Court under the Code of Civil Procedure or any other enactment for the time being in force.

CHAPTER VI. OF CONCILIATION.

38. The Local Government may from time to time appoint any person other than an officer of police to be a Conciliator and may cancel any such appointment.

Every Conciliator appointed under this section shall be appointed only for a term not exceeding three years, but may on the expiration of the period for which he has been appointed be again appointed for a further term not exceeding three years.

Every Conciliator so appointed shall exercise his functions under this Act in respect of matters affecting agriculturists residing within such local area as the Local Government may, from time to time, prescribe.

39. When any dispute arises as to, or there is a prospect of litigation regarding, any matter within the cognizance of a Civil Court between two or more parties, one of whom is an agriculturist residing within any

local area for which a Conciliator has been appointed, or when application for execution of any decree in any suit to which any such agriculturist is a party, and which was passed before the date on which this Act comes into force is contemplated, any of the parties may apply to such Conciliator to effect an amicable settlement between them.

40. If the application be made by one of the parties only, the Conciliator shall take down, or cause to be taken down, in writing a concise statement of the applicant's case, and shall thereupon, by summons or by such other means as he deems fit, invite the person against whom such application is made to attend before him at a time and place to be fixed for this purpose, and shall direct the applicant also to be present at such time and place.

If the said person fails to appear at the time first fixed, the Conciliator may, if he thinks fit, from time to time extend the period for his appearance.

41. Whenever all the parties are present, the Conciliator shall call upon each in turn to explain his case regarding the matter in question; and shall use his best endeavours to induce them to agree to an amicable settlement or to submit such matter to arbitration.

42. The Conciliator shall hear but shall not record the statement of statements of witnesses, any witness and shall peruse any book of account or other document produced by the parties, or so much thereof as may be necessary, and, if any party or witness consents in writing to affirm any statement upon oath in any form not repugnant to justice or decency and not purporting to affect any third person, shall provide for such oath being duly taken in the presence of all the parties.

43. If on the day on which the case is first heard by the Conciliator or on any subsequent day to which he may adjourn the hearing, the parties come to any agreement, either finally disposing of the matter or for referring it to arbitration, such agreement shall be forthwith reduced to writing, and shall be read and explained to the parties, and shall be signed or otherwise authenticated by the Conciliator and the parties respectively.

Explanation.—A Conciliator may be appointed arbitrator under this section.

44. When the agreement is one finally disposing of the matter, the Conciliator shall forward the same in original to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place where the agriculturist who is a party thereto resides;

and shall at the same time deliver to each of the parties a written notice to show cause before such Judge, within one month from the date of such delivery, why such agreement ought not to be filed in such Court.

The Court which receives the agreement shall after the expiry of the said period of one month, unless cause has been shown as aforesaid, order such agreement to be filed; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed and from which no appeal lies.

45. When the agreement is one for referring the matter to arbitration, the Conciliator shall forward it to the Court, having jurisdiction in the matter, and such Court shall cause it to be filed and proceed thereon in manner provided by sections 523 and 524 of the Code of Civil Procedure.

46. If the person against whom any application is made before a Conciliator cannot after reasonable search be found, or if he refuses or neglects, after a reasonable period has been allowed for his appearance, to appear before the Conciliator, or if he appears but the endeavour to induce the parties to agree to an amicable settlement or to submit the matter in question to arbitration fails, the Conciliator shall, on demand, give to the applicant, or when there are several applicants to each applicant, a certificate under his hand to that effect.

47. No suit and no application for execution of a decree passed before the date on which this Act comes into force to which any agriculturist residing within any local area for which a Conciliator has been appointed is a party shall be entertained by any Civil Court, unless the plaintiff produces such certificate as aforesaid in reference thereto.

48. In computing the period of limitation prescribed for any such suit the time intervening between the application made by the plaintiff under section thirty-nine and the grant of the certificate under section forty-six shall be excluded.

49. The Local Government may from time to time make rules—

(a) regulating the procedure before Conciliators in matters not provided for by this Act;

(b) fixing the charges to be made by Conciliators for anything done by them under this chapter; and

(c) determining what record and accounts shall be kept by Conciliators and what returns shall be framed and furnished by them.

CHAPTER VII.

SUPERINTENDENCE AND REVISION.

50. The District Judge shall inspect, supervise and control the proceedings, under chapter II and chapter IV of this Act, of all Subordinate Judges and the proceedings of all Village-Munsifs and Conciliators.

51. The District Judge may—

(a) transfer to his own file, any suit or other matter pending before the Court of any Subordinate Judge under chapter II or chapter IV of this Act, and may dispose of the same as if he were a Subordinate Judge; or

(b) stay the proceedings in any such suit or matter, and sit together with such Judge as a Bench for trial with such Judge as a Bench to dispose of such suit or matter in accordance with the provisions of this Act.

If the members of any Bench sitting under this section differ in opinion, the opinion of the District Judge shall prevail.

52. The Local Government shall appoint an Assistant or Subordinate Judge to inspect and supervise, subject to the control of the District Judge, the proceedings of all Subordinate Judges, under chapter II and chapter IV of this Act, and of all Village-Munsifs and Conciliators in each of the said districts of Poona, Sátára, Sholápur and Ahmednagar:

Provided that, if the local Government thinks fit, the same Assistant or Subordinate Judge may be so appointed for two or more such districts.

Any Assistant or Subordinate Judge appointed under this section may in any district for which he is so appointed, if the District Judge so directs, exercise the powers of the District Judge under section fifty-one of this Act, and transfer any suit under section twenty-five of the Code of Civil Procedure.

53. The District Judge may, for the purpose of satisfying himself of the legality or propriety of any decree or order passed by a Subordinate Judge in any suit or other matter under chapter II or chapter IV of this Act, and as to the regularity of the proceedings therein, call for and examine the record of such suit or matter, and pass such decree or order thereon as he thinks fit;

and any Assistant Judge or Subordinate Judge appointed by the Local Government under section fifty-two may similarly, in any district for which he is appointed, call for and examine the record of any such suit or matter, and if he see cause therefor, may refer the same, with his remarks thereon, to the District Judge and the District Judge may pass such decree or order on the case as he thinks fit:

Provided that no decree or order shall be reversed or altered for any error or defect, or otherwise, unless a failure of justice appears to have taken place.

54. The Local Government from time to time may, and if the Government of India so direct, appoint an officer, as Special Judge, to discharge in the place of the District Judge all the functions of the District Judge under this Act, in respect of the proceedings of all Subordinate Judges, Village-Munsifs and Conciliators, and may cancel any such appointment.

Such Special Judge shall not, without the previous sanction of the Government of India, discharge any public function, except those which he is empowered by this Act to discharge.

If any conflict of authority arises between the Special Judge and the District Judge the High Court shall pass such order thereon consistent with this Act as it thinks fit.

No appeal shall lie from any decree or order passed by the District Judge under this chapter, or by the Special Judge, or by an Assistant or Subordinate Judge appointed under section fifty-two, or by a Bench, in any suit or proceeding under this Act.

CHAPTER VIII.

REGISTRATION BY VILLAGE-REGISTRARS.

55. The Local Government may, from time to time,—

(a) appoint such persons as it thinks fit, whether public officers or not, to be Village-Registrars, for such local areas as it may from time to time prescribe ;

(b) direct that the Village-Registrar for any local area to discharge the functions of a Village-Registrar for any other local areas concurrently with the Village-Registrars of such other local areas ; and

(c) delegate to any person by name or in virtue of his office the powers conferred on it by this section ; and may cancel any such appointment, direction, or delegation.

56. No instrument which purports to create, modify, transfer, evidence or extinguish an obligation for the payment of money or a charge upon any property, or to be a conveyance or lease, and which is executed after this Act comes into force by an agriculturist residing in any local area for which a Village-Registrar has been appointed, shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon by any such person or by any public officer unless such instrument is written by, or under the superintendence of, and is attested by a Village-Registrar :

Provided that nothing herein contained shall prevent the admission of any instrument in evidence in any criminal proceeding.

57. When any persons, one of whom is an agriculturist residing in any such local area, desire to execute any such instrument, they shall present themselves before the Village-Registrar appointed by the Local Government for the area in which such agriculturist, or, when there are several such agriculturists, any one of such agriculturists, resides, and such Registrar, after satisfying himself in such manner as he deems fit as to the identity of the parties and

receiving from them the fee (if any) prescribed by the Local Government in this behalf and the stamp (if any) which may be required by law, shall write the instrument, or cause the same to be written under his superintendence, and after reading the same aloud or causing it to be so read in the hearing of the parties shall require them to execute it in his presence.

Every instrument so written and executed shall at the time of execution be attested by the Village-Registrar, and also, if any of the parties thereto is unable to read such instrument, by two respectable witnesses.

58. Every Village-Registrar shall keep a register of instruments executed before him in such form as shall, from time to time, be prescribed by the Inspector-General of Registration.

As soon as all the parties to any instrument have executed it before a Village-Registrar, he shall make a copy of it or cause a copy of it to be made in his register, and shall deliver the original instrument to the party entitled to the custody of the same, and a certified copy thereof to the other party, or to each of the other parties if there be more than one.

Previous to delivery, the original instrument and each such copy shall be endorsed under the Village-Registrar's signature with the date of registration, the name and residence of the Village-Registrar and the volume and page of the register in which the instrument has been registered.

59. In every instrument written by or under the superintendence of the Village-Registrar, the amount and nature of the consideration, if any, shall be fully stated.

The Village-Registrar shall also endorse upon the instrument a note under his hand, recording whether or not the transfer of the consideration stated therein, or of any part thereof, took place in his presence.

If the instrument modifies, or wholly or partly supersedes, a previous instrument, such previous instrument shall be produced before the Village-Registrar and shall be fully described in the instrument to be executed, and shall be marked by the Village-Registrar under his hand for identification.

60. Every instrument executed and registered in accordance with the foregoing provisions shall be deemed to have been duly registered under the provisions of the Indian Registration Act, 1877 ; and no instrument which ought to have been executed before a Village-Registrar but has been otherwise executed shall be registered by any officer acting under the said Act, or in any public office, or shall be authenticated by any public officer.

61. The Inspector-General of Registration shall exercise, by himself and his subordinates, a general superintendence over all Village-Registrars, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Act for regulating their proceedings and for providing for the custody of their records.

62. Nothing in this Act shall be deemed to require any instrument to which the Government or any officer of Government in his official capacity is a party to be executed before a Village-Registrar.

63. The Local Government may, from time to time, make rules regulating the appointment, suspension, dismissal and remuneration of Village-Registrars, and prescribing the fees to be levied by them.

CHAPTER IX.

OF RECEIPTS AND STATEMENTS OF ACCOUNT.

64. The person to whom any agriculturist makes any payment of money in liquidation of a debt shall, at the time of such payment, tender to such agriculturist, whether he demand the same or not, a written receipt for the amount of such payment.

If such payment is made under any instrument executed before a Village-Registrar, the receipt shall, if the agriculturist so require, be endorsed on the copy of the instrument furnished to him under section fifty-eight.

65. Any agriculturist by whom any money is due under any instrument shall, on such date in each year as the Local Government, having regard to local custom, may from time to time, by notification in the official Gazette, fix, be entitled to receive, on demand, from the person claiming under such instrument, a statement up to that date of his account under such instrument.

66. Any agriculturist in whose name an account is kept by any trader or money-lender shall be entitled to receive from such trader or money-lender, on demand, a pass-book, and to require, from time to time, that his account up to date be written therein and authenticated by the signature or mark of the said trader or money-lender.

An entry so made in any such pass-book of any payment made to the trader or money-lender shall be deemed to be equivalent, for the purposes of section sixty-four, to the grant of a receipt for the amount so entered.

No person whose account has been written in a pass-book as required by this section shall be entitled also to demand an account under section sixty-five.

67. Any person who, in contravention of section sixty-four, sixty-five or sixty-six, refuses or neglects to tender a receipt or a statement of account or a pass-book, or to write, or cause to be written, any account or any part of an account in a pass-book, or to attest the same when so written, shall be punished for each such offence with fine which may extend to one hundred rupees.

CHAPTER X.

LEGAL PRACTITIONERS.

68. No pleader, vakil, or mukhtár, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any case before a Conciliator or a Village-Munsif, or to any case cognizable by a Subordinate Judge under this Act, the subject-matter whereof does not exceed in amount or value one hundred rupees:

Provided that any party to any such case may be permitted, on reasonable cause being shown to the satisfaction of the Conciliator, Village-Munsif or Subordinate Judge, to employ any relative, servant or dependent who is not, and has not previously been, a pleader, vakil or mukhtár, or an advocate or attorney of a High Court, to appear either conjointly with, or in lieu of, such party:

Provided also that a Subordinate Judge may permit a pleader, vakil or mukhtár, or an advocate or attorney of a High Court, to appear before him on behalf of any party to any case of the description aforesaid in which, for reasons to be recorded by him in writing, he deems it desirable that the party should have such assistance.

When a relative, servant or dependent appears in lieu of a party, he shall be furnished by him with a power-of-attorney defining the extent to which he is empowered to act.

69. When in any suit or proceeding before a Subordinate Judge under this Act to which an agriculturist is a party any pleader, vakil or mukhtár, or any advocate or attorney of a High Court, appears on behalf of any party opposed to such agriculturist, the Subordinate Judge, if he is of opinion that such agriculturist has not the means of obtaining proper professional assistance, may, with the consent of such agriculturist, direct the Government pleader or any other fit person (who is willing so to do) to appear on his behalf.

CHAPTER XI.

MISCELLANEOUS.

70. No mortgage, lien or charge of or upon any immoveable property belonging to an agriculturist shall be valid unless it is created by an instrument in writing under the hand of the person creating such mortgage, lien or charge.

Nothing in this section shall apply to any mortgage, lien or charge created by mere opera-

tion of law, or in favour of the Government or of any officer of the Government in his official capacity.

71. Every instrument executed before this Act comes into force and purporting to create any mortgage, lien or charge of or upon any immoveable property belonging to an agriculturist shall be deemed to be an instrument required by section 17 of the Indian Registration Act, 1877, to be registered; and any such instrument which before the passing of this Act was not so required to be registered may, notwithstanding anything contained in the said Indian Registration Act, 1877, be registered under that Act within one year from the date on which this Act comes into force.

Every Village-Registrar appointed under this Act shall be deemed to be a Sub-Registrar for the purpose of so registering such instruments; and the local area for which he is appointed shall be deemed for such purpose to be his sub-district.

Nothing in this section applies to an instrument purporting to create a mortgage, lien or charge in favour of the Government or of any officer of the Government in his official capacity.

72. In any suit against an agriculturist under this Act for the recovery of money the following Limitation. of money the following periods of limitation shall be deemed to be substituted for those prescribed in the second column of the second schedule annexed to the Indian Limitation Act, 1877 (that is to say):—

(a) when such suit is based on a written instrument registered under this Act or any law in force at the date of the execution of such instrument,—twelve years;

(b) in any other case,—six years:

Provided that nothing herein contained shall revive the right to bring any suit which would have been barred by limitation if it had been instituted immediately before this Act comes into force.

73. The decision of any Court of first instance that any person is or is not an agriculturist shall for the purposes of this Act be final.

74. Except in so far as it is inconsistent with this Act, the Code of Civil Procedure shall apply in all suits and proceedings before Subordinate Judges under this Act.

75. The Local Government may, from time to time, make all such rules as it may deem necessary for carrying out the provisions herein contained.

76. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall thereupon, in so far as they are consistent with this Act, have the force of law.

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

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THE



Bombay Government Gazette.

Published by Authority.

THURSDAY, 27TH NOVEMBER 1879.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

LEGISLATIVE DEPARTMENT.

Bombay Castle, 21st November 1879.

No. 369.—*Erratum.*—In line 12 of Section 127 of “The Bombay Land Revenue Code, 1879,” as published in the *Government Gazettes* of the 17th, 24th and 31st July 1879, for “Act” read “Acts.”

By order of His Excellency the Honourable the Governor in Council,

C. G. W. MACPHERSON,
Acting Under Secretary to Government.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 14th November 1879, and was promulgated for general information in the *Gazette of India* on the 15th November 1879 :—

Act No. XX. of 1879.

An Act to provide for the better prevention of Glanders and Farcy among Horses.

WHEREAS it is expedient to provide for the better prevention of glanders and farcy among horses; It is hereby enacted as follows :—

1. This Act may be called "The Glanders and Farcy Act, 1879."

It extends to the whole of British India, except the territories respectively administered by the Governor of Fort St. George in Council, the Governor of Bombay in Council and the Lieutenant-Governor of Bengal;

and it shall come into force at once.

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

"horse" includes also ponies, asses, mules and jennets:

"diseased" means affected with glanders or farcy.

3. The Local Government may, by notification in the official Gazette, apply this Act, or any provision of this Act, to any local area, to be specified in such notification, within the territories administered by it, and may in like manner amend or cancel any such notification.

4. When this Act has been so applied to any local area, the Local Government may, by notification in the official Gazette, appoint either by name or by virtue of their office such persons as it thinks fit to be Inspectors under this Act and to exercise and perform, within the whole of such local area or such portions thereof as it may from time to time prescribe, the powers conferred and the duties imposed by this Act on such officers.

Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

Every person so appointed shall be deemed a public servant within the meaning of the Indian Penal Code.

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5. Within the local limits for which he is so appointed, any such Inspector may seize any horse which he has reason to believe, from personal knowledge or from information given by any person and taken down in writing, is diseased.

6. For the purpose of making such seizure, such Inspector may, subject to such rules as the Local Government may from time to time make in this behalf, enter and search any field, building or other place where he has reason to believe that any such horse is to be found.

7. On any such seizure, the Inspector shall cause the horse so seized to be examined as soon as possible by such Veterinary Surgeon as the Local Government may from time to time appoint in this behalf.

8. If such Surgeon certifies in writing that such horse is diseased, the Inspector shall cause the same to be immediately destroyed; but if such Surgeon does not so certify, the Inspector shall at once deliver the same to the person entitled to the possession thereof.

9. When any diseased horse has been in any building, shed or other enclosed place, or in any open lines, the Inspector may issue a notice to the owner of such building, shed, place or lines, or the person in charge thereof, directing him to have the same disinfected, and the internal fittings thereof, or such other things found therein or near thereto as the Local Government may from time to time by rule prescribe, destroyed.

On the failure or neglect of such owner or other person to comply with such notice within a reasonable time, the Inspector shall cause such building, shed, place or lines to be disinfected, and such fittings or other things to be destroyed, and the expense (if any) thereby incurred may be recovered from such owner or other person as if it were a fine.

10. The owner or any person in charge of a diseased horse shall give immediate information of such horse being diseased to the Inspector or to some officer of Police.

11. No person in charge of any horse which has been in the same field, building or place or in contact with a diseased horse shall move such horse, except in good faith for the purpose

of preventing infection or under a license to be granted by the Inspector and subject to the conditions of such license.

12. Any Inspector who, without reasonable ground of suspicion, enters or searches any field, building or other place, or vexatiously and unnecessarily seizes or detains any horse on the pretence that it is diseased, 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.

No prosecution under this section shall be instituted after the expiry of three months from the date on which the offence has been committed.

13. Any person who refuses or neglects to comply with any notice issued by the Inspector under section 9; or who moves any horse in contravention of section eleven, shall be punished with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

14. The Local Government may, from time to time, make rules, consistent with this Act,—

(a) for regulating entries and searches by Inspectors under this Act;

(b) for regulating the destruction of horses certified under section eight to be diseased, and the disposal of the carcasses of such horses;

(c) for regulating the disinfecting of buildings and places in which diseased horses have been, and for prescribing what things found therein or near thereto shall be destroyed;

(d) for regulating the grant of licenses under section eleven, and the conditions on which such licenses shall be granted; and

(e) generally for carrying out the purposes of this Act.

All such rules shall be published in the official Gazette, and shall thereupon have the force of law.

Any person breaking a rule made under this section shall be punished with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

15. All diseased horses destroyed under the orders of the Governor General in Council or the Local Government in the districts of Ráwalpindí and Pesháwar previous to the passing of this Act shall be deemed to have been destroyed in accordance with law.

D. FITZPATRICK,

Secretary to the Government of India,
Legislative Department.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 14th November 1879, and was promulgated for general information in the *Gazette of India* on the 15th November 1879:—

Act No. XXI. of 1879.

THE FOREIGN JURISDICTION AND EXTRADITION ACT, 1879.

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An Act to provide for the trial of offences committed in places beyond British India and for the Extradition of Criminals.

WHEREAS by treaty, capitulation, agreement, grant, usage, sufferance and other lawful means the Governor General of India in Council has power and jurisdiction within divers places beyond the limits of British India; and whereas such power and jurisdiction have, from time to time, been delegated to Political Agents and others acting under the authority of the Governor General in Council; and whereas, doubts having arisen how far the exercise of such power and jurisdiction, and the delegation thereof, were controlled by and dependent on the laws of British India, the Foreign Jurisdiction and Extradition Act, 1872, was passed to remove such doubts, and also to consolidate and amend the law relating to the exercise and delegation of such power and jurisdiction, and to offences committed by British subjects beyond the limits of British India, and to the extradition of criminals; and whereas it is expedient to repeal that Act and re-enact it with the amendments hereinafter appearing; It is hereby enacted as follows.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Foreign Jurisdiction and Extradition Act, 1879":
Short title.
Extent. It extends to the whole of British India;
to all Native Indian subjects of Her Majesty beyond the limits of British India; and
to all European British subjects within the dominions of Princes and States in India in alliance with Her Majesty;
and it shall come into force on the passing thereof.
Commencement.

But nothing contained in this Act shall affect the provisions of any law or treaty for the time being in force as to the extradition of offenders; and the procedure provided by any such law or treaty shall be followed in every case to which it applies.

2. The Foreign Jurisdiction and Extradition Act, 1872, is repealed; but all existing appointments, delegations, certificates, requisitions and rules made, and all existing notifications, summonses, warrants, orders and directions issued, under that Act shall, in so far as they are consistent herewith, be deemed to have been respectively made and issued hereunder.

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

“Political Agent.” “Political Agent” means and includes—

(1) the principal officer representing the British Indian Government in any territory or place beyond the limits of British India :

(2) any officer in British India appointed by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under this Act for any place not forming part of British India : and

“European British subject” means a European British subject as defined in the Code of Criminal Procedure.

CHAPTER II.

POWERS OF BRITISH OFFICERS IN PLACES BEYOND BRITISH INDIA.

4. The Governor General in Council may exercise any power or jurisdiction which he for the time being has within any country or place beyond the limits of British India, and may delegate the same to any servant of the British Indian Government, in such manner and to such extent as the Governor General in Council from time to time thinks fit.

5. A notification in the *Gazette of India* of the exercise by the Governor General in Council of any such power or jurisdiction, and of the delegation thereof by him to any person or class of persons, and of the rules of procedure or other conditions to which such persons are to conform, and of the local area within which their powers are to be exercised, shall be conclusive proof of the truth of the matters stated in the notification.

6. The Governor General in Council may appoint any European British subject, either by name or by virtue of his office, in any such country or place to be a Justice of the Peace ; and every

such Justice of the Peace shall have in proceedings against European British subjects, or persons accused of having committed offences conjointly with such subjects, all the powers conferred by the Code of Criminal Procedure on Magistrates of the first class who are Justices of the Peace and European British subjects.

The Governor General in Council may direct to what Court having jurisdiction over European British subjects any such Justice of the Peace is to commit for trial.

7. All Political Agents and all Justices of the Peace appointed before the twenty-fifth day of April 1872, by the Governor General in Council or the Governor in Council of the Presidency of Fort St. George or Bombay, in or for any such country or place as aforesaid, shall be deemed to be and to have been appointed, and to have and to have had jurisdiction, under the provisions of this Act.

8. The law relating to offences and to criminal procedure for the time being in force in British India shall, subject as to procedure to such modifications as the Governor General in Council from time to time directs, extend—

(a) to all European British subjects in the dominions of Princes and States in India in alliance with Her Majesty ; and

(b) to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.

CHAPTER III.

INQUIRIES IN BRITISH INDIA INTO CRIMES COMMITTED BY BRITISH SUBJECTS IN PLACES BEYOND BRITISH INDIA.

9. When a European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or

when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found :

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be such, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge is one which ought to be inquired into in British India :

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar

against further proceedings against him under this Act in respect of the same offence at any place beyond the limits of British India.

10. Whenever any such offence as is referred to in section nine is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the place in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

CHAPTER IV.

EXTRADITION.

11. When an offence has been committed or is supposed to have been committed in any State against the law of such State by a person not being a European British subject, and such person escapes into or is in British India, the Political Agent for such State may issue a warrant for his arrest and delivery at a place and to a person to be named in the warrant—

If such Political Agent thinks that the offence is one which ought to be inquired into in such State ;

and if the act said to have been done would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code mentioned in the schedule hereto annexed, or under any other section of the said Code, or any other law, which may, from time to time, be specified by the Governor General in Council by a notification in the *Gazette of India*.

12. Such warrant may be directed to the Magistrate of any district in which the accused person is believed to be, and shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants; and the accused person, when arrested, shall be forwarded to the place and delivered to the officer named in the warrant.

13. Such Political Agent may either dispose of the case himself, or, if he is generally or specially directed to do so by the Governor General in Council, or by the Governor of the Presidency of Fort St. George in Council or by the Governor of the Presidency of Bombay in Council, may give over the person so forwarded, whether he be a Native Indian subject of Her Majesty or not, to be tried by the ordinary Courts of the State in which the offence was committed.

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14. Whenever a requisition is made to the Governor General in Council or any Local Government by or by the authority of the persons for the time being administering the Executive Government of any part of the dominions of Her Majesty, or the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory should be given up, the Governor General in Council or such Local Government, as the case may be, may issue an order to any Magistrate who would have had jurisdiction to inquire into the offence if it had been committed within the local limits of his jurisdiction, directing him to inquire into the truth of such accusation.

The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue; and shall enquire into the truth of such accusation, and shall report thereon to the Government by which he was directed to hold the said inquiry. If, upon receipt of such report, such Government is of opinion that the accused person ought to be given up to the persons making such requisition, it may issue a warrant for the custody and removal of such accused person and for his delivery at a place and to a person to be named in the warrant.

The provisions of section ten shall apply to inquiries held under this section.

15. Whenever any person accused or suspected of having committed an offence out of British India is within the local limits of the jurisdiction of a Magistrate in British India, and it appears to such Magistrate that the Political Agent for any State could, under the provisions of section eleven, issue a warrant for the arrest of such person, or that the persons for the time being administering the Executive Government of any part of the dominions of Her Majesty or the territory of any Foreign Prince or State could demand his surrender, such Magistrate may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and such evidence as would, in his opinion, justify the issue of such a warrant if the offence had been committed within the local limits of his jurisdiction.

Any Magistrate issuing a warrant under this section shall, when the offence appears or is alleged to have been committed in a State for which there is a Political Agent, send immediate information of his proceedings to such Agent, and in other cases shall at once report his proceedings to the Local Government.

16. No person arrested on a warrant issued by a Magistrate under section fifteen shall be detained more than two months from the date of his arrest, unless within such period the Magistrate receives a warrant under section eleven from the

Political Agent for any State for the delivery of such person, or an order with reference to him under section fourteen from the Governor General in Council or Local Government, or such person is in accordance with law delivered up to some Foreign Prince or State.

At any time before the receipt of such a warrant or order the Magistrate, if he thinks fit, may, and the Magistrate if so directed by the Local Government shall, discharge the accused person.

17. The provisions of the Code of Criminal Procedure in respect of Bail shall apply in the case of any person arrested under section fifteen in the same manner as if such person were accused of committing in British India the offence with which he is charged.

CHAPTER V.

MISCELLANEOUS.

18. The Governor General in Council may, from time to time, make rules to provide for—

(1) the confinement, diet and prison discipline of British subjects, European or Native, imprisoned by Political Agents under this Act;

(2) the removal of accused persons under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them; and

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

19. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in the territory of any Foreign Prince or State in like manner as it may be obtained in relation to any civil matter under the Code of Civil Procedure, Chapter XXV.; and the provisions of that chapter shall be construed as if the term "suit" included a proceeding against a criminal: Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

THE SCHEDULE.

SECTIONS OF THE INDIAN PENAL CODE REFERRED TO IN SECTION ELEVEN.

Sections 206, 208 and 224; Sections 230 to 263, both inclusive; Sections 299 to 304, both inclusive; Sections 307, 310 and 311; Sections 312 to 317, both inclusive; Sections 323 to 333, both inclusive; Sections 347 and 348; Sections 360 to 373, both inclusive; Sections 375 to 377, both inclusive; Sections 378 to 414, both inclusive; Sections 435 to 440, both inclusive; Sections 443 to 446, both inclusive; Sections 464 to 468, both inclusive; Sections 471 to 477, both inclusive.

D. FITZPATRICK,

Secy. to the Govt. of India,
Legislative Department.

[Published with the "Bombay Government Gazette" on the 4th December 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

LEGISLATIVE DEPARTMENT.

Bombay Castle, 21st November 1879.

No. 369.—*Erratum.*—In line 12 of Section 127 of "The Bombay Land Revenue Code, 1879," as published in the *Government Gazettes* of the 17th, 24th, and 31st July 1879, for "Act" read, "Acts."

By order of His Excellency the Honourable the Governor in Council,

C. G. W. MACPHERSON,
Acting Under Secretary to Government.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 14th November 1879, and was promulgated for general information in the *Gazette of India* on the 15th November 1879:—

Act No. XX. of 1879.

An Act to provide for the better prevention of Glanders and Farcy among Horses.

WHEREAS it is expedient to provide for the better prevention of glanders and farcy among horses; It is hereby enacted as follows:—

1. This Act may be called "The Glanders and Farcy Act, 1879."

It extends to the whole of British India, except the territories respectively administered by the Governor of Fort St. George in Council, the Governor of Bombay in Council and the Lieutenant-Governor of Bengal;

and it shall come into force at once.

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

"horse" includes also ponies, asses, mules and jennets:

"diseased" means affected with glanders or farcy.

3. The Local Government may, by notification in the official Gazette, apply this Act, or any provision of this Act, to any local area, to be specified in such notification, within the territories administered by it, and may in like manner amend or cancel any such notification.

4. When this Act has been so applied to any local area, the Local Government may, by notification in the official Gazette, appoint either by name or by virtue of their office such persons as it thinks fit to be Inspectors under this Act and to exercise and perform, within the whole of such local area or such portions thereof as it may from time to time prescribe, the powers conferred and the duties imposed by this Act on such officers.

Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

Every person so appointed shall be deemed a public servant within the meaning of the Indian Penal Code.

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5. Within the local limits for which he is so appointed, any such Inspector may seize any horse which he has reason to believe, from personal knowledge or from information given by any person and taken down in writing, is diseased.

6. For the purpose of making such seizure, such Inspector may, subject to such rules as the Local Government may from time to time make in this behalf, enter and search any field, building or other place where he has reason to believe that any such horse is to be found.

7. On any such seizure, the Inspector shall cause the horse so seized to be examined as soon as possible by such Veterinary Surgeon as the Local Government may from time to time appoint in this behalf.

8. If such Surgeon certifies in writing that such horse is diseased, the Inspector shall cause the same to be immediately destroyed; but if such Surgeon does not so certify, the Inspector shall at once deliver the same to the person entitled to the possession thereof.

9. When any diseased horse has been in any building, shed or other enclosed place, or in any open lines, the Inspector may issue a notice to the owner of such building, shed, place or lines, or the person in charge thereof, directing him to have the same disinfected, and the internal fittings thereof, or such other things found therein or near thereto as the Local Government may from time to time by rule prescribe, destroyed.

On the failure or neglect of such owner or other person to comply with such notice within a reasonable time, the Inspector shall cause such building, shed, place or lines to be disinfected, and such fittings or other things to be destroyed, and the expense (if any) thereby incurred may be recovered from such owner or other person as if it were a fine.

10. The owner or any person in charge of a diseased horse shall give immediate information of such horse being diseased to the Inspector or to some officer of Police.

11. No person in charge of any horse which has been in the same field, building or place or in contact with a diseased horse, shall move such horse, except in good faith for the purpose

of preventing infection or under a license to be granted by the Inspector and subject to the conditions of such license.

12. Any Inspector who, without reasonable ground of suspicion, enters or searches any field, building or other place, or vexatiously and unnecessarily seizes or detains any horse on the pretence that it is diseased, 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.

No prosecution under this section shall be instituted after the expiry of three months from the date on which the offence has been committed.

13. Any person who refuses or neglects to comply with any notice issued by the Inspector under section 9; or who moves any horse in contravention of section eleven, shall be punished with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

14. The Local Government may, from time to time, make rules, consistent with this Act,—

(a) for regulating entries and searches by Inspectors under this Act;

(b) for regulating the destruction of horses certified under section eight to be diseased, and the disposal of the carcasses of such horses;

(c) for regulating the disinfecting of buildings and places in which diseased horses have been, and for prescribing what things found therein or near thereto shall be destroyed;

(d) for regulating the grant of licenses under section eleven, and the conditions on which such licenses shall be granted; and

(e) generally for carrying out the purposes of this Act.

All such rules shall be published in the official Gazette, and shall thereupon have the force of law.

Any person breaking a rule made under this section shall be punished with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

15. All diseased horses destroyed under the orders of the Governor General in Council or the Local Government in the districts of Ráwalpindí and Pesháwar previous to the passing of this Act shall be deemed to have been destroyed in accordance with law.

D. FITZPATRICK;

Secretary to the Government of India,
Legislative Department.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 14th November 1879, and was promulgated for general information in the *Gazette of India* on the 15th November 1879:—

Act No. XXI. of 1879.

THE FOREIGN JURISDICTION AND EXTRADITION ACT, 1879.

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An Act to provide for the trial of offences committed in places beyond British India and for the Extradition of Criminals.

WHEREAS by treaty, capitulation, agreement, grant, usage, sufferance and other lawful means the Governor General of India in Council has power and jurisdiction within divers places beyond the limits of British India; and whereas such power and jurisdiction have, from time to time, been delegated to Political Agents and others acting under the authority of the Governor General in Council; and whereas, doubts having arisen how far the exercise of such power and jurisdiction, and the delegation thereof, were controlled by and dependent on the laws of British India, the Foreign Jurisdiction and Extradition Act, 1872, was passed to remove such doubts, and also to consolidate and amend the law relating to the exercise and delegation of such power and jurisdiction, and to offences committed by British subjects beyond the limits of British India, and to the extradition of criminals; and whereas it is expedient to repeal that Act and re-enact it with the amendments hereinafter appearing; It is hereby enacted as follows.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Foreign Jurisdiction and Extradition Act, 1879":
Short title.
Extent. It extends to the whole of British India; to all Native Indian subjects of Her Majesty beyond the limits of British India; and to all European British subjects within the dominions of Princes and States in India in alliance with Her Majesty; and it shall come into force on the passing thereof.
Commencement.

But nothing contained in this Act shall affect the provisions of any law or treaty for the time being in force as to the extradition of offenders; and the procedure provided by any such law or treaty shall be followed in every case to which it applies.

2. The Foreign Jurisdiction and Extradition Act, 1872, is repealed; but all existing appointments, delegations, certificates, requisitions and rules made, and all existing notifications, summonses, warrants, orders and directions issued under that Act shall, in so far as they are consistent herewith, be deemed to have been respectively made and issued hereunder.

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

“Political Agent.” “Political Agent” means and includes—

(1) the principal officer representing the British Indian Government in any territory or place beyond the limits of British India :

(2) any officer in British India appointed by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under this Act for any place not forming part of British India : and

“European British subject” means a European British subject as defined in the Code of Criminal Procedure.

CHAPTER II.

POWERS OF BRITISH OFFICERS IN PLACES BEYOND BRITISH INDIA.

4. The Governor General in Council may exercise any power or jurisdiction which he for the time being has within any country or place beyond the limits of British India, and may delegate the same to any servant of the British Indian Government, in such manner and to such extent as the Governor General in Council from time to time thinks fit.

5. A notification in the *Gazette of India* of the exercise by the Governor General in Council of any such power or jurisdiction, and of the delegation thereof by him to any person or class of persons, and of the rules of procedure or other conditions to which such persons are to conform, and of the local area within which their powers are to be exercised, shall be conclusive proof of the truth of the matters stated in the notification.

6. The Governor General in Council may appoint any European British subject, either by name or by virtue of his office, in any such country or place to be a Justice of the Peace ; and every

such Justice of the Peace shall have in proceedings against European British subjects, or persons accused of having committed offences conjointly with such subjects, all the powers conferred by the Code of Criminal Procedure on Magistrates of the first class who are Justices of the Peace and European British subjects.

The Governor General in Council may direct to what Court having jurisdiction over European British subjects any such Justice of the Peace is to commit for trial.

7. All Political Agents and all Justices of the Peace appointed before the twenty-fifth day of April 1872, by the Governor General in Council or the Governor in Council of the Presidency of Fort St. George or Bombay, in or for any such country or place as aforesaid, shall be deemed to be and to have been appointed, and to have and to have had jurisdiction, under the provisions of this Act.

8. The law relating to offences and to criminal procedure for the time being in force in British India shall, subject as to procedure to such modifications as the Governor General in Council from time to time directs, extend—

(a) to all European British subjects in the dominions of Princes and States in India in alliance with Her Majesty ; and

(b) to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.

CHAPTER III.

INQUIRIES IN BRITISH INDIA INTO CRIMES COMMITTED BY BRITISH SUBJECTS IN PLACES BEYOND BRITISH INDIA.

9. When a European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or

when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found :

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be such, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge is one which ought to be inquired into in British India :

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar

against further proceedings against him under this Act in respect of the same offence at any place beyond the limits of British India.

10. Whenever any such offence as is referred to in section nine is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the place in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

CHAPTER IV.

EXTRADITION.

11. When an offence has been committed or is supposed to have been committed in any State against the law of such State by a person not being a European British subject, and such person escapes into or is in British India, the Political Agent for such State may issue a warrant for his arrest and delivery at a place and to a person to be named in the warrant—

If such Political Agent thinks that the offence is one which ought to be inquired into in such State ;

and if the act said to have been done would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code mentioned in the schedule hereto annexed, or under any other section of the said Code, or any other law, which may, from time to time, be specified by the Governor General in Council by a notification in the *Gazette of India*.

12. Such warrant may be directed to the Magistrate of any district in which the accused person is believed to be, and shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants ; and the accused person, when arrested, shall be forwarded to the place and delivered to the officer named in the warrant.

13. Such Political Agent may either dispose of the case himself, or, if he is generally or specially directed to do so by the Governor General in Council, or by the Governor of the Presidency of Fort St. George in Council or by the Governor of the Presidency of Bombay in Council, may give over the person so forwarded, whether he be a Native Indian subject of Her Majesty or not, to be tried by the ordinary Courts of the State in which the offence was committed.

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14. Whenever a requisition is made to the Governor General in Council or any Local Government by or by the authority of the persons for the time being administering the Executive Government of any part of the dominions of Her Majesty, or the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory should be given up, the Governor General in Council or such Local Government, as the case may be, may issue an order to any Magistrate who would have had jurisdiction to inquire into the offence if it had been committed within the local limits of his jurisdiction, directing him to inquire into the truth of such accusation.

The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue ; and shall enquire into the truth of such accusation, and shall report thereon to the Government by which he was directed to hold the said inquiry. If, upon receipt of such report, such Government is of opinion that the accused person ought to be given up to the persons making such requisition, it may issue a warrant for the custody and removal of such accused person and for his delivery at a place and to a person to be named in the warrant.

The provisions of section ten shall apply to inquiries held under this section.

15. Whenever any person accused or suspected of having committed an offence out of British India is within the local limits of the jurisdiction of a Magistrate in British India, and it appears to such Magistrate that the Political Agent for any State could, under the provisions of section eleven, issue a warrant for the arrest of such person, or that the persons for the time being administering the Executive Government of any part of the dominions of Her Majesty or the territory of any Foreign Prince or State could demand his surrender, such Magistrate may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and such evidence as would, in his opinion, justify the issue of such a warrant if the offence had been committed within the local limits of his jurisdiction.

Any Magistrate issuing a warrant under this section shall, when the offence appears or is alleged to have been committed in a State for which there is a Political Agent, send immediate information of his proceedings to such Agent, and in other cases shall at once report his proceedings to the Local Government.

16. No person arrested on a warrant issued by a Magistrate under section fifteen shall be detained more than two months from the date of his arrest, unless within such period the Magistrate receives a warrant under section eleven from the

Political Agent for any State for the delivery of such person, or an order with reference to him under section fourteen from the Governor General in Council or Local Government, or such person is in accordance with law delivered up to some Foreign Prince or State.

At any time before the receipt of such a warrant or order the Magistrate, if he thinks fit, may, and the Magistrate if so directed by the Local Government shall, discharge the accused person.

17. The provisions of the Code of Criminal Procedure in respect of Bail shall apply in the case of any person arrested under section fifteen in the same manner as if such person were accused of committing in British India the offence with which he is charged.

CHAPTER V.

MISCELLANEOUS.

18. The Governor General in Council may, from time to time, make Power to make rules. rules to provide for—

(1) the confinement, diet and prison discipline of British subjects, European or Native, imprisoned by Political Agents under this Act;

(2) the removal of accused persons under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them; and

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

19. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in the territory of any Foreign Prince or State in like manner as it may be obtained in relation to any civil matter under the Code of Civil Procedure, Chapter XXV; and the provisions of that chapter shall be construed as if the term "suit" included a proceeding against a criminal: Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

THE SCHEDULE.

SECTIONS OF THE INDIAN PENAL CODE REFERRED TO IN SECTION ELEVEN.

Sections 206, 208 and 224; Sections 230 to 263, both inclusive; Sections 299 to 304, both inclusive; Sections 307, 310 and 311; Sections 312 to 317, both inclusive; Sections 323 to 333, both inclusive; Sections 347 and 348; Sections 360 to 373, both inclusive; Sections 375 to 377, both inclusive; Sections 378 to 414, both inclusive; Sections 435 to 440, both inclusive; Sections 443 to 446, both inclusive; Sections 464 to 468, both inclusive; Sections 471 to 477, both inclusive.

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

[Published with the "Bombay Government Gazette" on the 11th December 1879.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

LEGISLATIVE DEPARTMENT.

Bombay Castle, 21st November 1879.

No. 369.—*Erratum.*—In line 12 of Section 127 of "The Bombay Land Revenue Code, 1879," as published in the *Government Gazettes* of the 17th, 24th, and 31st July 1879, for "Act" read "Acts."

By order of His Excellency the Honourable the Governor in Council,

C. G. W. MACPHERSON,
Acting Under Secretary to Government.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 14th November 1879, and was promulgated for general information in the *Gazette of India* on the 15th November 1879 :—

Act No. XX. of 1879.

An Act to provide for the better prevention of Glanders and Farcy among Horses.

WHEREAS it is expedient to provide for the better prevention of glanders and farcy among horses; It is hereby enacted as follows :—

1. This Act may be called "The Glanders and Farcy Act, 1879 :"

It extends to the whole of British India, except the territories respectively administered by the Governor of Fort St. George in Council, the Governor of Bombay in Council and the Lieutenant-Governor of Bengal;

and it shall come into force at once.

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

"horse" includes also ponies, asses, mules and jennets :

"diseased." "diseased" means affected with glanders or farcy.

3. The Local Government may, by notification in the official Gazette, apply this Act, or any provision of this Act, to any local area, to be specified in such notification, within the territories administered by it, and may in like manner amend or cancel any such notification.

4. When this Act has been so applied to any local area, the Local Government may, by notification in the official Gazette, appoint either by name or by virtue of their office such persons as it thinks fit to be Inspectors under this Act and to exercise and perform, within the whole of such local area or such portions thereof as it may from time to time prescribe, the powers conferred and the duties imposed by this Act on such officers.

Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

Every person so appointed shall be deemed a public servant within the meaning of the Indian Penal Code.

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5. Within the local limits for which he is so appointed, any such Inspector may seize any horse which he has reason to believe, from personal knowledge or from information given by any person and taken down in writing, is diseased.

6. For the purpose of making such seizure, such Inspector may, subject to such rules as the Local Government may from time to time make in this behalf, enter and search any field, building or other place where he has reason to believe that any such horse is to be found.

7. On any such seizure, the Inspector shall cause the horse so seized to be examined as soon as possible by such Veterinary Surgeon as the Local Government may from time to time appoint in this behalf.

8. If such Surgeon certifies in writing that such horse is diseased, the Inspector shall cause the same to be immediately destroyed; but if such Surgeon does not so certify, the Inspector shall at once deliver the same to the person entitled to the possession thereof.

9. When any diseased horse has been in any building, shed or other enclosed place, or in any open lines, the Inspector may issue a notice to the owner of such building, shed, place or lines, or the person in charge thereof, directing him to have the same disinfected, and the internal fittings thereof, or such other things found therein or near thereto as the Local Government may from time to time by rule prescribe, destroyed.

On the failure or neglect of such owner or other person to comply with such notice within a reasonable time, the Inspector shall cause such building, shed, place or lines to be disinfected, and such fittings or other things to be destroyed, and the expense (if any) thereby incurred may be recovered from such owner or other person as if it were a fine.

10. The owner or any person in charge of a diseased horse shall give immediate information of such horse being diseased to the Inspector or to some officer of Police.

11. No person in charge of any horse which has been in the same field, building or place or in contact with a diseased horse shall move such horse, except in good faith for the purpose

of preventing infection or under a license to be granted by the Inspector and subject to the conditions of such license.

12. Any Inspector who, without reasonable ground of suspicion, enters or searches any field, building or other place, or vexatiously and unnecessarily seizes or detains any horse on the pretence that it is diseased, 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.

No prosecution under this section shall be instituted after the expiry of three months from the date on which the offence has been committed.

13. Any person who refuses or neglects to comply with any notice issued by the Inspector under section 9; or who moves any horse in contravention of section eleven, shall be punished with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

14. The Local Government may, from time to time, make rules, consistent with this Act,—

(a) for regulating entries and searches by Inspectors under this Act;

(b) for regulating the destruction of horses certified under section eight to be diseased, and the disposal of the carcasses of such horses;

(c) for regulating the disinfecting of buildings and places in which diseased horses have been, and for prescribing what things found therein or near thereto shall be destroyed;

(d) for regulating the grant of licenses under section eleven, and the conditions on which such licenses shall be granted; and

(e) generally for carrying out the purposes of this Act.

All such rules shall be published in the official Gazette, and shall thereupon have the force of law.

Any person breaking a rule made under this section shall be punished with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

15. All diseased horses destroyed under the orders of the Governor General in Council or the Local Government in the districts of Ráwalpindi and Pesháwar previous to the passing of this Act shall be deemed to have been destroyed in accordance with law.

D. FITZPATRICK,

Secretary to the Government of India,
Legislative Department.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 14th November 1879, and was promulgated for general information in the *Gazette of India* on the 15th November 1879 :—

Act No. XXI. of 1879.

THE FOREIGN JURISDICTION AND EXTRADITION ACT, 1879.

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An Act to provide for the trial of offences committed in places beyond British India and for the Extradition of Criminals.

WHEREAS by treaty, capitulation, agreement, grant, usage, sufferance and other lawful means the Governor General of India in Council has power and jurisdiction within divers places beyond the limits of British India; and whereas such power and jurisdiction have, from time to time, been delegated to Political Agents and others acting under the authority of the Governor General in Council; and whereas, doubts having arisen how far the exercise of such power and jurisdiction, and the delegation thereof, were controlled by and dependent on the laws of British India, the Foreign Jurisdiction and Extradition Act, 1872, was passed to remove such doubts, and also to consolidate and amend the law relating to the exercise and delegation of such power and jurisdiction, and to offences committed by British subjects beyond the limits of British India, and to the extradition of criminals; and whereas it is expedient to repeal that Act and re-enact it with the amendments hereinafter appearing; It is hereby enacted as follows.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Foreign Jurisdiction and Extradition Act, 1879":
Short title.
Extent. It extends to the whole of British India; to all Native Indian subjects of Her Majesty beyond the limits of British India; and to all European British subjects within the dominions of Princes and States in India in alliance with Her Majesty; and it shall come into force on the passing thereof.
Commencement.

But nothing contained in this Act shall affect the provisions of any law or treaty for the time being in force as to the extradition of offenders; and the procedure provided by any such law or treaty shall be followed in every case to which it applies.

2. The Foreign Jurisdiction and Extradition Act, 1872, is repealed; but all existing appointments, delegations, certificates, requisitions and rules made, and all existing notifications, summonses, warrants, orders and directions issued under that Act shall, in so far as they are consistent herewith, be deemed to have been respectively made and issued hereunder.

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

“Political Agent.” “Political Agent” means and includes—

(1) the principal officer representing the British Indian Government in any territory or place beyond the limits of British India:

(2) any officer in British India appointed by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under this Act for any place not forming part of British India: and

“European British subject” means a European British subject as defined in the Code of Criminal Procedure.

CHAPTER II.

POWERS OF BRITISH OFFICERS IN PLACES BEYOND BRITISH INDIA.

4. The Governor General in Council may exercise any power or jurisdiction which he for the time being has within any country or place beyond the limits of British India, and may delegate the same to any servant of the British Indian Government, in such manner and to such extent as the Governor General in Council from time to time thinks fit.

5. A notification in the *Gazette of India* of the exercise by the Governor General in Council of any such power or jurisdiction, and of the delegation thereof by him to any person or class of persons, and of the rules of procedure or other conditions to which such persons are to conform, and of the local area within which their powers are to be exercised, shall be conclusive proof of the truth of the matters stated in the notification.

6. The Governor General in Council may appoint any European British subject, either by name or by virtue of his office, in any such country or place to be a Justice of the Peace; and every

such Justice of the Peace shall have in proceedings against European British subjects, or persons accused of having committed offences conjointly with such subjects, all the powers conferred by the Code of Criminal Procedure on Magistrates of the first class who are Justices of the Peace and European British subjects.

The Governor General in Council may direct to what Court having jurisdiction over European British subjects any such Justice of the Peace is to commit for trial.

7. All Political Agents and all Justices of the Peace appointed before the twenty-fifth day of April 1872, by the Governor General in Council or the Governor in Council of the Presidency of Fort St. George or Bombay, in or for any such country or place as aforesaid, shall be deemed to be and to have been appointed, and to have and to have had jurisdiction, under the provisions of this Act.

8. The law relating to offences and to criminal procedure for the time being in force in British India shall, subject as to procedure to such modifications as the Governor General in Council from time to time directs, extend—

(a) to all European British subjects in the dominions of Princes and States in India in alliance with Her Majesty; and

(b) to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.

CHAPTER III.

INQUIRIES IN BRITISH INDIA INTO CRIMES COMMITTED BY BRITISH SUBJECTS IN PLACES BEYOND BRITISH INDIA.

9. When a European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or

when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be such, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge is one which ought to be inquired into in British India:

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar

against further proceedings against him under this Act in respect of the same offence at any place beyond the limits of British India.

10. Whenever any such offence as is referred to in section nine is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the place in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

CHAPTER IV.

EXTRADITION.

11. When an offence has been committed or is supposed to have been committed in any State against the law of such State by a person not being a European British subject, and such person escapes into or is in British India, the Political Agent for such State may issue a warrant for his arrest and delivery at a place and to a person to be named in the warrant—

If such Political Agent thinks that the offence is one which ought to be inquired into in such State;

and if the act said to have been done would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code mentioned in the schedule hereto annexed, or under any other section of the said Code, or any other law, which may, from time to time, be specified by the Governor General in Council by a notification in the *Gazette of India*.

12. Such warrant may be directed to the Magistrate of any district in which the accused person is believed to be, and shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants; and the accused person, when arrested, shall be forwarded to the place and delivered to the officer named in the warrant.

13. Such Political Agent may either dispose of the case himself, or, if he is generally or specially directed to do so by the Governor General in Council, or by the Governor of the Presidency of Fort St. George in Council or by the Governor of the Presidency of Bombay in Council, may give over the person so forwarded, whether he be a Native Indian subject of Her Majesty or not, to be tried by the ordinary Courts of the State in which the offence was committed.

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14. Whenever a requisition is made to the Governor General in Council or any Local Government by or by the authority of the persons for the time being administering the Executive Government of any part of the dominions of Her Majesty, or the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory should be given up, the Governor General in Council or such Local Government, as the case may be, may issue an order to any Magistrate who would have had jurisdiction to inquire into the offence if it had been committed within the local limits of his jurisdiction, directing him to inquire into the truth of such accusation.

The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue; and shall enquire into the truth of such accusation, and shall report thereon to the Government by which he was directed to hold the said inquiry. If, upon receipt of such report, such Government is of opinion that the accused person ought to be given up to the persons making such requisition, it may issue a warrant for the custody and removal of such accused person and for his delivery at a place and to a person to be named in the warrant.

The provisions of section ten shall apply to inquiries held under this section.

15. Whenever any person accused or suspected of having committed an offence out of British India is within the local limits of the jurisdiction of a Magistrate in British India, and it appears to such Magistrate that the Political Agent for any State could, under the provisions of section eleven, issue a warrant for the arrest of such person, or that the persons for the time being administering the Executive Government of any part of the dominions of Her Majesty or the territory of any Foreign Prince or State could demand his surrender, such Magistrate may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and such evidence as would, in his opinion, justify the issue of such a warrant if the offence had been committed within the local limits of his jurisdiction.

Any Magistrate issuing a warrant under this section shall, when the Magistrate to inform the Political Agent or Local Government, of the offence appears or is alleged to have been committed in a State for which there is a Political Agent, send immediate information of his proceedings to such Agent, and in other cases shall at once report his proceedings to the Local Government.

16. No person arrested on a warrant issued by a Magistrate under section fifteen shall be detained more than two months from the date of his arrest, unless within such period the Magistrate receives a warrant under section eleven from the

Political Agent for any State for the delivery of such person, or an order with reference to him under section fourteen from the Governor General in Council or Local Government, or such person is in accordance with law delivered up to some Foreign Prince or State.

At any time before the receipt of such a warrant or order the Magistrate, if he thinks fit, may, and the Magistrate if so directed by the Local Government shall, discharge the accused person.

17. The provisions of the Code of Criminal Procedure in respect of bail shall apply in the case of any person arrested under section fifteen in the same manner as if such person were accused of committing in British India the offence with which he is charged.

CHAPTER V.

MISCELLANEOUS.

18. The Governor General in Council may, from time to time, make rules to provide for—

(1) the confinement, diet and prison discipline of British subjects, European or Native, imprisoned by Political Agents under this Act;

(2) the removal of accused persons under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them; and

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

19. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in the territory of any Foreign Prince or State in like manner as it may be obtained in relation to any civil matter under the Code of Civil Procedure, Chapter XXV.; and the provisions of that chapter shall be construed as if the term "suit" included a proceeding against a criminal: Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

THE SCHEDULE.

SECTIONS OF THE INDIAN PENAL CODE REFERRED TO IN SECTION ELEVEN.

Sections 206, 208 and 224; Sections 230 to 263, both inclusive; Sections 299 to 304, both inclusive; Sections 307, 310 and 311; Sections 312 to 317, both inclusive; Sections 323 to 333, both inclusive; Sections 347 and 348; Sections 360 to 373, both inclusive; Sections 375 to 377, both inclusive; Sections 378 to 414, both inclusive; Sections 435 to 440, both inclusive; Sections 443 to 446, both inclusive; Sections 464 to 468, both inclusive; Sections 471 to 477, both inclusive.

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

THE



Bombay Government Gazette.

1880.

PART IV.

ACTS

PASSED BY THE

GOVERNMENT OF INDIA

AND BY THE

GOVERNMENT OF BOMBAY.

Bombay:

PRINTED AT THE GOVERNMENT CENTRAL PRESS.

MDCCCLXXXI.

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Bombay Government Gazette.

Published by Authority.

THURSDAY, 15TH JANUARY 1880.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 9th January 1880, and was promulgated for general information in the *Gazette of India* on the 10th January 1880 :—

Act No. I. of 1880.

An Act to confer certain powers on Religious Societies.

WHEREAS it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies; It is hereby enacted as follows :—

Short title.	1. This Act may be called "The Religious Societies Act, 1880."
Commencement.	It shall come into force at once; and
Local extent.	shall extend to the whole of British India;

but nothing herein contained shall apply to any Hindus, Muhammadans or Buddhists, or to any persons whom the Governor General in Council may, from time to time, by notification

IV.—1

in the *Gazette of India*, exclude from the operation of this Act.

2. When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property,

and such property has been or hereafter shall be vested in trustees in trust for such body,

and it becomes necessary to appoint a new trustee in the place of or in addition to any such trustee or any trustee appointed in the manner hereinafter prescribed,

and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed,

such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two-thirds, of the members of such body actually present at the meeting at which the appointment is made.

3. Every appointment of new trustees under section two shall be made to appear by some memorandum under the hand of the chairman of the chairman for the time being of the meeting at which such appointment is made.

Such memorandum shall be in the form set forth in the schedule hereto annexed, or as near thereto as circumstances allow, shall be executed and attested by two or more credible witnesses in the presence of such meeting, and shall be deemed to be a document of which the registration is required by the Indian Registration Act, 1877, section seventeen.

4. When any new trustees have been appointed, whether in the manner prescribed by any such instrument as aforesaid or in the manner hereinbefore provided, the property subject to the trust shall forthwith, notwithstanding any thing contained in any such instrument, become vested, without any conveyance or other assurance, in such new trustees and the old continuing trustees jointly, or if there are no old continuing trustees, in such new trustees wholly, upon the same trusts, and with and subject to the same powers and provisions, as it was vested in the old trustees.

5. Nothing herein contained shall be deemed to invalidate any appointment of new trustees, or any conveyance of any property, which may hereafter be made as heretofore was by law required.

6. Any number not less than three-fifths of the members of any such body as aforesaid may at a meeting convened for the purpose determine that such body shall be dissolved; and thereupon it shall be dissolved forthwith, or at the time then agreed upon; and all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of such body applicable thereto, if any, and if not, then as such body at such meeting may determine:

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of such body is situate; and the Court shall make such order in the matter as it deems fit.

7. If upon the dissolution of any such body there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of such body or any of them, but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three-fifths of the members present at a meeting convened in this behalf, or in default thereof by such Court as last aforesaid.

8. Nothing in sections six and seven shall be deemed to affect any provision contained in any instrument for the dissolution of such body, or for the payment or distribution of such property.

9. When any question arises, either in connection with the matters hereinbefore referred to, or otherwise, as to whether any person is a member of any such body as aforesaid, or as to the validity of any appointment under this Act, any person interested in such question may apply by petition to the High Court for its opinion on such question. A copy of such petition shall be served upon, and the hearing thereof may be attended by, such other persons interested in the question as the Court thinks fit.

Any opinion given by the Court on an application under this section shall be deemed to have the force of a declaratory decree.

The costs of every application under this section shall be in the discretion of the Court.

THE SCHEDULE.

(See section 3.)

Memorandum of the appointment of new trustees of the (*describe the church, chapel or other buildings and property*) situate at a meeting duly convened and held for that purpose (*in the vestry of the said*) on the day of 18 , A. B. of Chairman.

Names and descriptions of all the trustees on the constitution or last appointment of trustees made the day of

(*here insert the same*).

Names and descriptions of all the trustees in whom the said (*chapel and property*) now become legally vested.

First.—Old continuing trustees:—

(*here insert the same*).

Second.—New trustees now chosen and appointed:—

(*here insert the same*).

Dated this day of 18

Signed by the said A. B. as Chairman of the said Meeting, at and in the presence of the said Meeting on the day and year aforesaid in the presence of—

C. D.
E. F.

A. B.
Chairman of the said Meeting.
D. FITZPATRICK.
Secy. to the Govt. of India.

[Published with the "Bombay Government Gazette" on the 22nd January 1880.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 9th January 1880, and was promulgated for general information in the *Gazette of India* on the 10th January 1880:—

Act No. I. of 1880.

An Act to confer certain powers on Religious Societies.

WHEREAS it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies; It is hereby enacted as follows:—

1. This Act may be called "The Religious Societies Act, 1880."

It shall come into force at once; and shall extend to the whole of British India;

but nothing herein contained shall apply to any Hindus, Muhammadans or Buddhists, or to any persons whom the Governor General in Council may, from time to time, by notification in the *Gazette of India*, exclude from the operation of this Act.

2. When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property,

and such property has been or hereafter shall be vested in trustees in trust for such body,

and it becomes necessary to appoint a new trustee in the place of or in addition to any such trustee or any trustee appointed in the manner hereinafter prescribed,

and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed,

such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two-thirds of the members of such body actually present at the meeting at which the appointment is made.

3. Every appointment of new trustees under section two shall be made Appointment under section 2 to be recorded in a memorandum under the hand of the chairman of the meeting. to appear by some memorandum under the hand of the chairman of the meeting at which such appointment is made.

Such memorandum shall be in the form set forth in the schedule hereto annexed, or as near thereto as circumstances allow, shall be executed and attested by two or more credible witnesses in the presence of such meeting, and shall be deemed to be a document of which the registration is required by the Indian Registration Act, 1877, section seventeen.

4. When any new trustees have been appointed, whether in the manner prescribed by any such instrument as aforesaid or in the manner hereinbefore provided, the property subject to the trust shall forthwith, notwithstanding any thing contained in any such instrument, become vested, without any conveyance or other assurance, in such new trustees and the old continuing trustees jointly, or if there are no old continuing trustees, in such new trustees wholly, upon the same trusts, and with and subject to the same powers and provisions, as it was vested in the old trustees.

5. Nothing herein contained shall be deemed to invalidate any appointment of new trustees, or any conveyance of any property, which may hereafter be made as heretofore was by law required.

6. Any number not less than three-fifths of the members of any such body as aforesaid may at a meeting convened for the purpose determine that such body shall be dissolved; and thereupon it shall be dissolved forthwith, or at the time then agreed upon; and all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of

such body applicable thereto, if any, and if not, then as such body at such meeting may determine :

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of such body is situate ; and the Court shall make such order in the matter as it deems fit.

7. If upon the dissolution of any such body

there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of such body or any of them, but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three-fifths of the members present at a meeting convened in this behalf, or in default thereof by such Court as last aforesaid.

8. Nothing in sections six and seven shall be

deemed to affect any provision contained in any instrument for the dissolution of such body, or for the payment or distribution of such property.

9. When any question arises, either in con-

nection with the matters submitted to High Court, or otherwise, as to whether any person is a member of any such body as aforesaid, or as to the validity of any appointment under this Act, any person interested in such question may apply by petition to the High Court for its opinion on such question. A copy of such petition shall be served upon, and the hearing thereof may be attended by, such other persons interested in the question as the Court thinks fit.

Any opinion given by the Court on an application under this section shall be deemed to have the force of a declaratory decree.

The costs of every application under this section shall be in the discretion of the Court.

THE SCHEDULE.

(See section 3.)

Memorandum of the appointment of new trustees of the (describe the church, chapel or other buildings and property) situate

at a meeting duly convened and held for that purpose (in the vestry of the said) on the day of 18 , A. B. of Chairman.

Names and descriptions of all the trustees on the constitution or last appointment of trustees made the day of

(here insert the same).

Names and descriptions of all the trustees in whom the said (chapel and property) now become legally vested.

First.—Old continuing trustees :—

(here insert the same).

Second.—New trustees now chosen and appointed :—

(here insert the same).

Dated this day of 18

Signed by the said A. B. }
as Chairman of the said }
Meeting, at and in the }
presence of the said Meet- }
ing on the day and year }
aforesaid in the presence }
of—

A. B.
Chairman of the
said Meeting.

C. D.
E. F.

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

[Published with the "Bombay Government Gazette" on the 29th January 1880.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 9th January 1880, and was promulgated for general information in the *Gazette of India* on the 10th January 1880:—

Act No. I. of 1880.

An Act to confer certain powers on Religious Societies.

WHEREAS it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies; It is hereby enacted as follows:—

1. This Act may be called "The Religious Societies Act, 1880."

It shall come into force at once; and

shall extend to the whole of British India;

but nothing herein contained shall apply to any Hindus, Muhammadans or Buddhists, or to any persons whom the Governor General in Council may, from time to time, by notification in the *Gazette of India*, exclude from the operation of this Act.

2. When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property,

and such property has been or hereafter shall be vested in trustees in trust for such body,

and it becomes necessary to appoint a new trustee in the place of or in addition to any such trustee or any trustee appointed in the manner hereinafter prescribed,

and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed,

iv.—1 b

such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two-thirds of the members of such body actually present at the meeting at which the appointment is made.

3. Every appointment of new trustees under section 2 to be recorded in a memorandum under the hand of the chairman of the meeting.

section two shall be made to appear by some memorandum under the hand of the chairman for the time being of the meeting at which such appointment is made.

Such memorandum shall be in the form set forth in the schedule hereto annexed, or as near thereto as circumstances allow, shall be executed and attested, by two or more credible witnesses in the presence of such meeting, and shall be deemed to be a document of which the registration is required by the Indian Registration Act, 1877, section seventeen.

4. When any new trustees have been appointed, whether in the manner prescribed by any such instrument as aforesaid or in the manner hereinbefore provided, the property subject to the trust shall forthwith, notwithstanding any thing contained in any such instrument, become vested, without any conveyance or other assurance, in such new trustees and the old continuing trustees jointly, or if there are no old continuing trustees, in such new trustees wholly, upon the same trusts, and with and subject to the same powers and provisions, as it was vested in the old trustees.

5. Nothing herein contained shall be deemed to invalidate any appointment of new trustees, or any conveyance of any property, which may hereafter be made as heretofore was by law required.

6. Any number not less than three-fifths of the members of any such body as aforesaid may at a meeting convened for the purpose determine that such body shall be dissolved; and thereupon it shall be dissolved forthwith, or at the time then agreed upon; and all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of

such body applicable thereto, if any, and if not, then as such body at such meeting may determine :

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of such body is situate; and the Court shall make such order in the matter as it deems fit.

7. If upon the dissolution of any such body there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of such body or any of them, but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three-fifths of the members present at a meeting convened in this behalf, or in default thereof by such Court as last aforesaid.

8. Nothing in sections six and seven shall be deemed to affect any provision contained in any instrument for the dissolution of such body, or for the payment or distribution of such property.

9. When any question arises, either in connection with the matters submitted to High Court, or otherwise, as to whether any person is a member of any such body as aforesaid, or as to the validity of any appointment under this Act, any person interested in such question may apply by petition to the High Court for its opinion on such question. A copy of such petition shall be served upon, and the hearing thereof may be attended by, such other persons interested in the question as the Court thinks fit.

Any opinion given by the Court on an application under this section shall be deemed to have the force of a declaratory decree.

The costs of every application under this section shall be in the discretion of the Court.

THE SCHEDULE.

(See section 3.)

Memorandum of the appointment of new trustees of the (describe the church, chapel or other buildings and property) situate at a meeting duly convened and held for that purpose (in the vestry of the said) on the day of 18 , A. B. of Chairman.

Names and descriptions of all the trustees on the constitution or last appointment of trustees made the day of

(here insert the same).

Names and descriptions of all the trustees in whom the said (chapel and property) now become legally vested.

First.—Old continuing trustees:—

(here insert the same).

Second.—New trustees now chosen and appointed:—

(here insert the same).

Dated this day of 18

Signed by the said A. B. as Chairman of the said Meeting, at and in the presence of the said Meeting on the day and year aforesaid in the presence of—

C. D.
E. F.

A. B.
Chairman of the
said Meeting.

D. FITZPATRICK.

Secy. to the Govt. of India.

[Published with the "Bombay Government Gazette" on the 19th February 1880.]

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 30th January 1880, and was referred to a Select Committee:—

No. 3 of 1880.

A Bill for the appointment of persons to the office of Kázi.

WHEREAS, by the preamble to Act No. XI of 1864 (*an Act to repeal the law relating to the offices of Hindú and Muhammadan Kázis and to abolish the former offices*) it was (among other things) declared that it was inexpedient that the appointment of Kázi-ul-Kuzát, or of City, Town or Pargana Kázis should be made by the Government, and by the same Act the enactments relating to the appointment by the Government of the said officers were repealed; and whereas by the usage of the Muhammadan community in some parts of British India, the presence of Kázis appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Kázi; It is hereby enacted as follows:—

Short title, 1. This Act may be called "The Kázi's Act, 1880;"

Commencement. and it shall come into force at once.

It extends, in the first instance, only to the territories administered by the Governor of Fort St. George in Council.

Local extent. But any other Local Government may, from time to time, by notification in the official Gazette, extend it to the whole or any part of the territories under its administration.

2. Whenever it appears to the Local Government that any considerable number of the Muhammadan residents of such local area, the Local Government may, if it thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons, and appoint him or them to be Kázis for such local area.

The Local Government may, if it thinks fit, suspend or dismiss any Kázi appointed under this section.

3. Nothing herein contained shall be deemed to confer any judicial or other powers on any Kázi appointed hereunder, or to render the presence of a Kázi necessary at the celebration of any marriage or the performance of any rite or ceremony.

Nothing in Act to confer judicial or other powers on Kázi; or to render the presence of a Kázi necessary at marriages or other religious rites or ceremonies.

STATEMENT OF OBJECTS AND REASONS.

Under the Muhammadan Law the Kázi was chiefly a judicial officer. His principal powers and duties are stated at some length in the Hedaya, Book XX. He was appointed by the State, and may be said to have corresponded to our Judge or Magistrate. In addition, however, to his functions under the Muhammadan law, the Kázi in this country, before the advent of British rule, appears to have performed certain other duties, partly of a secular and partly of a religious nature. The principal of these seem to have been preparing, attesting and registering deeds of transfer of property, celebrating marriages, and performing other rites and ceremonies. It is not apparent that any of these duties were incumbent on the Kázi as such. It is probable that the customary performance of them by him arose rather from his being a public functionary and one known by his official position to be acquainted with the law, than from his having, as Kázi, a greater claim to perform them than any one else.

2. Such was the position of the Kázi in this country under Native government. On the introduction of the British rule, Judges and Magistrates took the place of Kázis, and the Kázi in his judicial capacity disappeared; but the British Government, though no longer recognising the judicial functions of the Kázi, did not abolish the office. By certain Regulations * passed from time to time, the appointment of Kázi-ul-Kuzát and Kázis by the State was provided for, and the performance of their non-judicial duties was recognised by law. In the case of Bengal, indeed, certain additional duties were imposed on them. The duties of the Kázi under these Regulations comprised some or all of the following, *viz.* :—

* Bengal Regulation XXXIX. of 1793 for Bengal, Bihár and Orissa.
Bengal Regulation XLIX. of 1795 for Benares.
Bengal Regulation XLVI. of 1803 for the Ceded Provinces.
Madras Regulation III. of 1808 for Madras.
Bombay Regulation XXVI. of 1827 for Bombay.

- (1) preparing and attesting deeds of transfer and other law-papers ;
- (2) celebrating marriages and presiding at divorces ;
- (3) performing various rites and ceremonies ;
- (4) superintending the sale of distrained property and paying charitable and other pensions and allowances.

3. In the course of subsequent legislation, the first and last of the above duties devolved on officers specially appointed for the purpose, and there remained nothing to be performed by the Kázi but the second and third, which were purely ceremonial. Under these circumstances it appeared no longer necessary that the Government should appoint these officers. Accordingly, in 1864, by Act XI. of that year, all the Regulations relating to the appointment of Kázis by Government and the duties to be discharged by them were repealed, but in order that it might be clear that no interference with the ceremonial functions of these officers was intended, a section was added to that Act as follows :— “ Nothing contained in this Act shall be construed so as to prevent a Kázi-ul-Kuzát or other Kázi from performing, when required to do so, any duties or ceremonies prescribed by the Muhammadan law ” (see section 2 of Act XI. of 1864).

4. Certain of his duties having thus survived the passing of Act XI. of 1864, the Kázi is still a functionary of considerable importance in the Muhammadan community. What was originally in some sense an accidental adjunct of his judicial office has become his principal and only duty, and in some parts of the country at least, the presence of a Kázi at certain rites and ceremonies appears now to be considered by Muhammadans essential from their point of view.

5. Act XI. of 1864 has, however, raised a difficulty of a sort which was not anticipated at the time made except by the State. But as by Act XI. of 1864, the State divested itself of the power of appointment, the preamble of that Act declaring that it was inexpedient that such appointment should be made by Government, it would seem that no valid nomination to the office can now be made.

6. The inconvenience resulting to Muhammadans from this state of things, has been brought to the notice of Government on several occasions by members of that community, and more particularly by the Muhammadans of the Madras Presidency. It is considered that the grant of the relief that is sought, *viz.*, that Government should once more undertake the appointment of Kázis, is but a reasonable concession to the wants of the Muhammadan population.

With this object the present Bill has been prepared. It extends in the first instance to Madras only, where the want of duly appointed Kázis appears chiefly to have been felt, but it contains a clause empowering any other Local Government to extend its provisions to the territories administered by it, should the Muhammadans in those territories hereafter request its extension. It confers no legal rights or duties on Kázis. It simply, in order to satisfy the wants of the Muhammadan community, provides for the appointment of Kázis by Government, leaving the position and duties of the Kázis, whatever these may be, as they now are. To prevent any possible misapprehension on this point, a saving clause has been added to the effect that nothing in the Bill confers any judicial or other powers on a Kázi, or makes his presence necessary at any marriage or other ceremony at which his presence is not now necessary.

CALCUTTA ;
The 19th January 1880.

(Signed) SAYYAD AHMED.

D. FITZPATRICK,
Secretary to the Government of India, Legislative Department.

THE



Bombay Government Gazette.

Published by Authority.

THURSDAY, 12TH FEBRUARY 1880.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 30th January 1880, and was promulgated for general information in the *Gazette of India* on the 1st January 1880:—

Act No. IV. of 1880.

An Act to give effect to the Convention between the Governors General of British India and Portuguese India, regarding the Extradition of Criminals, and to the twentieth Article of the Treaty between Her Majesty and the King of Portugal and the Algarves.

WHEREAS, by the nineteenth article of the Treaty of Commerce and Extradition between Her Majesty and the King of Portugal and the Algarves, executed at Lisbon on the twenty-sixth day of December 1878, and ratified on the sixth day of August 1879, it was provided that the High Contracting Parties should deliver up to each other those persons who, being accused or convicted of crimes committed in the Indian dominions or jurisdiction of the one party, should be found in the Indian dominions or jurisdiction of the other party, and that the circumstances and conditions under which, and the crimes for which such persons should be delivered up, should form the subject of a separate Convention between

the Governors General of British India and Portuguese India, to be executed at the earliest date possible after the ratification of the said Treaty, and that such Convention should have the same binding character as the said Treaty, and should continue in force for the same period;

and whereas, in pursuance of the said article, the Convention set forth in the schedule hereto annexed has been executed.

And whereas by the twentieth article of the said Treaty it was provided that Commissions issued in criminal trials and enquiries by the judicial tribunals of the one party, for the examination of persons resident in the dominions of the other, should be executed according to the provisions of the laws of the dominions where the witness resides;

and whereas it is doubtful whether under the existing law of British India there is authority to give effect to all the provisions of the said Convention and of the said twentieth article;

It is hereby enacted as follows:—

1. The provisions of the said Convention shall be followed in British India in every case to which they apply.

The procedure prescribed in the Code of Criminal Procedure shall, in so far as it is not incon-

sistent with the said Convention, be followed in every such case.

2. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in Portuguese India in like manner as it may be obtained in relation to any civil matter under the Code of Civil Procedure, chapter XXV, ; and the provisions of that chapter shall be construed as if the term 'suit' included a proceeding against a criminal.

3. This Act may be called 'The Portuguese Treaty Act, 1880.'

Short title.

THE SCHEDULE.

Whereas by the nineteenth article of a treaty dated the twenty-sixth day of December 1878, and ratified on the sixth day of August 1879, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and the Algarves, it is provided that the high contracting parties engage to deliver up to each other those persons who, being accused or convicted of crimes committed in the Indian dominions or jurisdiction of the one party, shall

be found in the Indian dominions or jurisdiction of the other party; and whereas by the same article it is further provided that the circumstances and conditions under which, and the crimes for which, such persons are to be delivered up, shall form the subject of a separate Convention between the Governors-General of British India and Portuguese India, to be executed at the earliest date possible after the ratification of the said Treaty.

In pursuance of the said article, the undersigned Governors General of British India and Portuguese India, acting respectively on behalf of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and the Algarves (hereinafter called the High Contracting Parties), have agreed that the said persons shall be so delivered up under the circumstances, and subject to the exceptions, hereinafter stated, namely:—

(a) When the crime for which extradition is claimed has been committed beyond the dominions of the party claiming, the requisition shall also be complied with, if the laws of the party applied to authorize a prosecution for such crime when committed beyond his dominions, and if the person claimed is a subject of the party claiming his extradition.

(b) The crimes for which the extradition shall be granted are the following:—

British Indian Penal Code.		Portuguese Penal Code.	
Crime.	Section.	Crime.	Article.
Murder, culpable homicide not amounting to murder, and causing death by rash or negligent act	299 to 304A	Voluntary homicide, including— Parricide Poisoning Infanticide And involuntary homicide caused by negligence Attempt at homicide	349 355 353 356 368 350 ; 6 to 11
Attempt to commit murder or culpable homicide Voluntarily causing hurt or grievous hurt	307, 308, 511 319 to 333, 335 and 338	Wounding, causing contusions or hurts Ordinary hurts under Articles 359 and 360, being excepted in the circumstances described in Articles 370, 377, and 378. Rape Kidnapping and hiding of minors	359 to 367, 369 394, 395 to 397 342 to 344
Rape Kidnapping, abduction, concealing kidnapped person, slave dealing, or selling minors for immoral purposes... .. Immodest assault on a woman... .. Causing miscarriage and abortion Exposure or abandonment of a child Thefts Extortions, robberies, dacoities, attempts to commit robbery and belonging to a gang of thieves Criminal misappropriations and criminal breaches of trust Receiving stolen property Cheating Lurking, house-trespass, house-breaking Fraudulent bankruptcy and fraudulent disposition of property Dishonest opening of closed receptacle containing property Being a thug Belonging to a band of dacoits or robber. Aggravated cases of wrongful confinement Mischiefs by fire or explosive substance. Mischiefs to a vessel, or after preparation to cause death, hurt, or wrongful restraint	375 and 376 360 to 373 354 312 to 316 317 378 to 382 383 to 402 403 to 409 410 to 414 415 to 420 443 to 446 206, 208, 421 to 424 461 and 462 310, 311 400, 401 344 to 348 435, 436 and 438 437, 439, 440	Immodest assault on a woman... .. Abortion Exposure or abandonment of a child Thefts Robbery Theft Receiving stolen property Cheating, false pretences House-breaking Fraudulent bankruptcy and fraudulent disposition of property Dishonest opening or breaking of seals by public servants and others Association of malefactors Aggravated cases of wrongful confinement Arson Aggravated cases of mischief	391 358 345 to 348 421 ; 424 to 431 432 to 444 313 ; 422 to 425 ; 453 463 450 to 452 ; 456 380, Clause 1. 447 to 449 ; 455 310 to 312 263 331 to 333 466 to 474 475 and 481

British Indian Penal Code.		Portuguese Penal Code.	
Crime.	Section.	Crime.	Article.
Counterfeiting or altering money, or uttering counterfeit or altered money, making or possessing instruments for above purposes	230 to 254	Counterfeiting or altering money, or uttering counterfeit or altered money, making or possessing instrument for above purposes	206 to 214
Counterfeiting or fraudulently using of Government stamps issued for purposes of revenue	255 to 263	Counterfeit or fraudulent using of Government stamps or stamped paper...	228 to 229
Forgery and using of forged documents, and making of seals for fraudulent purposes	463 to 468; 470 to 477.	Forgery and using of forged documents, and making of seals for fraudulent purposes	215 to 217; 219 to 223; 230 and 231
Use of false trade-mark or property-mark, and frauds connected with such marks	478 to 489	Use of false trade-mark or property-mark, and frauds connected with such marks	230 and 231
Giving or fabricating false evidence to cause a person to be convicted of an offence, and subornation of the same..	194 and 195	Giving or fabricating false evidence to cause a person to be convicted of an offence, and subornation of the same	238 to 240
Illegal gratification taken by a public servant, or to influence a public servant	161 to 165	Illegal gratification taken by a public servant, or to influence a public servant	314 to 323; 452
Causing the evidence of the commission of any offence to disappear	201	Causing the evidence of commission of an offence mentioned in this Convention to disappear	464
False certificate or declaration made by public servant, or used by any person as evidence	197 to 200	False certificate or declaration made by public servants or used by any person as evidence	216 to 218; 221 and 222
Escape from lawful custody on accusation or conviction of any crime specified in this Convention	224	Escape from lawful custody on accusation or conviction of any crime specified in this Convention	190 to 195
<i>Crimes against other Laws.</i>			
Piracy by law of nations. Assaults on board a ship on the high seas, with intent to destroy life or to do grievous bodily harm.		Piracy Voluntary homicide, as above	162 349, 353, 355, 356
<i>Portuguese Maritime Code.</i>			
Sinking or destroying a vessel at sea, or attempting or conspiring to do so.		Loss or destruction of vessel, caused by a person on board... ..	42
Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas, against the authority of the master.		Act of revolt committed by more than third of crew	46

The extradition shall also take place for complicity or participation in any of the aforesaid crimes, and for any attempt to commit any such crime, provided such complicity, participation or attempt be punishable by the laws of both the High Contracting Parties.

(c) No British subject by birth or naturalization shall be delivered up by the Government or authorities of British India to the Government or authorities of Portuguese India; and, in like manner, no Portuguese subject by birth or naturalization shall be delivered up by the Government or authorities of Portuguese India to the Government or authorities of British India. Naturalization after the commission of the crime shall not be an obstacle to the extradition.

(d) The Governor General of British India will, from time to time, communicate to the Governor General of Portuguese India a list of Native States which, with the subjects thereof, are entitled to be placed, for the purposes of this Convention, upon the same footing as British India and the subjects of Her Britannic Majesty.

(e) The extradition shall not take place if the person claimed has already been tried and acquitted, or punished, for the same crime for which extradition is asked. If he should be under trial for any other crime, his extradition shall be deferred until the conclusion of the trial; and if the execution of the sentence, if any, would interfere with the extradition, it shall be postponed, in order that the extradition may take place. If upon extradition he be sentenced to other further punishment, the two High Contracting Parties shall arrange that the punishment shall be fulfilled according to priority of date of sentence.

(f) The extradition shall not take place if, after the commission of the crime, or the institution of the prosecution or the conviction thereon, the person claimed shall have acquired exemption from prosecution, or punishment, by lapse of time according to the laws of the State applied to.

(g) A person surrendered shall not be kept in prison or brought to trial, by the party to whom the surrender is made, for any other crime or on account of any other matters than those for which

the surrender has been granted. This stipulation is not applicable to crimes committed after the extradition.

(h) If the person whose extradition is claimed by one of the High Contracting Parties shall be also claimed by one or more other Governments, on account of crimes committed in their respective dominions, the following rule shall be observed:—

If he is a subject of the High Contracting Party who claims him, the surrender shall be made to such party. If he is not so, the other High Contracting Party shall have the power of delivering him up to the reclaiming Government which, in the case in question, may appear to the former best entitled to the preference.

(i) The requisition for extradition may be made, on behalf of Her Britannic Majesty, by the Government of British India or by the Government of the Presidency of Bombay; and, on behalf of His Most Faithful Majesty, by the Government of Portuguese India:

Provided that, when the person claimed is accused of any of the above crimes which in British India is not exclusively triable by the High Court or the Court of Session, the requisition may also be made by the Governors of the Portuguese Settlements of Damaun and Diu, for any such crime committed in such Settlements respectively, and may be preferred directly to any District Magistrate or Political Agent within whose local jurisdiction such accused person may be found. Such District Magistrate or Political Agent shall, subject to the exceptions and conditions of this Convention, and unless he deem reference to higher authority to be absolutely necessary, comply with such requisition by delivering up the accused.

In like manner, any District Magistrate or Political Agent may make requisition to the Government of Portuguese India, or to the Governors of Damaun and Diu respectively, for the extradition of any person found in their jurisdiction who is accused of the commission, within the local jurisdiction of such District Magistrate or Political Agent, of any of the above crimes, the maximum punishment for which, by the Portuguese Penal Code, does not exceed imprisonment for seven years or an equivalent thereto. Subject to the exceptions and conditions of this Convention, such requisition shall be complied with by the delivering up of the accused, unless reference to higher authority shall be deemed absolutely necessary.

The authority receiving a requisition may hold, or cause to be held, such inquiry as he may deem sufficient for the purpose of ascertaining the existence of *prima facie* proof of facts which constitute a crime for which extradition may be granted under clause (b) of this Convention, and, in the absence of such proof, may decline to deliver up the accused person.

(j) Every requisition shall ordinarily be accompanied by the summons or warrant of arrest, or an authenticated copy thereof, issued by the competent authority of the State applying for it, and by a statement setting forth the facts of the offence, and sufficient particulars to enable the accused to be identified.

In cases of urgency, satisfactory proof of the existence of a warrant of arrest issued by com-

petent authority may be provisionally accepted in support of a requisition.

(k) If the person claimed has not already been arrested by the authorities of the State to whom the requisition is made, such authorities shall at once proceed to secure his appearance.

(l) Any person accused of any of the above crimes, and whether a subject of the party in whose dominions or jurisdiction he is found or otherwise, may be arrested by the authorities of such dominions—

on production of a warrant of arrest issued by the competent authority of the other party;

or on advice, from such competent authority, transmitted by post, telegraph, or other means, stating the existence of such warrant of arrest;

or on demand made by the Magistrate or Police-officer of the other party who has pursued the accused across the frontier;

or on receipt of advice of the fact of the crime, whether communicated by a private complainant or otherwise, and whether or not the individual offender may be known or specified by name.

(m) Every such Magistrate or Police-officer who has pursued the accused across the frontier shall be entitled to the protection and assistance of the Magistrates and Police-officers of the State to whose dominions or jurisdiction the accused has fled. They shall forthwith take up the pursuit, and without waiting for the orders of higher authority, shall make all necessary searches, inquiries, pursuits, arrests and recoveries of stolen property, in accordance with the local law of criminal procedure.

The Magistrate or Police-officer who has pursued the accused across the frontier shall not enter houses or buildings, or make searches or arrests, except in presence or under the authority of a local Magistrate or Police-officer, but shall act in subordination to the local Magistrates or Police-officers, and shall assist them, if so required, in all necessary searches, inquiries, pursuits, arrests and recoveries of stolen property.

(n) Whenever any person is arrested in the dominions or jurisdiction of the one party for any of the above crimes committed in the dominions or jurisdiction of the other party, notice shall be given to the authorities of the other party, who may then, if the accused is a subject of the State where he is found, claim that he be tried there; or, if he is not such a subject, claim his extradition as provided in this Convention.

(o) All weapons and articles necessary as evidence shall be seized in order to their production before the proper officer, and, in case of extradition, in order that they may be delivered up with the accused when the extradition shall take place.

Such seizure and delivery shall extend to articles stolen or obtained by other offences, and the proceeds of such property, and to everything that may serve as evidence of the crime; and shall be made even when the extradition cannot be made, or the trial cannot be held, on account of the flight or death of the accused.

Nothing in this clause shall affect the rights of third parties to any such weapons and articles.

(p) The expenses occasioned by the arrest, imprisonment, maintenance and transport of criminals, and the conveyance of articles, shall, within the dominions and as far as the frontier, be defrayed by the party in whose dominions or jurisdiction such criminals or articles are found: the expenses by sea and beyond the frontier shall be defrayed by the other party.

(q) A British subject accused of having committed any of the above crimes in the Portuguese Indian dominions or jurisdiction, may be dealt with by the British Indian authorities as if the crime had been committed in British India; and a Portuguese subject accused of having committed any of the above crimes in the British Indian dominions or jurisdiction, may be dealt with by the Portuguese Indian authorities as if the crime had been committed in Portuguese India:

Provided that the accused is found in the dominions or jurisdiction of the party to whom he is subject, and has not been acquitted or punished in the dominions or jurisdiction in which he committed the crime.

Complaints of any such crimes shall be inquired into by the police and judicial authorities, irrespective of the nationality of the complainant, in accordance with the local laws.

(r) In all such trials and enquiries, the evidence of witnesses whose attendance cannot be procured without an unreasonable amount of delay, expense or inconvenience, may be recorded by the judicial authorities of the State where the offence occurred, on receipt of an interrogatory Commission from the other State, and such depositions or certified copies thereof shall be received by the authorities of the other State as valid evidence: Provided that the authorities of the one State shall in all cases aid those of the other, as far as may be, in securing the personal attendance of witnesses, and reasonable time shall be allowed for the production of evidence, before the final discharge or conviction of the accused.

(s) If within two months after receipt of notice of the arrest no requisition for extradition or complaint or application for a trial shall have been made, the accused may be set at liberty. He shall be set at liberty if, within one month of the day on which he was brought to the frontier or seaport, and there placed at the disposal of the party claiming, he shall not have been despatched to the dominions of such party:

Provided that, until the extradition takes place, the accused may be liberated on bail or recognizance where such procedure is allowed by the law of the dominions or jurisdiction where he is found; and that after the extradition, the procedure shall be that provided by the law of the other dominions or jurisdiction.

(t) The High Contracting Parties engage to aid each other in the apprehension and surrender of deserters from their respective naval and military forces, and to apply all the provisions of this Convention to the offence of deserting.

It is agreed that this Convention shall have effect from the first day of February one thousand eight hundred and eighty.

Done at Calcutta on the thirtieth day of January in the year of our Lord one thousand eight hundred and eighty.

LYTTON,
*Viceroy and Governor General
of British India.*

Done at Panjim on the twentieth day of January in the year of our Lord one thousand eight hundred and eighty.

CAETANO AL^{PR} D'ALMEIDA
ALBUQUERQUE,
Governor General of Portuguese India.

D. FITZPATRICK,
*Secy. to the Govt. of India,
Legislative Department."*

[Published with the "Bombay Government Gazette" on the 12th February 1880.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 30th January 1880, and was promulgated for general information in the *Gazette of India* on the 1st January 1880:—

Act No. III of 1880.

THE CANTONMENTS ACT, 1880.

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34. Saving of jurisdiction of Courts-martial, &c.
35. Power to prescribe rules as to expenditure of funds raised under Act XX of 1856.

An Act to amend the law relating to Cantonments.

WHEREAS it is expedient to amend the law relating to cantonments;
Preamble. It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

- Short title. 1. This Act may be called "The Cantonments Act, 1880."

This section, section two and section twenty-four apply to the whole of British India. The remaining portions of this Act extend to the whole of British India except the territories respectively administered by the Governor of Fort St. George in Council and the Governor of Bombay in Council. The Governor of Fort St. George in Council or the Governor of Bombay in Council may, by notification in the official Gazette, extend any such portion to any place under his administration; and, from the date on which any such portion is so extended to any place such of the enactments for the time being in force in such place as are in any way inconsistent with, or repugnant to, such portion shall cease to have effect in such place.

Enactments inconsistent with this Act in Madras and Bombay cantonments.

2. Act No. XXII of 1864 (to provide for the administration of Military Cantonments) is hereby repealed; but all orders, declarations, rules and regulations made, powers conferred, and Courts established under that Act, shall be deemed to be respectively made, conferred and established under this Act.

All references to the said Act No. XXII of 1864 in enactments passed subsequently thereto shall be read as if made to this Act.

CHAPTER II.

CRIMINAL JURISDICTION.

3. Every person invested by the Local Government, under the Code of Criminal Procedure, with the powers of a Magistrate of the first class within the limits of any cantonment, shall be styled the Cantonment Magistrate, and shall be deemed a Magistrate in charge of a division of a district within the meaning, and for the purposes of the said Code.

4. Every person invested by the Local Government, under the provisions of the said Code, with the powers of a Magistrate of the second or third class within the limits of any cantonment, shall be styled the Assistant Cantonment Magistrate.

CHAPTER III.

CIVIL JURISDICTION.

5. Whenever the Local Government establishes within the limits of any cantonment a Court of Small Causes under Act No. XI of 1865 (to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil jurisdiction of the High Courts of Judicature), the Cantonment Magistrate, if there be a Cantonment Magistrate, shall be the Judge of the Court so established.

The Local Government shall declare and may from time to time alter the pecuniary limit of the jurisdiction of every such Court, but such limit shall in no case exceed five hundred rupees.

6. The Local Government may invest any Assistant Cantonment Magistrate with the powers of a Judge of a Court of Small Causes to try suits instituted in any Court referred to in section five; provided that no Assistant Cantonment Magistrate shall have jurisdiction to try suits for an amount exceeding fifty rupees.

7. All the provisions of the said Act shall be applicable to every such Court, and to all suits instituted in any such Court, except as is herein otherwise provided.

8. Whenever a Court of Small Causes is established in any cantonment, the jurisdiction exercised in such cantonment by any officer under Act No. III of 1859 (for conferring Civil Jurisdiction in certain cases upon Cantonment Joint Magistrates) shall cease and so much of any Act as authorises the commanding-officers of stations or cantonments to convene military courts of requests for the trial of actions of debt and other personal actions shall cease to have effect within the limits of such cantonment.

CHAPTER IV.

POLICE.

9. The Police-force employed in any cantonment shall be deemed to be part of the general Police-force under the Local Government in whose territories such cantonment is situate, within the meaning of Act No. V of 1861 (for the Regulation of Police) section two, and all the provisions of the said Act shall be applicable to such force.

The administration of the police within the limits of any cantonment in which there is a Cantonment Magistrate shall be vested in the District Superintendent subject to the general control and direction of the commanding-officer of such cantonment.

10. The Local Government may extend section thirty-four of the said Act No. V. of 1861 to any cantonment situate in the territories administered by such Government.

11. The commanding-officer of a cantonment may send any process requiring service or execution by any means not immediately at his disposal to the chief Police-officer in the cantonment for service or execution through the cantonment-police; and the said chief Police-officer shall

serve or execute such process in the same manner as if it had been issued by the Cantonment Magistrate, and subject to the same rules.

12. The Local Government may, by notification in the official Gazette, extend the provisions of Act No. XX of 1856 (to make better provision for the appointment and maintenance of Police Charukidars in Cities, Towns, Stations, Suburbs and Bázars in the Presidency of Fort William in Bengal), to any cantonment to which a Cantonment Magistrate may be appointed; and the Cantonment Magistrate of any cantonment to which the said Act is so extended may exercise all the powers vested in a Magistrate by that Act subject only to the control of the Magistrate of the District and the Local Government.

Whenever any such Cantonment Magistrate is absent, or when his office is temporarily vacant, the Magistrate of the district shall, during such absence, or until the Local Government fills up the vacancy, carry out the provisions of the same Act when so extended as aforesaid.

13. The Local Government may order that any cantonment to which the provisions of the said Act No. XX of 1856 are extended shall be divided into any number of cantonment-divisions, and may determine the nature of the tax to be levied in each such division according to section ten of the same Act.

CHAPTER V.

SPIRITUOUS LIQUORS.

14. If within any cantonment, or within any limits around such cantonment prescribed by the Local Government, any person not amenable to the Articles of War, or any sutler or camp-follower, knowingly barter, sells or supplies, or offers or attempts to barter, sell or supply, any spirituous liquor, wine or intoxicating drug to, or for the use of, any European soldier, or to or for the use of any European or Eurasian being a camp-follower or a soldier's wife, without a written license from the Officer Commanding or from some person authorized by the Officer Commanding to grant such license, the person so bartering, selling or supplying, or offering or attempting to barter, sell or supply, such liquor, wine or drug, shall be liable on conviction to fine which may extend to one hundred rupees, or to imprisonment for a term which may extend to three months, or, in lieu of such fine or imprisonment, to the punishment of whipping as prescribed for offences under section 2 of Act No. VI of 1864 (to authorize the punishment of whipping in certain cases), subject to all the provisions of that Act.

15. If any person convicted of an offence under section fourteen is again convicted of an offence under that section, any spirituous liquor, wine or intoxicating drug within

such cantonment or limits which, at the time of the commission of such subsequent offence, belongs to him, or is in his possession shall, without further proof, be deemed to be in his possession for the purpose of being supplied to European soldiers contrary to the provisions of this Act.

16. If within such cantonment or limits any camp-follower or military pensioner, or the wife or the widow of any soldier, camp-follower or military pensioner, removes, conveys or has, in his or her possession, any quantity of spirituous liquor or wine exceeding one ser or quart, without a permit to be signed by the officer in command, or such other officer as may be appointed by him to grant permits under this Act, every such person shall be liable upon conviction to fine which may extend to fifty rupees, and for any subsequent offence to fine which may extend to one hundred rupees, or to imprisonment for a term which may extend to three months: provided that nothing in this section contained shall apply to any liquor brought into a cantonment for the private use of any commissioned officer.

17. If any person subject to the provisions of this Act is found committing any offence contrary to section fourteen or section sixteen, any Police-officer may immediately without warrant arrest such person, and also seize any spirituous liquor, wine or intoxicating drug, together with any vessel containing the same, and anything used for the purpose of removing, conveying or concealing the same, which may be found in his possession, and shall thereupon without delay take such person, together with the things so seized, before the Cantonment Magistrate or other officer having jurisdiction to punish the offender.

18. In case of a conviction for any offence under section fourteen or section sixteen, the Cantonment Magistrate or other officer may adjudge any liquor, wine or intoxicating drug in respect of which the accused is convicted, and any other spirituous liquor, wine or intoxicating drug found in his possession at the time of committing the offence, and any vessel containing the same, together with anything used for the purpose of conveying, removing or concealing the same or any part thereof, to be confiscated; and such Magistrate or officer may order the whole or any part or parts of any fine imposed under this Act to be paid, as soon as the same is realized, to the person upon whose information such conviction takes place, or to the officer who has apprehended the offender or seized any of the goods adjudged to be confiscated.

19. Anything seized under section seventeen in respect of which any person is charged with an offence under this Act may be ordered to be detained until the person in whose possession the same has been seized is convicted or acquitted of the offence charged.

If such person is acquitted, anything so seized shall be restored; if he is convicted, such of the things only, if any, as are not adjudged by the Cantonment Magistrate or other officer to be confiscated shall be restored: the remainder shall be dealt with as confiscated.

20. The foregoing sections shall not apply to the sale or supply of any article for medicinal purposes, by recognized medical practitioners, chemists or druggists.

CHAPTER VI.

MUNICIPAL TAXATION.

21. The Local Government may from time to time, with the previous sanction of the Governor-General in Council, by notification in the official Gazette, impose in any cantonment any tax which, under any enactment in force at the date of such notification, can be imposed in any municipality within the territories administered by such Government, and may, with the like sanction and by a like notification, abolish any tax so imposed.

22. When any tax is leviable in a cantonment under section twenty-one, the Local Government may from time to time, by notification in the official Gazette, apply or adapt to such cantonment the provisions of any enactment or rules in force at the date of such notification for the assessment and recovery of any tax in any municipality within the territories administered by such Government.

23. The proceeds of all taxes levied in any cantonment under section twenty-one shall, after defraying therefrom the cost of assessing and collecting the same, be applied in such cantonment, under the directions of the Local Government, to the maintenance of the Police-force and the carrying out of measures under the rules made under section twenty-five.

24. Notwithstanding anything contained in any enactment for the time being in force, the Governor-General in Council may, by an order in writing, prohibit the levy of the whole or any part of any tax in any cantonment, or exempt any person by name or in virtue of his office, or any class of persons, from the operation of any such tax, and may, by a like order, rescind any such prohibition or exemption.

CHAPTER VII.

SUBSIDIARY RULES.

25. The Local Government may from time to time make rules consistent with this Act to provide within the limits of any cantonment for the matters hereinafter mentioned.

The rules made under this section may be general for all cantonments in the territories administered by the Local Government making the same, or special for any one or more of such cantonments, according as the Local Government directs.

26. No rule made under section twenty-five shall have effect until the same has been confirmed by the Governor-General in Council. A copy of every such rule when so confirmed, in English and in the vernacular language chiefly in use, shall be hung up in some conspicuous part of the office of the Cantonment Magistrate, or in such other place as the Local Government or the commanding-officer directs.

27. The rules made under section twenty-five may provide for all or any of the following matters:—

1st—regulating, in cases in which the land within the limits of the cantonment is the property of Government, and the occupation and use of which by private persons is only permissive, the conditions under which such occupation or use shall be allowed, and under which the Government may resume possession of such land, and under which compensation shall be given to persons occupying or using the land so resumed;

2nd—maintaining proper registers of immovable property within the limits of the cantonment, and providing for the registration of transfers of such property;

3rd—regulating the manner in which houses within the limits of the cantonment shall be claimable for purchase or hire, when necessary, for the accommodation of military officers;

4th—regulating the management and expenditure of any funds made available by law or by the Government for the purpose of public improvements within the limits of the cantonment, or for carrying out any rules made under section twenty-five; and the appointment of the necessary servants and establishments;

5th—the definition and prohibition of public nuisances;

6th—the maintenance generally of the cantonment in a proper sanitary condition; the prevention and cure of disease; the management and regulation of the public roads, of conservancy and drainage; the regulation and inspection of public and private necessaries, urinals, cess-pools, drains, and all places in which filth or rubbish is deposited, of slaughter-houses, public markets, burial and burning grounds, and of all offensive or dangerous trades and occupations;

7th—inspecting and controlling brothels and preventing the spread of venereal disease;

8th—the supervision and regulation of public wells, tanks, springs or other sources from which water is or may be made available for public use;

9th—the execution and promotion of works of public utility and convenience;

10th—the registration of deaths, and the making and recording observations and facts important for the public health and interest;

11th.—the imposition of penalties on persons convicted of the breach of any rule made under section twenty-five, and declaring what persons shall make the preliminary inquiry into or take cognizance of any breach of such rules and the manner in which the investigation shall be conducted: provided that no penalty so imposed shall exceed a fine of fifty rupees, or imprisonment for eight days.

28. Breaches of any rule made under section twenty-five shall be triable by the Cantonment Magistrate when there is such an officer: but the Local Government may invest any Assistant Cantonment Magistrate, or any other person, with powers to try such breaches, and may authorize such person to exercise such powers independently of the Cantonment Magistrate.

There shall be no appeal in any case tried under this section; but every person trying any such case shall, for the purposes of Chapter XXII. of the Code of Criminal Procedure, be deemed to be subordinate to the High Court, the Court of Session and the Magistrate of the District.

29. In every case in which an offender is sentenced to a fine for the breach of any rule made under section twenty-five, the amount may in case of non-payment be levied by distress and sale of any moveable property of the offender which may be found within the limits of the cantonment.

If no such property sufficient for the payment of the fine can be found, the offender shall be liable to simple imprisonment for any term which may extend to one month.

30. Nothing in this Act, nor in any rule made under section twenty-five, shall prevent any person from being prosecuted under any other enactment for any offence punishable under this Act, or from being liable under any other enactment to any other or higher penalty than is provided for such offence by this Act. Provided that no person shall be punished twice for the same offence.

31. Whenever it appears necessary for the protection of the health of the troops in any cantonment, the Governor-General in Council may extend to any place outside the limits of such cantonment and in the vicinity thereof, all or any of the rules made for such cantonment for inspecting and controlling brothels and preventing the spread of venereal disease and make any additional rules consistent with this Act for providing for the same matters, and may define the limits around such cantonment within which such rules or additional rules shall be in force.

32. When such rules, with any additional rules made as aforesaid are extended under section thirty-one to any place outside the limits

of such cantonment, the Governor-General in Council may provide, in the manner described in clause eleven of section twenty-seven, for the imposition of penalties for the breach of such rules and for prescribing the manner in which, and the persons by whom, breaches of such rules shall be inquired into or be cognizable.

33. Whenever, in any cantonment, rules have been made under section twenty-five, so much of any enactment as may be held to empower the commanding-officer to make local regulations regarding matters other than military shall cease to have any effect in such cantonment, and all local regulations for any cantonment which may have been made before the promulgation of the rules for such cantonment made under section twenty-five, shall cease to have any effect.

34. Nothing in the foregoing sections shall be deemed to affect the jurisdiction or Military authority of Courts-martial or of commanding-officers of cantonments or of regiments, corps or detachments under any Articles of War, or the provisions of any Statute for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty in the East Indies; and the Cantonment Magistrate shall exercise no jurisdiction in respect of such offences.

Provided that when a Cantonment Magistrate or other officer not being the commanding-officer has been invested by the Local Government with power within the limits of any cantonment to dispose of cases under any rule made under section twenty-five, the commanding-officer shall not exercise the powers described in clause (c) of Part III. of the Indian Articles of War in respect of any case arising under such rule when such rules have been passed for such cantonment under section twenty-five, and penalties have been laid down for their infringement.

The said rules shall be held to be the rules mentioned in the said last mentioned clause, and so much of the same clause as declares the penalties which may be inflicted for breach of cantonment-regulations shall cease from that time to have any effect in such cantonment.

35. The Local Government may from time to time prescribe rules for regulating the expenditure, for the general purposes of this Act, of any funds raised under the said Act No. XX. of 1856. Such funds may be expended for the purpose of carrying out any measures under any of the rules made under section twenty-five or section thirty-one of this Act, in addition to or in lieu of the purposes described in section thirty-six of the said Act No. XX. of 1856.

D. FITZPATRICK,

Secy. to the Govt. of India,
Legislative Department,

[Published with the "Bombay Government Gazette" on the 19th February 1880.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 30th January 1880, and was promulgated for general information in the *Gazette of India* on the 1st January 1880:—

Act No. III of 1880.

THE CANTONMENTS ACT, 1880.

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- 1 Short title.
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CIVIL JURISDICTION.

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6. Small Cause jurisdiction of Assistant Cantonment Magistrate.
7. Act XI of 1865 to apply to all Small Cause Courts in cantonments.
8. Military courts of requests.

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Administration of Police within cantonments.
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16. Penalty on certain persons having in possession within cantonments more than certain quantity of spirituous liquor, &c., without permit.
17. Arrest of offenders under section 14 or 16, and seizure of spirituous liquor, &c.
18. Confiscation of such liquor, &c.
19. Detention of property seized.
Disposal of property seized.
20. Saving of articles sold or supplied for medicinal purposes.

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22. Power to provide for assessment and collection of taxes.
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24. Power to prohibit taxation in cantonments.

CHAPTER VII.

SUBSIDIARY RULES.

25. Power to make cantonment-rules.
Rules may be general or special.
26. Rules to be confirmed by Governor General in Council.
27. For what matters rules may provide.
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29. Fine how levied.
Imprisonment in case fine not levied.
30. Prosecutions, &c., under other enactments.
31. Extension of rules as to brothels and venereal disease.
32. Penalties for breach of rules in extended limits.
33. Effect of cantonment-rules on enactments previously in force.
34. Saving of jurisdiction of Courts-martial, &c.
35. Power to prescribe rules as to expenditure of funds raised under Act XX of 1856.

An Act to amend the law relating to Cantonments.

WHEREAS it is expedient to amend the law relating to cantonments; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

- Short title. 1. This Act may be called "The Cantonments Act, 1880."

This section, section two and section twenty-four apply to the whole of British India. The remaining portions of this Act extend to the whole of British India except the territories respectively administered by the Governor of Fort St. George in Council and the Governor of Bombay in Council. The Governor of Fort St. George in Council or the Governor of Bombay in Council may, by notification in the official Gazette, extend any such portion to any place under his administration; and, from the date on which any such portion is so extended to any place such of the enactments for the time being in force in such place as are in any way inconsistent with, or repugnant to, such portion shall cease to have effect in such place.

2. Act No. XXII of 1864 (to provide for the administration of Military Cantonments) is hereby repealed; but all orders, declarations, rules and regulations made, powers conferred, and Courts established under that Act, shall be deemed to be respectively made, conferred and established under this Act.

All references to the said Act No. XXII of 1864 in enactments passed subsequently thereto shall be read as if made to this Act.

CHAPTER II.

CRIMINAL JURISDICTION.

3. Every person invested by the Local Government, under the Code of Criminal Procedure, with the powers of a Magistrate of the first class within the limits of any cantonment, shall be styled the Cantonment Magistrate, and shall be deemed a Magistrate in charge of a division of a district within the meaning, and for the purposes of the said Code.

4. Every person invested by the Local Government, under the provisions of the said Code, with the powers of a Magistrate of the second or third class within the limits of any cantonment, shall be styled the Assistant Cantonment Magistrate.

CHAPTER III.

CIVIL JURISDICTION.

5. Whenever the Local Government establishes within the limits of any cantonment a Court of Small Causes under Act No. XI of 1865 (to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil jurisdiction of the High Courts of Judicature), the Cantonment Magistrate, if there be a Cantonment Magistrate, shall be the Judge of the Court so established.

The Local Government shall declare and may from time to time alter the pecuniary limit of the jurisdiction of every such Court, but such limit shall in no case exceed five hundred rupees.

6. The Local Government may invest any Assistant Cantonment Magistrate with the powers of a Judge of a Court of Small Causes to try suits instituted in any Court referred to in section five; provided that no Assistant Cantonment Magistrate shall have jurisdiction to try suits for an amount exceeding fifty rupees.

7. All the provisions of the said Act shall be applicable to every such Court, and to all suits instituted in any such Court, except as is herein otherwise provided.

8. Whenever a Court of Small Causes is established in any cantonment, the jurisdiction exercised in such cantonment by any officer under Act No. III of 1859 (for conferring Civil Jurisdiction in certain cases upon cantonment Joint Magistrates) shall cease and so much of any Act as authorises the commanding-officers of stations or cantonments to convene military courts of requests for the trial of actions of debt and other personal actions shall cease to have effect within the limits of such cantonment.

CHAPTER IV.

POLICE.

9. The Police-force employed in any cantonment shall be deemed to be part of the general Police-force under the Local Government in whose territories such cantonment is situate, within the meaning of Act No. V of 1861 (for the Regulation of Police) section two, and all the provisions of the said Act shall be applicable to such force.

The administration of the police within the limits of any cantonment in which there is a Cantonment Magistrate shall be vested in the District Superintendent subject to the general control and direction of the commanding-officer of such cantonment.

10. The Local Government may extend section thirty-four of the said Act No. V. of 1861 to any cantonment situate in the territories administered by such Government.

11. The commanding-officer of a cantonment may send any process requiring service or execution by any means not immediately at his disposal to the chief Police-officer in the cantonment for service or execution through the cantonment-police; and the said chief Police-officer shall

serve or execute such process in the same manner as if it had been issued by the Cantonment Magistrate, and subject to the same rules.

12. The Local Government may, by notification in the official Gazette, extend the provisions of Act No. XX of 1856 (to make better provision for the appointment and maintenance of Police *Chaukidars in Cities, Towns, Stations, Suburbs and Bázars in the Presidency of Fort William in Bengal*), to any cantonment to which a Cantonment Magistrate may be appointed; and the Cantonment Magistrate of any cantonment to which the said Act is so extended may exercise all the powers vested in a Magistrate by that Act subject only to the control of the Magistrate of the District and the Local Government.

Whenever any such Cantonment Magistrate is absent, or when his office is temporarily vacant, the Magistrate of the district shall, during such absence, or until the Local Government fills up the vacancy, carry out the provisions of the same Act when so extended as aforesaid.

13. The Local Government may order that any cantonment to which the provisions of the said Act No. XX of 1856 are extended shall be divided into any number of cantonment-divisions, and may determine the nature of the tax to be levied in each such division according to section ten of the same Act.

CHAPTER V.

SPIRITUOUS LIQUORS.

14. If within any cantonment, or within any limits around such cantonment prescribed by the Local Government, any person not amenable to the Articles of War, or any sutler or camp-follower, knowingly barter, sells or supplies, or offers or attempts to barter, sell or supply, any spirituous liquor, wine or intoxicating drug to, or for the use of, any European soldier, or to or for the use of any European or Eurasian being a camp-follower or a soldier's wife, without a written license from the Officer Commanding or from some person authorized by the Officer Commanding to grant such license, the person so bartering, selling or supplying, or offering or attempting to barter, sell or supply, such liquor, wine or drug, shall be liable on conviction to fine which may extend to one hundred rupees, or to imprisonment for a term which may extend to three months, or, in lieu of such fine or imprisonment, to the punishment of whipping as prescribed for offences under section 2 of Act No. VI of 1864 (to authorize the punishment of whipping in certain cases), subject to all the provisions of that Act.

15. If any person convicted of an offence under section fourteen is again convicted of an offence under that section, any spirituous liquor, wine or intoxicating drug within

such cantonment or limits which, at the time of the commission of such subsequent offence, belongs to him, or is in his possession shall, without further proof, be deemed to be in his possession for the purpose of being supplied to European soldiers contrary to the provisions of this Act.

16. If within such cantonment or limits any camp-follower or military pensioner, or the wife or the widow of any soldier, camp-follower or military pensioner, removes, conveys or has, in his or her possession, any quantity of spirituous liquor or wine exceeding one ser or quart, without a permit to be signed by the officer in command, or such other officer as may be appointed by him to grant permits under this Act, every such person shall be liable upon conviction to fine which may extend to fifty rupees, and for any subsequent offence to fine which may extend to one hundred rupees, or to imprisonment for a term which may extend to three months: provided that nothing in this section contained shall apply to any liquor brought into a cantonment for the private use of any commissioned officer.

17. If any person subject to the provisions of this Act is found committing any offence contrary to section fourteen or section sixteen, any Police-officer may immediately without warrant arrest such person, and also seize any spirituous liquor, wine or intoxicating drug, together with any vessel containing the same, and anything used for the purpose of removing, conveying or concealing the same, which may be found in his possession, and shall thereupon without delay take such person, together with the things so seized, before the Cantonment Magistrate or other officer having jurisdiction to punish the offender.

18. In case of a conviction for any offence under section fourteen or section sixteen, the Cantonment Magistrate or other officer may adjudge any liquor, wine or intoxicating drug in respect of which the accused is convicted, and any other spirituous liquor, wine or intoxicating drug found in his possession at the time of committing the offence, and any vessel containing the same, together with anything used for the purpose of conveying, removing or concealing the same or any part thereof, to be confiscated; and such Magistrate or officer may order the whole or any part or parts of any fine imposed under this Act to be paid, as soon as the same is realized, to the person upon whose information such conviction takes place, or to the officer who has apprehended the offender or seized any of the goods adjudged to be confiscated.

19. Anything seized under section seventeen in respect of which any person is charged with an offence under this Act may be ordered to be detained until the person in whose possession the same has been seized is convicted or acquitted of the offence charged.

If such person is acquitted, anything so seized shall be restored; if he is convicted, such of the things only, if any, as are not adjudged by the Cantonment Magistrate or other officer to be confiscated shall be restored: the remainder shall be dealt with as confiscated.

20. The foregoing sections shall not apply to the sale or supply of any article for medicinal purposes by recognized medical practitioners, chemists or druggists.

CHAPTER VI.

MUNICIPAL TAXATION.

21. The Local Government may from time to time, with the previous sanction of the Governor-General in Council, by notification in the official Gazette, impose in any cantonment any tax which, under any enactment in force at the date of such notification, can be imposed in any municipality within the territories administered by such Government, and may, with the like sanction and by a like notification, abolish any tax so imposed.

22. When any tax is leviable in a cantonment under section twenty-one, the Local Government may from time to time, by notification in the official Gazette, apply or adapt to such cantonment the provisions of any enactment or rules in force at the date of such notification for the assessment and recovery of any tax in any municipality within the territories administered by such Government.

23. The proceeds of all taxes levied in any cantonment under section twenty-one shall, after defraying therefrom the cost of assessing and collecting the same, be applied in such cantonment, under the directions of the Local Government, to the maintenance of the Police-force and the carrying out of measures under the rules made under section twenty-five.

24. Notwithstanding anything contained in any enactment for the time being in force, the Governor-General in Council may, by an order in writing, prohibit the levy of the whole or any part of any tax in any cantonment, or exempt any person by name or in virtue of his office, or any class of persons, from the operation of any such tax, and may, by a like order, rescind any such prohibition or exemption.

CHAPTER VII.

SUBSIDIARY RULES.

25. The Local Government may from time to time make rules consistent with this Act to provide within the limits of any cantonment for the matters hereinafter mentioned.

The rules made under this section may be general for all cantonments in the territories administered by the Local Government making the same, or special for any one or more of such cantonments, according as the Local Government directs.

26. No rule made under section twenty-five shall have effect until the same has been confirmed by the Governor-General in Council. A copy of every such rule when so confirmed, in English and in the vernacular language chiefly in use, shall be hung up in some conspicuous part of the office of the Cantonment Magistrate, or in such other place as the Local Government or the commanding-officer directs.

27. The rules made under section twenty-five may provide for all or any of the following matters:—

1st—regulating, in cases in which the land within the limits of the cantonment is the property of Government, and the occupation and use of which by private persons is only permissive, the conditions under which such occupation or use shall be allowed, and under which the Government may resume possession of such land, and under which compensation shall be given to persons occupying or using the land so resumed;

2nd—maintaining proper registers of immovable property within the limits of the cantonment, and providing for the registration of transfers of such property;

3rd—regulating the manner in which houses within the limits of the cantonment shall be claimable for purchase or hire, when necessary, for the accommodation of military officers;

4th—regulating the management and expenditure of any funds made available by law or by the Government for the purpose of public improvements within the limits of the cantonment, or for carrying out any rules made under section twenty-five; and the appointment of the necessary servants and establishments;

5th—the definition and prohibition of public nuisances;

6th—the maintenance generally of the cantonment in a proper sanitary condition; the prevention and cure of disease; the management and regulation of the public roads, of conservancy and drainage; the regulation and inspection of public and private necessaries, urinals, cess-pools, drains, and all places in which filth or rubbish is deposited, of slaughter-houses, public markets, burial and burning grounds, and of all offensive or dangerous trades and occupations;

7th—inspecting and controlling brothels and preventing the spread of venereal disease;

8th—the supervision and regulation of public wells, tanks, springs or other sources from which water is or may be made available for public use;

9th—the execution and promotion of works of public utility and convenience;

10th—the registration of deaths, and the making and recording observations and facts important for the public health and interest;

11th.—the imposition of penalties on persons convicted of the breach of any rule made under section twenty-five, and declaring what persons shall make the preliminary inquiry into or take cognizance of any breach of such rules and the manner in which the investigation shall be conducted: provided that no penalty so imposed shall exceed a fine of fifty rupees, or imprisonment for eight days.

28. Breaches of any rule made under section twenty-five shall be triable by the Cantonment Magistrate when there is such an officer: but the Local Government may invest any Assistant Cantonment Magistrate, or any other person, with powers to try such breaches, and may authorize such person to exercise such powers independently of the Cantonment Magistrate.

There shall be no appeal in any case tried under this section; but every person trying any such case shall, for the purposes of Chapter XXII. of the Code of Criminal Procedure, be deemed to be subordinate to the High Court, the Court of Session and the Magistrate of the District.

29. In every case in which an offender is sentenced to a fine for the breach of any rule made under section twenty-five, the amount may in case of non-payment be levied by distress and sale of any moveable property of the offender which may be found within the limits of the cantonment.

If no such property sufficient for the payment of the fine can be found, the offender shall be liable to simple imprisonment for any term which may extend to one month.

30. Nothing in this Act, nor in any rule made under section twenty-five, shall prevent any person from being prosecuted under any other enactment for any offence punishable under this Act, or from being liable under any other enactment to any other or higher penalty than is provided for such offence by this Act. Provided that no person shall be punished twice for the same offence.

31. Whenever it appears necessary for the protection of the health of the troops in any cantonment, the Governor-General in Council may extend to any place outside the limits of such cantonment and in the vicinity thereof, all or any of the rules made for such cantonment for inspecting and controlling brothels and preventing the spread of venereal disease and make any additional rules consistent with this Act for providing for the same matters, and may define the limits around such cantonment within which such rules or additional rules shall be in force.

32. When such rules, with any additional rules made as aforesaid are extended under section thirty-one to any place outside the limits

of such cantonment, the Governor-General in Council may provide, in the manner described in clause eleven of section twenty-seven, for the imposition of penalties for the breach of such rules and for prescribing the manner in which, and the persons by whom, breaches of such rules shall be inquired into or be cognizable.

33. Whenever, in any cantonment, rules have been made under section twenty-five, so much of any enactment as may be held to empower the commanding-officer to make local regulations regarding matters other than military shall cease to have any effect in such cantonment, and all local regulations for any cantonment which may have been made before the promulgation of the rules for such cantonment made under section twenty-five, shall cease to have any effect.

34. Nothing in the foregoing sections shall be deemed to affect the jurisdiction of Military Courts-martial, &c. authority of Courts-martial or of commanding-officers of cantonments or of regiments, corps or detachments under any Articles of War, or the provisions of any Statute for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty in the East Indies; and the Cantonment Magistrate shall exercise no jurisdiction in respect of such offences.

Provided that when a Cantonment Magistrate or other officer not being the commanding-officer has been invested by the Local Government with power within the limits of any cantonment to dispose of cases under any rule made under section twenty-five, the commanding-officer shall not exercise the powers described in clause (c) of Part III. of the Indian Articles of War in respect of any case arising under such rule when such rules have been passed for such cantonment under section twenty-five, and penalties have been laid down for their infringement.

The said rules shall be held to be the rules mentioned in the said last mentioned clause, and so much of the same clause as declares the penalties which may be inflicted for breach of cantonment-regulations shall cease from that time to have any effect in such cantonment.

35. The Local Government may from time to time prescribe rules for regulating the expenditure, for the general purposes of this Act, of any funds raised under the said Act No. XX. of 1856. Such funds may be expended for the purpose of carrying out any measures under any of the rules made under section twenty-five or section thirty-one of this Act, in addition to or in lieu of the purposes described in section thirty-six of the said Act No. XX. of 1856.

D. FITZPATRICK,

Secy. to the Govt. of India,
Legislative Department.

If such person is acquitted, anything so seized shall be restored; if he is convicted, such of the things only, if any, as are not adjudged by the Cantonment Magistrate or other officer to be confiscated shall be restored: the remainder shall be dealt with as confiscated.

20. The foregoing sections shall not apply to the sale or supply of any article for medicinal purposes by recognized medical practitioners, chemists or druggists.

CHAPTER VI.

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22. When any tax is leviable in a cantonment under section twenty-one, the Local Government may from time to time, by notification in the official Gazette, apply or adapt to such cantonment the provisions of any enactment or rules in force at the date of such notification for the assessment and recovery of any tax in any municipality within the territories administered by such Government.

23. The proceeds of all taxes levied in any cantonment under section twenty-one shall, after defraying therefrom the cost of assessing and collecting the same, be applied in such cantonment, under the directions of the Local Government, to the maintenance of the Police-force and the carrying out of measures under the rules made under section twenty-five.

24. Notwithstanding anything contained in any enactment for the time being in force, the Governor-General in Council may, by an order in writing, prohibit the levy of the whole or any part of any tax in any cantonment, or exempt any person by name or in virtue of his office, or any class of persons, from the operation of any such tax, and may, by a like order, rescind any such prohibition or exemption.

CHAPTER VII.

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The rules made under this section may be general for all cantonments in the territories administered by the Local Government making the same, or special for any one or more of such cantonments, according as the Local Government directs.

26. No rule made under section twenty-five shall have effect until the same has been confirmed by the Governor-General in Council. A copy of every such rule when so confirmed, in English and in the vernacular language chiefly in use, shall be hung up in some conspicuous part of the office of the Cantonment Magistrate, or in such other place as the Local Government or the commanding-officer directs.

27. The rules made under section twenty-five may provide for all or any of the following matters:—

1st—regulating, in cases in which the land within the limits of the cantonment is the property of Government, and the occupation and use of which by private persons is only permissive, the conditions under which such occupation or use shall be allowed, and under which the Government may resume possession of such land, and under which compensation shall be given to persons occupying or using the land so resumed;

2nd—maintaining proper registers of immovable property within the limits of the cantonment, and providing for the registration of transfers of such property;

3rd—regulating the manner in which houses within the limits of the cantonment shall be claimable for purchase or hire, when necessary, for the accommodation of military officers;

4th—regulating the management and expenditure of any funds made available by law or by the Government for the purpose of public improvements within the limits of the cantonment, or for carrying out any rules made under section twenty-five; and the appointment of the necessary servants and establishments;

5th—the definition and prohibition of public nuisances;

6th—the maintenance generally of the cantonment in a proper sanitary condition; the prevention and cure of disease; the management and regulation of the public roads, of conservancy and drainage; the regulation and inspection of public and private necessaries, urinals, cess-pools, drains, and all places in which filth or rubbish is deposited, of slaughter-houses, public markets, burial and burning grounds, and of all offensive or dangerous trades and occupations;

7th—inspecting and controlling brothels and preventing the spread of venereal disease;

8th—the supervision and regulation of public wells, tanks, springs or other sources from which water is or may be made available for public use;

9th—the execution and promotion of works of public utility and convenience;

10th—the registration of deaths, and the making and recording observations and facts important for the public health and interest;

11th.—the imposition of penalties on persons convicted of the breach of any rule made under section twenty-five, and declaring what persons shall make the preliminary inquiry into or take cognizance of any breach of such rules and the manner in which the investigation shall be conducted: provided that no penalty so imposed shall exceed a fine of fifty rupees, or imprisonment for eight days.

28. Breaches of any rule made under section twenty-five shall be triable by the Cantonment Magistrate when there is such an officer: but the Local Government may invest any Assistant Cantonment Magistrate, or any other person, with powers to try such breaches, and may authorize such person to exercise such powers independently of the Cantonment Magistrate.

There shall be no appeal in any case tried under this section; but every person trying any such case shall, for the purposes of Chapter XXII. of the Code of Criminal Procedure, be deemed to be subordinate to the High Court, the Court of Session and the Magistrate of the District.

29. In every case in which an offender is sentenced to a fine for the breach of any rule made under section twenty-five, the amount may in case of non-payment be levied by distress and sale of any moveable property of the offender which may be found within the limits of the cantonment.

If no such property sufficient for the payment of the fine can be found, the offender shall be liable to simple imprisonment for any term which may extend to one month.

30. Nothing in this Act, nor in any rule made under section twenty-five, shall prevent any person from being prosecuted under any other enactment for any offence punishable under this Act, or from being liable under any other enactment to any other or higher penalty than is provided for such offence by this Act. Provided that no person shall be punished twice for the same offence.

31. Whenever it appears necessary for the protection of the health of the troops in any cantonment, the Governor-General in Council may extend to any place outside the limits of such cantonment and in the vicinity thereof, all or any of the rules made for such cantonment for inspecting and controlling brothels and preventing the spread of venereal disease and make any additional rules consistent with this Act for providing for the same matters, and may define the limits around such cantonment within which such rules or additional rules shall be in force.

32. When such rules, with any additional rules made as aforesaid are extended under section thirty-one to any place outside the limits

of such cantonment, the Governor-General in Council may provide, in the manner described in clause eleven of section twenty-seven, for the imposition of penalties for the breach of such rules and for prescribing the manner in which, and the persons by whom, breaches of such rules shall be inquired into or be cognizable.

33. Whenever, in any cantonment, rules have been made under section twenty-five, so much of any enactment as may be held to empower the commanding-officer to make local regulations regarding matters other than military shall cease to have any effect in such cantonment, and all local regulations for any cantonment which may have been made before the promulgation of the rules for such cantonment made under section twenty-five, shall cease to have any effect.

34. Nothing in the foregoing sections shall be deemed to affect the jurisdiction of Military Courts-martial, &c. authority of Courts-martial or of commanding-officers of cantonments or of regiments, corps or detachments under any Articles of War, or the provisions of any Statute for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty in the East Indies; and the Cantonment Magistrate shall exercise no jurisdiction in respect of such offences.

Provided that when a Cantonment Magistrate or other officer not being the commanding-officer has been invested by the Local Government with power within the limits of any cantonment to dispose of cases under any rule made under section twenty-five, the commanding-officer shall not exercise the powers described in clause (c) of Part III. of the Indian Articles of War in respect of any case arising under such rule when such rules have been passed for such cantonment under section twenty-five, and penalties have been laid down for their infringement.

The said rules shall be held to be the rules mentioned in the said last mentioned clause, and so much of the same clause as declares the penalties which may be inflicted for breach of cantonment-regulations shall cease from that time to have any effect in such cantonment.

35. The Local Government may from time to time prescribe rules for regulating the expenditure, for the general purposes of this Act, of any funds raised under the said Act No. XX. of 1856. Such funds may be expended for the purpose of carrying out any measures under any of the rules made under section twenty-five or section thirty-one of this Act, in addition to or in lieu of the purposes described in section thirty-six of the said Act No. XX. of 1856.

D. FITZPATRICK,

Secy. to the Govt. of India,
Legislative Department.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 30th January 1880, and was promulgated for general information in the *Gazette of India* on the 1st January 1880:—

Act No. IV. of 1880.

An Act to give effect to the Convention between the Governors General of British India and Portuguese India regarding the Extradition of Criminals, and to the twentieth Article of the Treaty between Her Majesty and the King of Portugal and the Algarves.

WHEREAS, by the nineteenth article of the Treaty of Commerce and Extradition between Her Majesty and the King of Portugal and the Algarves, executed at Lisbon on the twenty-sixth day of December 1878, and ratified on the sixth day of August 1879, it was provided that the High Contracting Parties should deliver up to each other those persons who, being accused or convicted of crimes committed in the Indian dominions or jurisdiction of the one party, should be found in the Indian dominions or jurisdiction of the other party, and that the circumstances and conditions under which, and the crimes for which such persons should be delivered up, should form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed at the earliest date possible after the ratification of the said Treaty, and that such Convention should have the same binding character as the said Treaty, and should continue in force for the same period;

and whereas, in pursuance of the said article, the Convention set forth in the schedule hereto annexed has been executed.

And whereas by the twentieth article of the said Treaty it was provided that Commissions issued in criminal trials and enquiries by the judicial tribunals of the one party, for the examination of persons resident in the dominions of the other, should be executed according to the provisions of the laws of the dominions where the witness resides;

and whereas it is doubtful whether under the existing law of British India there is authority to give effect to all the provisions of the said Convention and of the said twentieth article;

It is hereby enacted as follows:—

1. The provisions of the said Convention shall be followed in British India in every case to which they apply.

Provisions of Convention to be followed.

IV.—5 e

The procedure prescribed in the Code of Criminal Procedure shall, in so far as it is not inconsistent with the said Convention, be followed in every such case.

2. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in Portuguese India in like manner as it may be obtained in relation to any civil matter under the Code of Civil Procedure, chapter XXV; and the provisions of that chapter shall be construed as if the term 'suit' included a proceeding against a criminal.

3. This Act may be called 'The Portuguese Treaty Act, 1880.'

Short title.

THE SCHEDULE.

Whereas by the nineteenth article of a treaty dated the twenty-sixth day of December 1878, and ratified on the sixth day of August 1879, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and the Algarves, it is provided that the high contracting parties engage to deliver up to each other those persons who, being accused or convicted of crimes committed in the Indian dominions or jurisdiction of the one party, shall be found in the Indian dominions or jurisdiction of the other party; and whereas by the same article it is further provided that the circumstances and conditions under which, and the crimes for which, such persons are to be delivered up, shall form the subject of a separate Convention between the Governors-General of British India and Portuguese India, to be executed at the earliest date possible after the ratification of the said Treaty.

In pursuance of the said article, the undersigned Governors General of British India and Portuguese India, acting respectively on behalf of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and the Algarves (hereinafter called the High Contracting Parties), have agreed that the said persons shall be so delivered up under the circumstances, and subject to the exceptions, hereinafter stated, namely:—

(a) When the crime for which extradition is claimed has been committed beyond the dominions of the party claiming, the requisition shall also be complied with, if the laws of the party applied to authorize a prosecution for such crime when committed beyond his dominions, and if the person claimed is a subject of the party claiming his extradition.

(b) The crimes for which the extradition shall be granted are the following :—

British Indian Penal Code.		Portuguese Penal Code.	
Crime.	Section.	Crime.	Article.
Murder, culpable homicide not amounting to murder, and causing death by rash or negligent act	299 to 304A	Voluntary homicide, including— Parricide Poisoning Infanticide And involuntary homicide caused by negligence Attempt at homicide	349 355 353 356 368 350 ; 6 to 11
Attempt to commit murder or culpable homicide Voluntarily causing hurt or grievous hurt	307, 308, 511 319 to 333, 335 and 338	Wounding, causing contusions or hurts Ordinary hurts under Articles 359 and 360, being excepted in the circumstances described in Articles 370, 377, and 378. Rape Kidnapping and hiding of minors	359 to 367, 369 394, 395 to 397 342 to 344
Rape Kidnapping, abduction, concealing kidnapped person, slave dealing, or selling minors for immoral purposes Immodest assault on a woman... .. Causing miscarriage and abortion Exposure or abandonment of a child Thefts Extortions, robberies, dacoities, attempts to commit robbery and belonging to a gang of thieves Criminal misappropriations and criminal breaches of trust Receiving stolen property Cheating Lurking, house-trespass, house-breaking Fraudulent bankruptcy and fraudulent disposition of property Dishonest opening of closed receptacle containing property Being a thug Belonging to a band of dacoits or robbers. Aggravated cases of wrongful confinement Mischiefs by fire or explosive substance. Mischiefs to a vessel, or after preparation to cause death, hurt, or wrongful restraint Counterfeiting or altering money, or uttering counterfeit or altered money, making or possessing instruments for above purposes Counterfeiting or fraudulently using of Government stamps issued for purposes of revenue Forgery and using of forged documents, and making of seals for fraudulent purposes Use of false trade-mark or property-mark, and frauds connected with such marks Giving or fabricating false evidence to cause a person to be convicted of an offence, and subornation of the same..	375 and 376 360 to 373 354 312 to 316 317 378 to 382 383 to 402 403 to 409 410 to 414 415 to 420 443 to 446 206, 208, 421 to 424 461 and 462 310, 311 400, 401 344 to 348 435, 436 and 438 437, 439, 440 230 to 254 255 to 263 463 to 468 ; 470 to 477 478 to 489 194 and 195 161 to 165 201 197 to 200 224	Immodest assault on a woman... .. Abortion... .. Exposure or abandonment of a child Thefts Robbery Theft Receiving stolen property Cheating, false pretences House-breaking Fraudulent bankruptcy and fraudulent disposition of property Dishonest opening or breaking of seals by public servants and others Association of malefactors Aggravated cases of wrongful confinement Arson Aggravated cases of mischief Counterfeiting or altering money, or uttering counterfeit or altered money, making or possessing instrument for above purposes Counterfeit or fraudulent using of Government stamps or stamped paper... .. Forgery and using of forged documents, and making of seals for fraudulent purposes Use of false trade-mark or property-mark, and frauds connected with such marks Giving or fabricating false evidence to cause a person to be convicted of an offence, and subornation of the same Illegal gratification taken by a public servant, or to influence a public servant Causing the evidence of commission of an offence mentioned in this Convention to disappear False certificate or declaration made by public servants or used by any person as evidence Escape from lawful custody on accusation or conviction of any crime specified in this Convention	391 358 345 to 348 421 ; 424 to 431 432 to 444 313 ; 422 to 425 ; 453 463 450 to 452 ; 456 380, Clause 1. 447 to 449 ; 455 310 to 312 263 331 to 333 466 to 474 475 and 481 206 to 214 228 to 229 215 to 217 ; 219 to 223 ; 230 and 231 230 and 231 238 to 240 314 to 323 ; 452 464 216 to 218 ; 221 and 222 190 to 195

British Indian Penal Code.		Portuguese Penal Code.	
Crime.	Section.	Crime.	Article.
<i>Crimes against other Laws.</i>			
Piracy by law of nations. Assaults on board a ship on the high seas, with intent to destroy life or to do grievous bodily harm.		Piracy Voluntary homicide, as above	162 349, 353, 355, 356
Sinking or destroying a vessel at sea, or attempting or conspiring to do so.		<i>Portuguese Maritime Code.</i> Loss or destruction of vessel, caused by a person on board... ..	42
Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas, against the authority of the master.		Act of revolt committed by more than third of crew	46

The extradition shall also take place for complicity or participation in any of the aforesaid crimes, and for any attempt to commit any such crime, provided such complicity, participation or attempt be punishable by the laws of both the High Contracting Parties.

(c) No British subject by birth or naturalization shall be delivered up by the Government or authorities of British India to the Government or authorities of Portuguese India; and, in like manner, no Portuguese subject by birth or naturalization shall be delivered up by the Government or authorities of Portuguese India to the Government or authorities of British India. Naturalization after the commission of the crime shall not be an obstacle to the extradition.

(d) The Governor General of British India will, from time to time, communicate to the Governor General of Portuguese India a list of Native States which, with the subjects thereof, are entitled to be placed, for the purposes of this Convention, upon the same footing as British India and the subjects of Her Britannic Majesty.

(e) The extradition shall not take place if the person claimed has already been tried and acquitted, or punished, for the same crime for which extradition is asked. If he should be under trial for any other crime, his extradition shall be deferred until the conclusion of the trial; and if the execution of the sentence, if any, would interfere with the extradition, it shall be postponed, in order that the extradition may take place. If upon extradition he be sentenced to other further punishment, the two High Contracting Parties shall arrange that the punishment shall be fulfilled according to priority of date of sentence.

(f) The extradition shall not take place if, after the commission of the crime, or the institution of the prosecution or the conviction thereon, the person claimed shall have acquired exemption from prosecution, or punishment, by lapse of time according to the laws of the State applied to.

(g) A person surrendered shall not be kept in prison or brought to trial, by the party to whom the surrender is made, for any other crime or on account of any other matters than those for which the surrender has been granted. This stipulation is not applicable to crimes committed after the extradition.

(h) If the person whose extradition is claimed by one of the High Contracting Parties shall be also claimed by one or more other Governments, on account of crimes committed in their respective dominions, the following rule shall be observed:—

If he is a subject of the High Contracting Party who claims him, the surrender shall be made to such party. If he is not so, the other High Contracting Party shall have the power of delivering him up to the reclaiming Government which, in the case in question, may appear to the former best entitled to the preference.

(i) The requisition for extradition may be made, on behalf of Her Britannic Majesty, by the Government of British India or by the Government of the Presidency of Bombay; and, on behalf of His Most Faithful Majesty, by the Government of Portuguese India:

Provided that, when the person claimed is accused of any of the above crimes which in British India is not exclusively triable by the High Court or the Court of Session, the requisition may also be made by the Governors of the Portuguese Settlements of Damaun and Diu, for any such crime committed in such Settlements respectively, and may be preferred directly to any District Magistrate or Political Agent within whose local jurisdiction such accused person may be found. Such District Magistrate or Political Agent shall, subject to the exceptions and conditions of this Convention, and unless he deem reference to higher authority to be absolutely necessary, comply with such requisition by delivering up the accused.

In like manner, any District Magistrate or Political Agent may make requisition to the Government of Portuguese India, or to the Governors of Damaun and Diu respectively, for the extradition of any person found in their jurisdiction who is accused of the commission, within the local jurisdiction of such District Magistrate or Political Agent, of any of the above crimes, the maximum punishment for which, by the Portuguese Penal Code, does not exceed imprisonment for seven years or an equivalent thereto. Subject to the exceptions and conditions of this Convention, such requisition shall be complied with by the delivering up of the accused, unless reference to higher authority shall be deemed absolutely necessary.

The authority receiving a requisition may hold, or cause to be held, such inquiry as he may deem sufficient for the purpose of ascertaining the existence of *prima facie* proof of facts which constitute a crime for which extradition may be granted under clause (b) of this Convention, and, in the absence of such proof, may decline to deliver up the accused person.

(j) Every requisition shall ordinarily be accompanied by the summons or warrant of arrest, or an authenticated copy thereof, issued by the competent authority of the State applying for it, and by a statement setting forth the facts of the offence, and sufficient particulars to enable the accused to be identified.

In cases of urgency, satisfactory proof of the existence of a warrant of arrest issued by competent authority may be provisionally accepted in support of a requisition.

(k) If the person claimed has not already been arrested by the authorities of the State to whom the requisition is made, such authorities shall at once proceed to secure his appearance.

(l) Any person accused of any of the above crimes, and whether a subject of the party in whose dominions or jurisdiction he is found or otherwise, may be arrested by the authorities of such dominions—

on production of a warrant of arrest issued by the competent authority of the other party ;

or on advice, from such competent authority, transmitted by post, telegraph, or other means, stating the existence of such warrant of arrest ;

or on demand made by the Magistrate or Police-officer of the other party who has pursued the accused across the frontier ;

or on receipt of advice of the fact of the crime, whether communicated by a private complainant or otherwise, and whether or not the individual offender may be known or specified by name.

(m) Every such Magistrate or Police-officer who has pursued the accused across the frontier shall be entitled to the protection and assistance of the Magistrates and Police-officers of the State to whose dominions or jurisdiction the accused has fled. They shall forthwith take up the pursuit, and without waiting for the orders of higher authority, shall make all necessary searches, inquiries, pursuits, arrests and recoveries of stolen property, in accordance with the local law of criminal procedure.

The Magistrate or Police-officer who has pursued the accused across the frontier shall not enter houses or buildings, or make searches or arrests, except in presence or under the authority of a local Magistrate or Police-officer, but shall act in subordination to the local Magistrates or Police-officers, and shall assist them, if so required, in all necessary searches, inquiries, pursuits, arrests and recoveries of stolen property.

(n) Whenever any person is arrested in the dominions or jurisdiction of the one party for any of the above crimes committed in the dominions or jurisdiction of the other party, notice shall be given to the authorities of the other party, who

may then, if the accused is a subject of the State where he is found, claim that he be tried there ; or, if he is not such a subject, claim his extradition as provided in this Convention.

(o) All weapons and articles necessary as evidence shall be seized in order to their production before the proper officer, and, in case of extradition, in order that they may be delivered up with the accused when the extradition shall take place.

Such seizure and delivery shall extend to articles stolen or obtained by other offences, and the proceeds of such property, and to everything that may serve as evidence of the crime ; and shall be made even when the extradition cannot be made, or the trial cannot be held, on account of the flight or death of the accused.

Nothing in this clause shall affect the rights of third parties to any such weapons and articles.

(p) The expenses occasioned by the arrest, imprisonment, maintenance and transport of criminals, and the conveyance of articles, shall, within the dominions and as far as the frontier, be defrayed by the party in whose dominions or jurisdiction such criminals or articles are found : the expenses by sea and beyond the frontier shall be defrayed by the other party.

(q) A British subject accused of having committed any of the above crimes in the Portuguese Indian dominions or jurisdiction, may be dealt with by the British Indian authorities as if the crime had been committed in British India ; and a Portuguese subject accused of having committed any of the above crimes in the British Indian dominions or jurisdiction, may be dealt with by the Portuguese Indian authorities as if the crime had been committed in Portuguese India :

Provided that the accused is found in the dominions or jurisdiction of the party to whom he is subject, and has not been acquitted or punished in the dominions or jurisdiction in which he committed the crime.

Complaints of any such crimes shall be inquired into by the police and judicial authorities, irrespective of the nationality of the complainant, in accordance with the local laws.

(r) In all such trials and enquiries, the evidence of witnesses whose attendance cannot be procured without an unreasonable amount of delay, expense or inconvenience, may be recorded by the judicial authorities of the State where the offence occurred, on receipt of an interrogatory Commission from the other State, and such depositions or certified copies thereof shall be received by the authorities of the other State as valid evidence : Provided that the authorities of the one State shall in all cases aid those of the other, as far as may be, in securing the personal attendance of witnesses, and reasonable time shall be allowed for the production of evidence before the final discharge or conviction of the accused.

(s) If within two months after receipt of notice of the arrest no requisition for extradition or complaint or application for a trial shall have been made, the accused may be set at liberty. He shall be set at liberty if, within one month of the day on which he was brought to the frontier or seaport,

and there placed at the disposal of the party claiming, he shall not have been despatched to the dominions of such party :

Provided that, until the extradition takes place, the accused may be liberated on bail or recognizance where such procedure is allowed by the law of the dominions or jurisdiction where he is found; and that after the extradition, the procedure shall be that provided by the law of the other dominions or jurisdiction.

(f) The High Contracting Parties engage to aid each other in the apprehension and surrender of deserters from their respective naval and military forces, and to apply all the provisions of this Convention to the offence of deserting.

It is agreed that this Convention shall have effect from the first day of February one thousand eight hundred and eighty.

Done at Calcutta on the thirtieth day of January in the year of our Lord one thousand eight hundred and eighty.

LYTTON,
*Viceroy and Governor General
of British India.*

Done at Panjim on the twentieth day of January in the year of our Lord one thousand eight hundred and eighty.

CAETANO AL^{DR.} D'ALMEIDA
ALBUQUERQUE,
Governor General of Portuguese India.

D. FITZPATRICK,
*Secy. to the Govt. of India,
Legislative Department.*

The authority receiving a requisition may hold, or cause to be held, such inquiry as he may deem sufficient for the purpose of ascertaining the existence of *prima facie* proof of facts which constitute a crime for which extradition may be granted under clause (b) of this Convention, and, in the absence of such proof, may decline to deliver up the accused person.

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(l) Any person accused of any of the above crimes, and whether a subject of the party in whose dominions or jurisdiction he is found or otherwise, may be arrested by the authorities of such dominions—

on production of a warrant of arrest issued by the competent authority of the other party ;

or on advice, from such competent authority, transmitted by post, telegraph, or other means, stating the existence of such warrant of arrest ;

or on demand made by the Magistrate or Police-officer of the other party who has pursued the accused across the frontier ;

or on receipt of advice of the fact of the crime, whether communicated by a private complainant or otherwise, and whether or not the individual offender may be known or specified by name.

(m) Every such Magistrate or Police-officer who has pursued the accused across the frontier shall be entitled to the protection and assistance of the Magistrates and Police-officers of the State to whose dominions or jurisdiction the accused has fled. They shall forthwith take up the pursuit, and without waiting for the orders of higher authority, shall make all necessary searches, inquiries, pursuits, arrests and recoveries of stolen property, in accordance with the local law of criminal procedure.

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(n) Whenever any person is arrested in the dominions or jurisdiction of the one party for any of the above crimes committed in the dominions or jurisdiction of the other party, notice shall be given to the authorities of the other party, who

may then, if the accused is a subject of the State where he is found, claim that he be tried there ; or, if he is not such a subject, claim his extradition as provided in this Convention.

(o) All weapons and articles necessary as evidence shall be seized in order to their production before the proper officer, and, in case of extradition, in order that they may be delivered up with the accused when the extradition shall take place.

Such seizure and delivery shall extend to articles stolen or obtained by other offences, and the proceeds of such property, and to everything that may serve as evidence of the crime ; and shall be made even when the extradition cannot be made, or the trial cannot be held, on account of the flight or death of the accused.

Nothing in this clause shall affect the rights of third parties to any such weapons and articles.

(p) The expenses occasioned by the arrest, imprisonment, maintenance and transport of criminals, and the conveyance of articles, shall, within the dominions and as far as the frontier, be defrayed by the party in whose dominions or jurisdiction such criminals or articles are found : the expenses by sea and beyond the frontier shall be defrayed by the other party.

(q) A British subject accused of having committed any of the above crimes in the Portuguese Indian dominions or jurisdiction, may be dealt with by the British Indian authorities as if the crime had been committed in British India ; and a Portuguese subject accused of having committed any of the above crimes in the British Indian dominions or jurisdiction, may be dealt with by the Portuguese Indian authorities as if the crime had been committed in Portuguese India :

Provided that the accused is found in the dominions or jurisdiction of the party to whom he is subject, and has not been acquitted or punished in the dominions or jurisdiction in which he committed the crime.

Complaints of any such crimes shall be inquired into by the police and judicial authorities, irrespective of the nationality of the complainant, in accordance with the local laws.

(r) In all such trials and enquiries, the evidence of witnesses whose attendance cannot be procured without an unreasonable amount of delay, expense or inconvenience, may be recorded by the judicial authorities of the State where the offence occurred, on receipt of an interrogatory Commission from the other State, and such depositions or certified copies thereof shall be received by the authorities of the other State as valid evidence ; Provided that the authorities of the one State shall in all cases aid those of the other, as far as may be, in securing the personal attendance of witnesses, and reasonable time shall be allowed for the production of evidence before the final discharge or conviction of the accused.

(s) If within two months after receipt of notice of the arrest no requisition for extradition or complaint or application for a trial shall have been made, the accused may be set at liberty. He shall be set at liberty if, within one month of the day on which he was brought to the frontier or seaport,

and there placed at the disposal of the party claiming, he shall not have been despatched to the dominions of such party :

Provided that, until the extradition takes place, the accused may be liberated on bail or recognizance where such procedure is allowed by the law of the dominions or jurisdiction where he is found; and that after the extradition, the procedure shall be that provided by the law of the other dominions or jurisdiction.

(f) The High Contracting Parties engage to aid each other in the apprehension and surrender of deserters from their respective naval and military forces, and to apply all the provisions of this Convention to the offence of deserting.

It is agreed that this Convention shall have effect from the first day of February one thousand eight hundred and eighty.

Done at Calcutta on the thirtieth day of January in the year of our Lord one thousand eight hundred and eighty.

LYTTON,
*Viceroy and Governor General
of British India.*

Done at Panjim on the twentieth day of January in the year of our Lord one thousand eight hundred and eighty.

CAETANO AL^{DR.} D'ALMEIDA
ALBUQUERQUE,
Governor General of Portuguese India.

D. FITZPATRICK,
*Secy. to the Govt. of India,
Legislative Department.*

[Published with the "Bombay Government Gazette" on the 26th February 1880.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 30th January 1880, and was promulgated for general information in the *Gazette of India* on the 1st January 1880:—

Act No. IV. of 1880.

An Act to give effect to the Convention between the Governors General of British India and Portuguese India regarding the Extradition of Criminals, and to the twentieth Article of the Treaty between Her Majesty and the King of Portugal and the Algarves.

WHEREAS, by the nineteenth article of the Treaty of Commerce and Extradition between Her Majesty and the King of Portugal and the Algarves, executed at Lisbon on the twenty-sixth day of December 1878, and ratified on the sixth day of August 1879, it was provided that the High Contracting Parties should deliver up to each other those persons who, being accused or convicted of crimes committed in the Indian dominions or jurisdiction of the one party, should be found in the Indian dominions or jurisdiction of the other party, and that the circumstances and conditions under which, and the crimes for which such persons should be delivered up, should form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed at the earliest date possible after the ratification of the said Treaty, and that such Convention should have the same binding character as the said Treaty, and should continue in force for the same period;

and whereas, in pursuance of the said article, the Convention set forth in the schedule hereto annexed has been executed.

And whereas by the twentieth article of the said Treaty it was provided that Commissions issued in criminal trials and enquiries by the judicial tribunals of the one party, for the examination of persons resident in the dominions of the other, should be executed according to the provisions of the laws of the dominions where the witness resides;

and whereas it is doubtful whether under the existing law of British India there is authority to give effect to all the provisions of the said Convention and of the said twentieth article;

It is hereby enacted as follows:—

1. The provisions of the said Convention shall be followed in British India in every case to which they apply.

Provisions of Convention to be followed.

IV.—5 g

The procedure prescribed in the Code of Criminal Procedure shall, in so far as it is not inconsistent with the said Convention, be followed in every such case.

2. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in Portuguese India in like manner as it may be obtained in relation to any civil matter under the Code of Civil Procedure, chapter XXV; and the provisions of that chapter shall be construed as if the term 'suit' included a proceeding against a criminal.

3. This Act may be called 'The Portuguese Treaty Act, 1880.'

Short title.

THE SCHEDULE.

Whereas by the nineteenth article of a treaty dated the twenty-sixth day of December 1878, and ratified on the sixth day of August 1879, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and the Algarves, it is provided that the high contracting parties engage to deliver up to each other those persons who, being accused or convicted of crimes committed in the Indian dominions or jurisdiction of the one party, shall be found in the Indian dominions or jurisdiction of the other party; and whereas by the same article it is further provided that the circumstances and conditions under which, and the crimes for which, such persons are to be delivered up, shall form the subject of a separate Convention between the Governors-General of British India and Portuguese India, to be executed at the earliest date possible after the ratification of the said Treaty.

In pursuance of the said article, the undersigned Governors General of British India and Portuguese India, acting respectively on behalf of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and the Algarves (hereinafter called the High Contracting Parties), have agreed that the said persons shall be so delivered up under the circumstances, and subject to the exceptions, hereinafter stated; namely:—

(a) When the crime for which extradition is claimed has been committed beyond the dominions of the party claiming, the requisition shall also be complied with, if the laws of the party applied to authorize a prosecution for such crime when committed beyond his dominions, and if the person claimed is a subject of the party claiming his extradition.

(b) The crimes for which the extradition shall be granted are the following :—

British Indian Penal Code,		Portuguese Penal Code.	
Crime.	Section.	Crime.	Article.
Murder, culpable homicide not amounting to murder, and causing death by rash or negligent act	299 to 304A	Voluntary homicide, including—	349
		Parricide	355
Attempt to commit murder or culpable homicide	307, 308, 511	Poisoning	353
		Infanticide	356
Voluntarily causing hurt or grievous hurt	319 to 333, 335 and 338	And involuntary homicide caused by negligence	368
		Attempt at homicide	350 ; 6 to 11
Rape	375 and 376	Wounding, causing contusions or hurts	359 to 367, 369
		Ordinary hurts under Articles 359 and 360, being excepted in the circumstances described in Articles 370, 377, and 378.	
Kidnapping, abduction, concealing kidnapped person, slave dealing, or selling minors for immoral purposes...	360 to 373	Rape	394, 395 to 397
		Kidnapping and hiding of minors	342 to 344
Immodest assault on a woman...	354	Immodest assault on a woman...	391
Causing miscarriage and abortion	312 to 316	Abortion	358
Exposure or abandonment of a child	317	Exposure or abandonment of a child	345 to 348
Thefts	378 to 382	Thefts	421 ; 424 to 431
Extortions, robberies, dacoities, attempts to commit robbery and belonging to a gang of thieves	383 to 402	Robbery	432 to 444
Criminal misappropriations and criminal breaches of trust	403 to 409	Theft	313 ; 422 to 425 ; 453
Receiving stolen property	410 to 414	Receiving stolen property	463
Cheating	415 to 420	Cheating, false pretences	450 to 452 ; 456
Lurking, house-trespass, house-breaking	443 to 446	House-breaking	380, Clause 1.
Fraudulent bankruptcy and fraudulent disposition of property	206, 208, 421 to 424	Fraudulent bankruptcy and fraudulent disposition of property	447 to 449 ; 455
Dishonest opening of closed receptacle containing property	461 and 462	Dishonest opening or breaking of seals by public servants and others	310 to 312
Being a thug	310, 311	} Association of malefactors	263
Belonging to a band of dacoits or robbers.	400, 401		
Aggravated cases of wrongful confinement	344 to 348	Aggravated cases of wrongful confinement	331 to 333
Mischief by fire or explosive substance	435, 436 and 438	Arson	466 to 474
Mischief to a vessel, or after preparation to cause death, hurt, or wrongful restraint	437, 439, 440	Aggravated cases of mischief	475 and 481
Counterfeiting or altering money, or uttering counterfeit or altered money, making or possessing instruments for above purposes	230 to 254	Counterfeiting or altering money, or uttering counterfeit or altered money, making or possessing instrument for above purposes	206 to 214
Counterfeiting or fraudulently using of Government stamps issued for purposes of revenue	255 to 263	Counterfeit or fraudulent using of Government stamps or stamped paper...	228 to 229
Forgery and using of forged documents, and making of seals for fraudulent purposes	463 to 468 ; 470 to 477	Forgery and using of forged documents, and making of seals for fraudulent purposes	215 to 217 ; 219 to 223 ; 230 and 231
Use of false trade-mark or property-mark, and frauds connected with such marks	478 to 489	Use of false trade-mark or property-mark, and frauds connected with such marks	230 and 231
Giving or fabricating false evidence to cause a person to be convicted of an offence, and subornation of the same..	194 and 195	Giving or fabricating false evidence to cause a person to be convicted of an offence, and subornation of the same	238 to 240
Illegal gratification taken by a public servant, or to influence a public servant	161 to 165	Illegal gratification taken by a public servant, or to influence a public servant	314 to 323 ; 452
Causing the evidence of the commission of any offence to disappear	201	Causing the evidence of commission of an offence mentioned in this Convention to disappear	464
False certificate or declaration made by public servant, or used by any person as evidence	197 to 200	False certificate or declaration made by public servants or used by any person as evidence	216 to 218 ; 221 and 222
Escape from lawful custody on accusation or conviction of any crime specified in this Convention	224	Escape from lawful custody on accusation or conviction of any crime specified in this Convention	190 to 196

British Indian Penal Code.		Portuguese Penal Code.	
Crime.	Section.	Crime.	Article.
<i>Crimes against other Laws.</i>			
Piracy by law of nations. Assaults on board a ship on the high seas, with intent to destroy life or to do grievous bodily harm.		Piracy Voluntary homicide, as above	162 349, 353, 355, 356
<i>Portuguese Maritime Code.</i>			
Sinking or destroying a vessel at sea, or attempting or conspiring to do so.		Loss or destruction of vessel, caused by a person on board... ..	42
Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas, against the authority of the master.		Act of revolt committed by more than third of crew	46

The extradition shall also take place for complicity or participation in any of the aforesaid crimes, and for any attempt to commit any such crime, provided such complicity, participation or attempt be punishable by the laws of both the High Contracting Parties.

(c) No British subject by birth or naturalization shall be delivered up by the Government or authorities of British India to the Government or authorities of Portuguese India; and, in like manner, no Portuguese subject by birth or naturalization shall be delivered up by the Government or authorities of Portuguese India to the Government or authorities of British India. Naturalization after the commission of the crime shall not be an obstacle to the extradition.

(d) The Governor General of British India will, from time to time, communicate to the Governor General of Portuguese India a list of Native States which, with the subjects thereof, are entitled to be placed, for the purposes of this Convention, upon the same footing as British India and the subjects of Her Britannic Majesty.

(e) The extradition shall not take place if the person claimed has already been tried and acquitted, or punished, for the same crime for which extradition is asked. If he should be under trial for any other crime, his extradition shall be deferred until the conclusion of the trial; and if the execution of the sentence, if any, would interfere with the extradition, it shall be postponed, in order that the extradition may take place. If upon extradition he be sentenced to other further punishment, the two High Contracting Parties shall arrange that the punishment shall be fulfilled according to priority of date of sentence.

(f) The extradition shall not take place if, after the commission of the crime, or the institution of the prosecution or the conviction thereon, the person claimed shall have acquired exemption from prosecution, or punishment, by lapse of time according to the laws of the State applied to.

(g) A person surrendered shall not be kept in prison or brought to trial, by the party to whom the surrender is made, for any other crime or on account of any other matters than those for which the surrender has been granted. This stipulation is not applicable to crimes committed after the extradition.

(h) If the person whose extradition is claimed by one of the High Contracting Parties shall be also claimed by one or more other Governments, on account of crimes committed in their respective dominions, the following rule shall be observed:—

If he is a subject of the High Contracting Party who claims him, the surrender shall be made to such party. If he is not so, the other High Contracting Party shall have the power of delivering him up to the reclaiming Government which, in the case in question, may appear to the former best entitled to the preference.

(i) The requisition for extradition may be made, on behalf of Her Britannic Majesty, by the Government of British India or by the Government of the Presidency of Bombay; and, on behalf of His Most Faithful Majesty, by the Government of Portuguese India:

Provided that, when the person claimed is accused of any of the above crimes which in British India is not exclusively triable by the High Court or the Court of Session, the requisition may also be made by the Governors of the Portuguese Settlements of Damaun and Diu, for any such crime committed in such Settlements respectively, and may be preferred directly to any District Magistrate or Political Agent within whose local jurisdiction such accused person may be found. Such District Magistrate or Political Agent shall, subject to the exceptions and conditions of this Convention, and unless he deem reference to higher authority to be absolutely necessary, comply with such requisition by delivering up the accused.

In like manner, any District Magistrate or Political Agent may make requisition to the Government of Portuguese India, or to the Governors of Damaun and Diu respectively, for the extradition of any person found in their jurisdiction who is accused of the commission, within the local jurisdiction of such District Magistrate or Political Agent, of any of the above crimes, the maximum punishment for which, by the Portuguese Penal Code, does not exceed imprisonment for seven years or an equivalent thereto. Subject to the exceptions and conditions of this Convention, such requisition shall be complied with by the delivering up of the accused, unless reference to higher authority shall be deemed absolutely necessary.

The authority receiving a requisition may hold, or cause to be held, such inquiry as he may deem sufficient for the purpose of ascertaining the existence of *prima facie* proof of facts which constitute a crime for which extradition may be granted under clause (b) of this Convention, and, in the absence of such proof, may decline to deliver up the accused person.

(j) Every requisition shall ordinarily be accompanied by the summons or warrant of arrest, or an authenticated copy thereof, issued by the competent authority of the State applying for it, and by a statement setting forth the facts of the offence, and sufficient particulars to enable the accused to be identified.

In cases of urgency, satisfactory proof of the existence of a warrant of arrest issued by competent authority may be provisionally accepted in support of a requisition.

(k) If the person claimed has not already been arrested by the authorities of the State to whom the requisition is made, such authorities shall at once proceed to secure his appearance.

(l) Any person accused of any of the above crimes, and whether a subject of the party in whose dominions or jurisdiction he is found or otherwise, may be arrested by the authorities of such dominions—

on production of a warrant of arrest issued by the competent authority of the other party;

or on advice, from such competent authority, transmitted by post, telegraph, or other means, stating the existence of such warrant of arrest;

or on demand made by the Magistrate or Police-officer of the other party who has pursued the accused across the frontier;

or on receipt of advice of the fact of the crime, whether communicated by a private complainant or otherwise, and whether or not the individual offender may be known or specified by name.

(m) Every such Magistrate or Police-officer who has pursued the accused across the frontier shall be entitled to the protection and assistance of the Magistrates and Police-officers of the State to whose dominions or jurisdiction the accused has fled. They shall forthwith take up the pursuit, and without waiting for the orders of higher authority, shall make all necessary searches, inquiries, pursuits, arrests and recoveries of stolen property, in accordance with the local law of criminal procedure.

The Magistrate or Police-officer who has pursued the accused across the frontier shall not enter houses or buildings, or make searches or arrests, except in presence or under the authority of a local Magistrate or Police-officer, but shall act in subordination to the local Magistrates or Police-officers, and shall assist them, if so required, in all necessary searches, inquiries, pursuits, arrests and recoveries of stolen property.

(n) Whenever any person is arrested in the dominions or jurisdiction of the one party for any of the above crimes committed in the dominions or jurisdiction of the other party, notice shall be given to the authorities of the other party, who

may then, if the accused is a subject of the State where he is found, claim that he be tried there; or, if he is not such a subject, claim his extradition as provided in this Convention.

(o) All weapons and articles necessary as evidence shall be seized in order to their production before the proper officer, and, in case of extradition, in order that they may be delivered up with the accused when the extradition shall take place.

Such seizure and delivery shall extend to articles stolen or obtained by other offences, and the proceeds of such property, and to everything that may serve as evidence of the crime; and shall be made even when the extradition cannot be made, or the trial cannot be held, on account of the flight or death of the accused.

Nothing in this clause shall affect the rights of third parties to any such weapons and articles.

(p) The expenses occasioned by the arrest, imprisonment, maintenance and transport of criminals, and the conveyance of articles, shall, within the dominions and as far as the frontier, be defrayed by the party in whose dominions or jurisdiction such criminals or articles are found; the expenses by sea and beyond the frontier shall be defrayed by the other party.

(q) A British subject accused of having committed any of the above crimes in the Portuguese Indian dominions or jurisdiction, may be dealt with by the British Indian authorities as if the crime had been committed in British India; and a Portuguese subject accused of having committed any of the above crimes in the British Indian dominions or jurisdiction, may be dealt with by the Portuguese Indian authorities as if the crime had been committed in Portuguese India:

Provided that the accused is found in the dominions or jurisdiction of the party to whom he is subject, and has not been acquitted or punished in the dominions or jurisdiction in which he committed the crime.

Complaints of any such crimes shall be inquired into by the police and judicial authorities, irrespective of the nationality of the complainant, in accordance with the local laws.

(r) In all such trials and enquiries, the evidence of witnesses whose attendance cannot be procured without an unreasonable amount of delay, expense or inconvenience, may be recorded by the judicial authorities of the State where the offence occurred, on receipt of an interrogatory Commission from the other State, and such depositions or certified copies thereof shall be received by the authorities of the other State as valid evidence: Provided that the authorities of the one State shall in all cases aid those of the other, as far as may be, in securing the personal attendance of witnesses, and reasonable time shall be allowed for the production of evidence before the final discharge or conviction of the accused.

(s) If within two months after receipt of notice of the arrest no requisition for extradition or complaint or application for a trial shall have been made, the accused may be set at liberty. He shall be set at liberty if, within one month of the day on which he was brought to the frontier or seaport,

and there placed at the disposal of the party claiming, he shall not have been despatched to the dominions of such party :

Provided that, until the extradition takes place, the accused may be liberated on bail or recognizance where such procedure is allowed by the law of the dominions or jurisdiction where he is found; and that after the extradition, the procedure shall be that provided by the law of the other dominions or jurisdiction.

(t) The High Contracting Parties engage to aid each other in the apprehension and surrender of deserters from their respective naval and military forces, and to apply all the provisions of this Convention to the offence of deserting.

It is agreed that this Convention shall have effect from the first day of February one thousand eight hundred and eighty.

Done at Calcutta on the thirtieth day of January in the year of our Lord one thousand eight hundred and eighty.

LYTTON,
*Viceroy and Governor General
of British India.*

Done at Panjim on the twentieth day of January in the year of our Lord one thousand eight hundred and eighty.

CAETANO AL^{DR.} D'ALMEIDA
ALBUQUERQUE,
Governor General of Portuguese India.

D. FITZPATRICK,
*Secy. to the Govt. of India,
Legislative Department.*



Bombay Government Gazette.

Published by Authority.

THURSDAY, 11TH MARCH 1880.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 2nd March 1880, and was promulgated for general information in the *Gazette of India* on the 6th March 1880:—

Act No. VI. of 1880.

An Act to amend the law relating to the licensing of Trades and Dealings.

WHEREAS it is expedient to amend the law at present in force for the licensing of trades, dealings, and industries in certain parts of British India; It is hereby enacted as follows:

1. This Act may be called "The Indian License Acts Amendment Act, 1880."

The Northern India License Act, 1873.

2. The following portions of the Northern India License Act, 1873, are hereby repealed, that is to say—

Repeal of portions of Northern India License Act, 1873.

the portion of section one from and including the words "but nothing herein contained" to the end;

section two; -

and the portion of the schedule from and including the words and figures "class III" to the end.

3. In the same Act, to section three the following shall be added, that is to say—

Addition to section 3 of the same Act.

"In this Act the word 'trade,' 'dealing' or 'Trade,' 'dealing,' and 'calling' shall not be deemed to include the following, that is to say—

"(a) agriculture;

"(b) the performance by a cultivator or receiver of rent in kind of any process ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to market;

"(c) the sale by a cultivator or receiver of rent in kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce."

4. In the same Act, to section four the following shall be added, that is to say—

"Provided that if such person carries on such trade or dealing in more than one such district, he shall take out such license in the district in which his principal place of business in the said territories is situate.

"When any question arises as to what shall, for the purposes of this Act, be deemed to be the principal place of any business, the Governor General in Council, or such authority as the Governor General in Council may from time to time appoint in this behalf, shall decide such question, and his or its decision thereof shall be final."

5. In sections six, seven and eight of the same Act, for the words "such district," wherever they occur, the words "the said territories" shall be substituted.

Amendment of sections 6, 7 and 8 of same Act.

6. In section seven of the same Act, for the words "first day of January" the words "thirty-first day of March" shall be substituted.

7. In sections nine and ten of the same Act, for the figures "1878" the figures "1880" shall be substituted.

In section ten of the same Act, for the word "thirty" the word "sixty" and for the word "February" the word "June" shall be substituted.

Madras License Act, 1878.

8. In section five of the Madras License Act, 1878, the words "and whose annual net earnings or profits exceed two hundred rupees," and the portion of the schedule of the same Act from and including the words and figures "class XII," to the end, are hereby repealed.

9. In the same Act, for section three the following section shall be substituted:—

"In this Act the word 'trade,' 'dealing' or 'industry' shall not be deemed to include the following, that is to say:—

"(a) agriculture;

"(b) the performance by a cultivator or receiver of rent in kind of any process ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to market;

"(c) the sale by a cultivator or receiver of rent in kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce."

10. In section eight of the same Act, for the words "first day of January," the words "thirty-first day of March" shall be substituted.

11. In sections ten and eleven of the same Act, for the figures "1878," the figures "1880" shall be substituted.

12. In section eleven of the same Act, for the word "March" in both places in which it occurs, the word "June" shall be substituted.

The Bombay License Act, 1878.

13. In section one of the Bombay License Act, 1878, the words "but nothing herein contained applies to persons earning their livelihood solely by agriculture" are hereby repealed; and to section two of the same Act the following words shall be added:—

"And the word 'trade,' 'dealing,' 'industry,' 'calling' or 'occupation' shall not be deemed to include the following, that is to say:—

"(a) agriculture;

"(b) the performance by a cultivator or receiver of rent in kind of any process ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to market;

"(c) the sale by a cultivator or receiver of rent in kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce."

14. In sections nine and ten of the same Act, for the figures "1878," the figures "1880" shall be substituted.

15. In section seven of the same Act for the words "first day of January" the words "thirty-first day of March" shall be substituted—

and in section ten of the same Act for the word "thirty" where it first occurs, the word "sixty" shall be substituted, and for the words "within thirty days next after the first of January," the words "before the first day of June" shall be substituted.

16. In schedule A annexed to the same Act, for the words and figures "Companies registered under the Indian Companies Act, 1866," the words "Joint Stock Companies" shall be substituted.

17. In schedule B annexed to the same Act, the words and figures "class XII, Rs. 7, class XIII, Rs. 5, class XIV, Rs. 3, class XV, Rs. 2" are hereby repealed.

General.

18. Notwithstanding anything hereinbefore contained, any money due at the time of the passing of this Act, under any of the Acts hereby amended, may be recovered as if this Act had not been passed.

19. When any person is engaged in any trades, dealings, industries or callings in two or more of the local areas to which the several Acts hereby amended and the Bengal License Act for the time being in force respectively extend, and is thereby liable to pay fees under two or more of such Acts, he shall, if the Governor General in Council so directs, be chargeable with a fee only under such one of those Acts as the Governor General in Council may direct, and the amount of such fee shall be calculated as if he was engaged in all such trades, dealings, industries, and callings within the local area to which such Act applies.

A direction under this section may be given by general rule or special order.

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

[Published with the "Bombay Government Gazette" on the 18th March 1880.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 2nd March 1880, and was promulgated for general information in the *Gazette of India* on the 6th March 1880:—

Act No. VI. of 1880.

An Act to amend the law relating to the licensing of Trades and Dealings.

WHEREAS it is expedient to amend the law at present in force for the licensing of trades, dealings, and industries in certain parts of British India; It is hereby enacted as follows:

1. This Act may be called "The Indian License Acts Amendment Act, 1880."

The Northern India License Act, 1878.

2. The following portions of the Northern India License Act, 1878, are hereby repealed, that is to say—

the portion of section one from and including the words "but nothing herein contained" to the end;

section two;

and the portion of the schedule from and including the words and figures "class III" to the end.

3. In the same Act, to section three the following shall be added, that is to say—

"In this Act the word 'trade,' 'dealing' or 'calling' shall not be deemed to include the following, that is to say—

"(a) agriculture;

"(b) the performance by a cultivator or receiver of rent in kind of any process ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to market;

"(c) the sale by a cultivator or receiver of rent in kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce."

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Substitution of new section for section 4 of same Act.

4. In the same Act, to section four the following shall be added, that is, to say—

"Provided that if such person carries on such trade or dealing in more than one such district, he shall take out such license in the district in which his principal place of business in the said territories is situate.

"When any question arises as to what shall, for the purposes of this Act, be deemed to be the principal place of any business, the Governor General in Council, or such authority as the Governor General in Council may from time to time appoint in this behalf, shall decide such question, and his or its decision thereof shall be final."

5. In sections six, seven and eight of the same Act, for the words "such district," wherever they occur, the words "the said territories" shall be substituted.

6. In section seven of the same Act, for the words "first day of January" the words "thirty-first day of March" shall be substituted.

7. In sections nine and ten of the same Act, for the figures "1878" the figures "1880" shall be substituted.

In section ten of the same Act, for the word "thirty" the word "sixty" and for the word "February" the word "June" shall be substituted.

Madras License Act, 1879.

8. In section five of the Madras License Act, 1878, the words "and whose annual net earnings or profits exceed two hundred rupees," and the portion of the schedule of the same Act from and including the words and figures "class XII," to the end, are hereby repealed.

9. In the same Act, for section three the following section shall be substituted:—

"In this Act the word 'trade,' 'dealing' or 'industry' shall not be deemed to include the following, that is to say:—

"(a) agriculture;

"(b) the performance by a cultivator or receiver of rent in kind of any process ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to market;

"(c) the sale by a cultivator or receiver of rent in kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce."

10. In section eight of the same Act, for the words "first day of January," the words "thirty-first day of March" shall be substituted.

Amendment of section 8 of same Act.

11. In sections ten and eleven of the same Act, for the figures "1878," the figures "1880" shall be substituted.

In the same Act, "1880" substituted for "1878."

12. In section eleven of the same Act, for the word "March" in both places in which it occurs, the word "June" shall be substituted.

Amendment of section 11 of same Act.

The Bombay License Act, 1878.

13. In section one of the Bombay License Act, 1878, the words "but nothing herein contained applies to persons earning their livelihood solely by agriculture" are hereby repealed; and to section two of the same Act the following words shall be added:—

"And the word 'trade,' 'dealing,' 'industry,' 'calling' or 'occupation' shall not be deemed to include the following, that is to say:—

'Trade,' 'dealing,' 'industry,' 'calling,' 'occupation' defined.

(a) agriculture;

"(b) the performance by a cultivator or receiver of rent in kind of any process ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to market;

"(c) the sale by a cultivator or receiver of rent in kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce."

14. In sections nine and ten of the same Act, for the figures "1878," the figures "1880" shall be substituted.

In the same Act "1880" substituted for "1878."

15. In section seven of the same Act for the words "first day of January" the words "thirty-first day of March" shall be substituted—

Amendment of sections 7 and 11 of same Act.

and in section ten of the same Act for the word "thirty" where it first occurs, the word "sixty" shall be substituted, and for the words "within thirty days next after the first of January," the words "before the first day of June" shall be substituted.

16. In schedule A annexed to the same Act, for the words and figures "Companies registered under the Indian Companies Act, 1866," the words "Joint Stock Companies" shall be substituted.

Amendment of schedule A of same Act.

17. In schedule B annexed to the same Act, the words and figures "class XII, Rs. 7, class XIII, Rs. 5, class XIV, Rs. 3, class XV, Rs. 2" are hereby repealed.

Amendment of schedule B of same Act.

General.

18. Notwithstanding anything hereinbefore contained, any money due at the time of the passing of this Act, under any of the Acts hereby amended, may be recovered as if this Act had not been passed.

Recovery of money due when Act passes.

19. When any person is engaged in any trades, dealings, industries or callings in two or more of the local areas to which the several Acts hereby amended and the Bengal License Act for the time being in force respectively extend, and is thereby liable to pay fees under two or more of such Acts, he shall, if the Governor General in Council so directs, be chargeable with a fee only under such one of those Acts as the Governor General in Council may direct, and the amount of such fee shall be calculated as if he was engaged in all such trades, dealings, industries, and callings within the local area to which such Act applies.

A direction under this section may be given by general rule or special order.

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

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PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 11th March 1880, and was promulgated for general information in the *Gazette of India* on the 13th March 1880:—

Act No. VII of 1880.

THE INDIAN MERCHANT SHIPPING ACT, 1880.

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An Act to amend the law relating to Merchant Shipping, and for other purposes.

WHEREAS it is expedient to prevent the departure of certain ships from British India ;

and whereas it is also expedient to provide for the relief of distressed seamen and apprentices at ports in British India, and for the recovery of wages due to and expenses incurred in respect of such seamen and apprentices in cases to which section 211 of the Merchant Shipping Act, 1854, and section 16 of the Merchant Shipping Act, 1855, do not apply of their own force ;

and whereas it is also expedient to provide in other respects hereinafter appearing for the regulation and control of merchant shipping ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Indian Merchant Shipping Act, 1880" ;
and it shall come into force on the first day of June 1880.
Short title.
2. In this Act, unless there be something repugnant in the subject or context,—
Interpretation-clause.
"ship", includes every description of vessel used in navigation, not propelled by oars :
"ship":
"master" means any person (except a pilot or harbour-master) having for the time being the charge or control of a ship :
"master":
"port" in any provision of this Act includes also any part of a river or channel leading to a port which for the purposes of such provision the Local Government may, from time to time, by notification in the official Gazette, declare to be included in such port.
"port":

CHAPTER II.

UNSEAWORTHY AND UNSAFE SHIPS.

Saving clause.

3. Nothing in this chapter contained shall apply—

(a) to any ship belonging to, or hired by, Her Majesty or the Secretary of State for India in Council ;

(b) to any ship of less than one hundred and fifty tons register employed solely in fishing or in plying coastwise between ports situate in India and Ceylon.

(c) to any pleasure yacht.

4. In this chapter, "British Indian ship" means a ship registered under Interpretation-clause. Act No. XIX of 1838, "British Indian ship": Act No. X of 1841, or Act No. XI of 1850, or under any other law passed by the Governor General in Council and for the time being in force for the registration of ships in India ; and

"British ship": "British ship" includes a British Indian ship :

"manner prescribed" means such manner as the Local Government, with the previous sanction of the Governor General in Council, may from time to time, by rules published in the official Gazette prescribe.
"manner prescribed":

A ship is "unseaworthy" within the meaning of this chapter when the materials of which she is made, her construction, the qualifications of the master, the number and description of the crew, the weight, description and stowage of cargo, the tackle, sails, rigging, stores, ballast and other equipment generally are not such as to render her in every respect fit for the proposed voyage or service.

A ship is "unsafe" within the meaning of this chapter when by reason of the defective condition of her hull, equipments or machinery, or by reason of overloading or improper loading, she is unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended.
"unsafe."

Sending or taking Unseaworthy Ship to Sea.

5. Every person who sends or attempts to send a British Indian ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, shall, unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished, with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

Every master of a British Indian ship who knowingly takes such ship to sea in such unseaworthy state that the life of any person is
Master taking unseaworthy ship to sea liable to penalty.

likely to be thereby endangered shall, unless he proves that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

For the purpose of giving such proof, every person charged under this section may give evidence in the same manner as any other witness.

Prosecution to be by, or with consent of, Local Government. No prosecution under this section shall be instituted except by, or with the consent of, the Local Government.

Implied Condition of Seaworthiness in Contract of Service.

6. In every contract of service, express or implied, between the owner of a British ship and the master or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any such ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner that such owner and the master, and every agent charged with the loading of such ship or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to secure the seaworthiness of such ship for the voyage at the time when such voyage commences, and to keep her in a seaworthy state for the voyage during the same:

Provided that nothing in this section shall subject such owner to any liability by reason of such ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending her to sea is reasonable and justifiable.

Detention of Unsafe Ships by the Local Government.

7. The Local Government, if it has reason to believe, on complaint or otherwise, that a British ship in any port to which it may from time to time specially extend this section, is unsafe, may provisionally order the detention of such ship for the purpose of being surveyed.

A written statement of the grounds of such detention shall be forthwith served on the master of such ship.

8. When the Local Government provisionally orders the detention of a ship, it shall forthwith appoint some competent person to survey such ship and report thereon, and, on receiving his report, may either order the ship to be released or, if in its opinion the ship is unsafe, may order her to be finally detained.

An order of final detention under this section may be either absolute or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Local Government thinks necessary for the protection

of human life; and the Local Government may, from time to time, vary or add to any such order:

Provided that, before an order for final detention is made, a copy of the report shall be served upon the master of the ship, and within seven days after such service the owner or master may appeal against such report, in the manner prescribed, to the Court of Survey (hereinafter mentioned) for the port where the ship is detained.

9. Where a ship has been provisionally detained and a person has been appointed under section eight to survey such ship, the owner or master of the ship, at any time before such person makes such survey, may require that he shall take with him as assessor such person as such owner or master may select, being a person named in the list of assessors prepared under section fifteen, or, if there is no such list, or if it is impracticable to procure the attendance of any person named in such list, a person of nautical, engineering or other special skill and experience; and

in such case, if the surveyor and assessor agree that the ship should be detained or released, the Local Government shall cause the ship to be detained or released accordingly, and the owner or master shall have no appeal;

but if the surveyor and assessor differ in their report the Local Government may act as if the requisition had not been made, and the owner or master shall have such appeal touching the report of the surveyor as is hereinbefore provided.

10. Notwithstanding anything contained in section eight the Local Government may at any time, when a ship has been provisionally detained, instead of following the procedure hereinbefore provided, refer the matter to the Court of Survey for the port where the ship is detained.

Detaining-officers.

11. For the better execution of this chapter, the Local Government may, from time to time, appoint a sufficient number of fit persons as its officers, and may suspend or remove any of them.

Every officer so appointed (hereinafter referred to as a detaining-officer) shall have, for the purpose of his duties under this chapter, the following powers, (that is to say):—

(a) he may go on board any British ship and may inspect the same or any part thereof, or any of the machinery, equipments and cargo on board thereof, and may require the unloading or removal of any cargo, ballast or tackle, not unnecessarily detaining or delaying her from discharging, unloading or proceeding on any voyage;

(b) he may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him, may examine such

persons, and may, by a like summons, require returns in writing to any enquiries he thinks fit to make;

(c) he may require and enforce the production of all books, papers or documents which he considers important; and

(d) he may administer oaths, or may, in lieu of administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

12. Every detaining-officer shall, in addition to the powers herein-provisional detention and survey. have the same power as the Local Government has under sections seven and eight, respectively, of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person to survey her; and if he thinks that a ship so detained by him is not unsafe, may order her to be released.

Every such officer shall forthwith report to the Local Government any order made by him for the detention or release of a ship.

Of the Court of Survey and of Appeals and References thereto.

13. A Court of Survey for a port shall consist of a Judge sitting with two assessors.

14. The Judge shall be a District Judge, Judge of a Court of Small Causes, Presidency Magistrate, Magistrate of the first class or other fit person appointed in this behalf by the Local Government either generally or for any specified case.

15. The assessors shall be persons of nautical, engineering or other special skill and experience. One of them shall be appointed by the Local Government either generally or in each case, and the other shall be summoned by the Judge, in the manner prescribed, out of a list of persons from time to time prepared for the purpose and published by the Local Government in the official Gazette, or, if there is no such list, or if it is impracticable to procure the attendance of any person named in such list, shall be appointed by the Judge.

16. The Judge shall, on receiving notice of an appeal or a reference from the Local Government, immediately summon the assessors, in the manner prescribed, to meet forthwith.

17. Every such appeal and reference shall be heard in open Court.

18. The Judge and each assessor shall, for the purposes of this chapter, have the same powers as are by section eleven conferred on a detaining-officer.

19. The Judge may appoint any competent person to survey the ship and report thereon to the Court.

20. The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Local Government, may attend at any inspection or survey made in exercise or pursuance of the powers conferred by section eighteen or section nineteen.

21. The Judge shall have the same power as the Local Government has to order the ship to be released or finally detained; but, unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

22. The Judge shall report the proceedings of the Court in each case to the Local Government in the manner prescribed, and each assessor shall either sign such report or report to the Local Government the reasons for his dissent.

23. The Local Government may, with the previous sanction of the Governor General in Council, from time to time make rules to carry into effect the provisions of this chapter with respect to a Court of Survey, and in particular with respect to—

- (a) the procedure before the Court;
- (b) the requiring, on an appeal, of security for costs and damages;
- (c) the amount and application of fees; and
- (d) the ascertainment, in case of dispute, of the proper amount of costs under this chapter.

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

Scientific Referees.

24. If the Local Government is of opinion that an appeal under this chapter involves a question of construction or design, or of scientific difficulty or important principle, it may refer the matter to such one or more out of a list of scientific referees, to be from time to time prepared by the Local Government, as may appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Port officer and the appellant, or, in default of any such agreement, by the Local Government; and thereupon the appeal shall be determined by the referee or referees instead of by the Court of Survey.

25. The Local Government, if the appellant in any such appeal so requires and gives security to its satisfaction to pay the costs of and incidental to the reference, shall refer such appeal to a referee or referees selected as aforesaid.

26. The referee or referees to whom an appeal is referred under section twenty-four or section twenty-five shall have the same powers as a Judge of the Court of Survey.

Costs of Detention and Damages incidental thereto.

27. If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of a ship, the Government shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

28. If a ship is finally detained under this chapter or if it appears that a ship provisionally detained was at the time of such detention unsafe, the owner of the ship shall be liable to pay to the Government its costs of and incidental to the detention and survey of the ship; and such costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

29. For the purposes of this chapter the costs of and incidental to any proceeding before a Court of Survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Local Government, shall be deemed to be part of the costs of the detention and survey of the ship.

30. When a complaint is made to the Local Government or a detaining-officer that a British ship is unsafe, it shall be in the discretion of such Government or officer (as the case may be) to require the complainant to give security to the satisfaction of such Government or officer for the costs and compensation which such complainant may become liable to pay as hereinafter mentioned.

Provided that, where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship, and is not in the opinion of such Government or officer frivolous or vexatious, such security shall not be required; and such Government or officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps to ascertain whether the ship ought to be detained under this chapter.

31. Where a ship is detained in consequence of any complaint, and the circumstances are such that the Government is liable under this chapter to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to the Government all such costs and compensation as the Government incurs, or is liable to pay, in respect of the detention and survey of the ship.

Grain Cargoes.

32. No cargo of which more than one-third consists of any kind of grain, corn, rice, paddy, pulse, seeds, nuts or nut-kernels (hereinafter referred to as grain cargo) shall be carried on board any British Indian ship unless the same be contained in bags, sacks or barrels, or secured from shifting by boards or bulkheads or otherwise.

If the owner or master of any ship, or any agent of such owner who is charged with the loading of such ship or the sending her to sea, knowingly allows any grain cargo or part of a grain cargo to be shipped therein for carriage contrary to the provisions of this section, he shall be punished with fine which may extend to three thousand rupees.

Deck and Load Lines.

33. Every British Indian ship shall be permanently and conspicuously marked with lines of not less than twelve inches in length and one inch in breadth painted longitudinally on each side amidships or as near thereto as is practicable, and indicating the position of each deck which is above water.

The upper edge of each of these lines shall be level with the upper side of the deck plank next the waterway at the place of marking. The lines shall be white or yellow on a dark ground or black on a light ground.

34. The master of every British ship not being a coasting-vessel within the meaning of the Sea Customs Act, 1878, shall, before his ship is entered outwards from any port in British India upon any voyage, or if that is not practicable, as soon after as may be, mark outside upon each of her sides amidship, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre.

The centre of such disc shall indicate the maximum load-line in salt water to which it is intended to load such ship for that voyage.

35. The person applying for entry of any such ship outwards shall insert, in the form of application made to the Customs-collector, a statement in writing of the distances in feet and inches between the centre of such disc and the upper edge of each of the lines indicating the position of the ship's deck which is above such centre: and if default is made in delivering this statement, the Customs-collector may refuse to enter the ship outwards.

36. A copy of this statement shall be entered in the agreement with the crew before it is signed by any member of the crew; and no shipping-master shall proceed with the engagement of the crew till this entry is made.

The master shall enter a copy of this statement in the official log-book (if any).

37. When a ship has been marked as by section thirty-four required, she shall be kept so marked until she next returns to a port of discharge in British India or arrives at a port in the United Kingdom.

38. The master of every British ship which is a coasting vessel within the meaning of the Sea Customs Act, 1878 shall, before proceeding to sea from any port, mark outside upon each of her sides amidship, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre:

The centre of this disc shall indicate the maximum load-line in salt-water to which it is intended to load the ship, until notice is given of an alteration.

39. He shall also once in every twelve months, immediately before the ship proceeds to sea, send or deliver to the Collector, or other principal officer of Customs of such port as the Local Government may from time to time appoint on this behalf, a statement in writing of the distance in feet and inches between the centre of the disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre:

The master, before the ship proceeds to sea after any renewal or alteration of the disc, shall send or deliver to the collector or other principal officer of Customs aforesaid notice in writing of such renewal or alteration, together with such statement in writing as before mentioned of the distance between the centre of the disc and the upper edge of each of the deck-lines.

If default is made in sending or delivering any notice or statement required by this section to be sent or delivered, the master shall be punished with fine which may extend to one thousand rupees.

40. When a ship has been marked as required by section thirty-eight, she shall be kept so marked until notice is given of an alteration.

41. Any master of a ship who neglects to cause his ship to be marked as by this chapter required, or to keep her so marked, or who allows the ship to be so loaded that when in perfectly smooth salt-water the centre of the disc is submerged,

and any person who conceals, removes, alters, defaces or obliterates, or suffers any person under his control to conceal, remove, alter, deface or obliterate, any of the said marks, except in the event of the particulars thereby denoted being lawfully altered, or except for the purpose of escaping capture by an enemy,

shall be punished for each such offence with fine which may extend to one thousand rupees.

42. If any of the marks required by this chapter is in any respects inaccurate so as to be likely to mislead, the master of the ship shall be punished with fine which may extend to one thousand rupees.

43. The provisions of this chapter as to load-lines shall not apply to ships coming from ports in the United Kingdom and marked with such lines in accordance with the provisions of the laws for the time being there in force.

Supplemental Provisions.

44. The Local Government may at any time, if satisfied that a ship detained under this chapter is not unsafe, order her to be released either upon or without any conditions.

45. When under this chapter a ship is authorized or ordered to be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, any commander or first officer of any of Her Majesty's Indian Government ships, or any Port-officer, Harbour-master, Conservator of a port or officer of Customs, may detain the ship.

46. If any ship after such detention, or after service on the master of any notice of or order for such detention proceeds to sea before she is released by competent authority, the master of the ship shall be punished with fine which may extend to one thousand rupees.

47. When a ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty, any person authorized under this chapter to detain or survey such ship, the owner and master of such ship shall each be liable to pay all expenses of and incidental to such person being so taken to sea, and shall also each be punished with fine which may extend to one thousand rupees.

When any owner or master is convicted of an offence under this section, the convicting Magistrate may inquire into and determine the amount payable on account of expenses by such owner or master under this section, and may direct that the same shall be recovered from him in manner provided for the recovery of fines.

48. When a ship has been detained under this chapter, she shall not be released by reason of her British or British Indian register being subsequently closed.

49. For the purposes of the survey of a ship under this chapter, any person authorized to make the same may go on board the ship and inspect the same, and every

part thereof, and the machinery, equipments and cargo, and may require the unloading or removal of any cargo, ballast or tackle.

50. Every Judge, assessor, officer or surveyor under this chapter shall be deemed to be a public servant within the meaning of the Indian Penal Code.

51. Where any order, notice, statement or document is required for the purpose of any provision of this chapter to be served on the master of a ship, the same shall be served, where there is no master, on the owner of the ship if he resides in the port where the ship is detained, or, if there is no owner residing there, on some agent of the owner residing there; or where such owner or agent is unknown or cannot be found, a copy of such order, notice, statement or document shall be affixed to the mast of the ship, and shall thereupon be deemed to be duly served.

52. Any such order, notice, statement or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or, in the case of a master, by leaving it for him on board the ship with the person being or appearing to be in command or charge of the ship.

53. The Local Government may, from time to time, by notification in the official Gazette, delegate either absolutely or subject to such conditions or restrictions as it thinks fit, to any body of Commissioners or trustees appointed for managing the affairs of a port all or any of the powers, and require the said body to discharge all or any of the functions of a Local Government under the foregoing sections of this Act, except the powers conferred by section fourteen, the power of preparing a list of assessors under section fifteen and the power of making rules, and may cancel any such notification.

While any such notification remains in force, all costs and damages which would otherwise be recoverable under this Act by or from the Government shall be recoverable in like manner by or from such body; and such body shall, notwithstanding anything to the contrary contained in any enactment now in force credit or pay, as the case may be, the amount of any costs or damages so recovered to or from the funds held by them in trust as such body.

CHAPTER III.

DISTRESSED SEAMEN.

54. This chapter shall be read with, and taken as part of, Act No. I of 1859 (for the amendment of the law relating to Merchant Seamen).

But nothing in this chapter contained applies to seamen or apprentices to whom the provisions of section 211 of the Merchant Shipping Act, 1854, or section 16 of the Merchant Shipping Act Amendment Act, 1855, apply.

In this chapter "local authority" means such person as the Local Government may, from time to time, subject to the control of the Governor General in Council, appoint by name or in virtue of his office to exercise the powers conferred, and to perform the duties imposed on the local authority under this chapter.

Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

55. The local authority may, subject to the rules hereinafter mentioned, provide for the subsistence—

(a) of all seamen and apprentices, being Native Indian subjects of Her Majesty, who have been shipwrecked, discharged or left behind at any place in British India, whether from any British ship employed in the merchant service, or from any of Her Majesty's ships, or who have been engaged by any person acting either as principal or agent to serve in any ship belonging to any foreign power, or to the subject of any foreign State, and who are in distress in any such place; and

(b) of all seamen and apprentices not being Native Indian subjects who have been shipwrecked, discharged or left behind at any place in British India and who are in distress in any such place,

until such time as such authority is able to provide them with a passage as hereinafter provided.

56. Subject as aforesaid, the local authority may cause such seamen or apprentices to be put on board some ship belonging to any subject of Her Majesty which is in want of men to make up its complement, and is bound—

(a) in the case of seamen or apprentices who are Native Indian subjects of Her Majesty, to their home or to a port in British India near their home;

(b) in the case of other British seamen or apprentices, to any port in the United Kingdom or the British possession to which they belong (as the case requires); and

(c) in the case of seamen or apprentices not being subjects of Her Majesty, to such place as the local authority, subject to the control of the Governor General in Council, may in each case determine.

57. In default of any such ship, the local authority may, subject to the provisions of section 211 of the Merchant Shipping Act, 1854, provide such seamen or apprentices with a passage in any ship (whether British or foreign) bound as aforesaid.

58. The local authority shall indorse on the agreement of any British ship on board of which any seaman or apprentice is sent under section fifty-six or section fifty-seven, the name of every person so sent on board thereof, with such particulars concerning the case as the Governor General in Council may from time to time by rule prescribe.

59. The master of every British ship bound as aforesaid shall receive and afford a passage and subsistence to all seamen and apprentices whom he is required to take on board his ship under the provisions of section fifty-six or section fifty-seven not exceeding one for every fifty tons burden, and shall, during the passage, provide every such seaman or apprentice with a proper berth or sleeping-place effectually protected against sea and weather.

60. If the master of any such ship fails or refuses to receive on board his ship, or to give a passage or subsistence to, or to provide for, any such seaman or apprentice contrary to the provisions of section fifty-nine, he shall, for each seaman and apprentice with respect to whom he so fails or refuses, be punished with fine which may extend to one thousand rupees, or, when he is tried at any place beyond the limits of British India, to the equivalent of one thousand rupees in the currency of such place.

61. When any master of a British ship has conveyed a seaman or apprentice in excess of the number (if any) wanted to make up the complement of his crew to any place in accordance with the requisition of a local authority under this chapter, such master shall be entitled to be paid by the Secretary of State for India in Council in respect of the subsistence and passage of such seaman or apprentice such sum per diem as the Governor General in Council from time to time appoints:

Provided that no payment shall be made under this section except on the production of the following documents (that is to say):—

(a) a certificate signed by the local authority by whose direction such seaman or apprentice was received on board, specifying the name of such seaman or apprentice, and the time when he was received on board; and

(b) a declaration in writing by such master made and verified in manner hereinafter provided, and stating—

(1) the number of days during which such seaman or apprentice received subsistence and was provided for as aforesaid on board his ship;

(2) the number of men and boys forming the complement of his crew;

(3) the number of seamen and apprentices employed on board his ship during the time such seaman or apprentice was on board; and

(4) every variation (if any) of such number.

The declaration required by this section shall, in the case of a ship conveying Native Indian

subjects of Her Majesty to a port in British India, be made before a Shipping-master or such other officer as the Local Government may appoint. In other cases such declaration shall be made and verified in the same manner as declarations made under section 212 of the Merchant Shipping Act, 1854.

62. (a). If any seaman or apprentice, being a Native Indian subject of Her Majesty and belonging to any British ship, is discharged or left behind at any place in British India without full compliance on the part of the master with all the provisions in that behalf of the law for the time being in force, and becomes distressed and is relieved under the provisions of this chapter; or

(b) if any such seaman or apprentice, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign power or to the subject of any foreign power, become distressed and is relieved as aforesaid; or

(c) if any seaman or apprentice belonging to any British ship, registered in British India, and not being a Native Indian subject of Her Majesty, is discharged or left behind at any place in British India without full compliance as aforesaid, and becomes distressed and is relieved as aforesaid,

the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and, in case he should die before reaching home, for his burial, shall be a charge upon the ship, whether British or foreign, to which he so belonged as aforesaid.

63. All such wages and expenses shall be recoverable with costs either from the master of such ship or from the person who is owner thereof for the time being, or in the case of an engagement for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made, in the same manner as other debts due to the Secretary of State for India in Council, or in the same manner and by the same form and process in which wages due to the seaman or apprentice would be recoverable by him.

64. The Local Government may, from time to time, by notification in the official Gazette, authorize, either generally or specially, such persons as it thinks fit to sue for any such wages and expenses and recover the same.

And every person so authorized shall be entitled to sue and recover accordingly, and shall be deemed to be a person filling a public office within the meaning of the Indian Evidence Act, 1872, section 57, clause 7.

65. When any such wages and expenses are due to or in respect of a seaman or apprentice mentioned in section sixty-two, clause (c), they may, instead of being

recovered by a person authorized under section sixty-four, be recovered by the Board of Trade in manner provided by the Merchant Shipping Act, 1854, section 213, and when so recovered shall be paid by the said Board to the Secretary of State for India in Council.

66. In all proceedings under this chapter, whether in India or elsewhere, the production of a certificate signed by the local authority by which any seaman or apprentice named therein was relieved, or any expenses were incurred, under this chapter, to the effect that such seaman or apprentice was in distress, and that such expenses were incurred in respect of such seaman or apprentice, shall be sufficient evidence that such seaman or apprentice was relieved, conveyed home or buried (as the case may be) at the expense of the revenues of India.

67. The Governor General in Council may, from time to time, make rules to determine under what circumstances and subject to what conditions seamen or apprentices may be relieved and provided with passages under this chapter and generally to carry out the provisions of this chapter.

All such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

CHAPTER IV.

SHIP SURVEYORS.

68. The Local Government may, from time to time, appoint competent persons for the purpose of examining the qualifications of persons desirous of practising the profession of a ship surveyor at any port in the territories administered by such Government, and subject to the control of the Governor-General in Council, make rules—

(a) for the conduct of such examinations and the qualifications to be required,

(b) for the grant of certificates to qualified persons,

(c) for the fees to be paid for such examinations and certificates,

(d) for holding inquiries into charges of incompetency and misconduct on the part of holders of such certificates, and

(e) for the suspension and cancelment of such certificates.

All such rules shall be published in the official Gazette, and shall thereupon have the force of law.

69. No person shall, in any port in which there is a person exercising the profession of a ship surveyor and holding a certificate granted under section sixty-eight, exercise such profession in

such port unless he holds a certificate issued under that section.

Provided that nothing herein contained shall prevent any person employed by Lloyd's Register of British and Foreign Shipping or Bureau Veritas from discharging any of the duties of such employment, or apply to any person specially exempted by the Local Government from the operation of this section.

70. Any person exercising the profession, of a ship surveyor in contravention of the provisions of section sixty-nine shall be punished with fine not exceeding one thousand rupees, and shall be incapable of maintaining any suit for any fee or reward for anything done by him in such exercise of such profession.

CHAPTER V.

RECEIVERS OF WRECK.

71. In this Chapter "wreck" includes the following when found in the sea or any tidal water or on the shores thereof, that is to say:—

goods which have been cast into the sea and then sink and remain under water;

goods which have been cast or fall into the sea and remain floating on the surface;

goods which are sunk in the sea, but are attached to a floating object in order that they may be found again,

goods which are thrown away or abandoned, and a vessel abandoned without hope or intention of recovery.

72. Chapter V of the Indian Ports Act, 1875, and section 5 of Act No. XIII of 1878 (*An Act to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices, and to amend the Indian Merchant Shipping Act, 1875, and the Indian Ports Act, 1875*) are hereby repealed.

But nothing in this chapter shall be deemed to affect section 40 of the Indian Ports Act, 1875, or entitle any person to salvage in respect of any property recovered by creeping or sweeping in contravention of that section.

73. The Local Government may, from time to time, by notification in the official Gazette, with the previous sanction of the Governor General in Council, appoint such persons as it thinks fit to receive and take possession of wreck and to perform such duties connected therewith as are hereinafter mentioned within such local limits as it may from time to time prescribe.

Persons so appointed shall be called receivers of wreck.

74. Any person finding and taking possession of any wreck within any local limits for which a receiver of wreck has been so appointed, shall as soon as practicable—

Surveyors of Lloyd's and Veritas.

Penalty for practising as ship surveyor without certificate.

What shall be evidence of distress and expenses incurred.

Power of Governor-General in Council to make rules.

Local Government to appoint examiners.

and to make rules as to qualification, &c., of ship surveyors.

Appointment of receivers.

Publication of rules.

No person to practise as ship surveyor unless qualified.

(a) if he be the owner thereof, give the receiver of wreck notice in writing of the finding thereof and of the marks by which such wreck is distinguished;

(b) if he be not the owner of such wreck, deliver the same to the receiver of wreck.

75. Whenever any wreck is found by the receiver of wreck or has been delivered to him in accordance with the provisions of section seventy-four by any person, not being the owner thereof, the Government or such other person so delivering such wreck, as the case may be, shall be entitled to receive a reasonable sum for salvage, having regard to all the circumstances of the case.

Any dispute arising concerning the amount due under this section shall be determined by a Magistrate, upon application to him for that purpose by either of the disputing parties.

76. The receiver of wreck shall, on taking possession of any wreck, publish a notification, in such manner and at such place as the Local Government may from time to time prescribe in this behalf, containing a description of the same and the time at which and the place where the same was found.

77. If after the publication of such notification the wreck is unclaimed,

or if the person claiming the same fails to pay the amount due for salvage and for charges incurred by the receiver of wreck in respect thereof,

the receiver of wreck may sell such wreck by public auction, if of a perishable nature, forthwith, and if not of a perishable nature, at any period not less than six months after such notification as aforesaid.

78. On the realization of the proceeds of such sale, the amount due for salvage and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the balance shall be paid to the owner of the wreck, or, if no such person appear and claim the same, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same.

Provided that he makes his claim within one year from the date of the sale.

79. Any person omitting to give notice of the finding of, or to deliver, any wreck to the receiver of wreck, as required by section seventy-four shall be punished with fine which may extend to one thousand rupees, and in the case of omission to deliver any wreck, shall, in addition to such fine, forfeit all claim to salvage, and pay to the owner of such wreck if the same is

claimed, or if the same is unclaimed to the Government, a penalty not exceeding twice the value of such wreck.

CHAPTER VI.

INSPECTION OF SHIPS WITH REGARD TO LIGHT AND FOG-SIGNALS.

80. Nothing in this chapter contained shall apply to any ship belonging to, or hired by, Her Majesty or the Secretary of State for India in Council, or belonging any foreign Prince or State.

81. The Local Government may, from time to time, appoint persons to inspect in any port, ships to which the regulations for preventing collisions at sea, issued under the provisions of the Merchant Shipping Act Amendment Act, 1862, or any other similar law for the time being in force, may apply for the purpose of seeing that such ships are properly provided with lights and with the means of making fog-signals, in pursuance of such regulations or law, and may suspend or remove any person so appointed.

Every person so appointed shall in the port for which he is appointed have, for the purposes of such inspection, the powers given to detaining-officers by section eleven.

82. If any such person finds that any ship is not so provided, he shall give to the master or owner notice in writing pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same.

83. Every notice so given shall be communicated in such manner as the Local Government may direct to the Customs-collector at any port from which such ship may seek to clear; and no Customs-collector to whom such communication is made shall grant such ship a port clearance or allow her to proceed to sea without a certificate under the hand of some person appointed as aforesaid, to the effect that the said ship is properly provided with lights and with the means of making fog-signals in pursuance of the said regulations or law.

CHAPTER VII.

MISCELLANEOUS.

84. Every offence punishable under chapter II, chapter III or chapter V, may be tried in any district or presidency-town in which the offender is found, as well as in any district or presidency town in which it might be tried under the law relating to criminal procedure for the time being in force.

85. And whereas it is also expedient to provide for the assistance of assessors in certain causes in Courts exercising Ad-

miralty or Vice-Admiralty jurisdiction; it is hereby further enacted as follows :—

In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the court, whether it be exercising its original or its appellate jurisdiction, may if it think fit, and upon request of either party to such cause, shall, summon to its assistance, in such manner as the Court may by rule, from time to time, direct, two competent assessors;

and such assessors shall attend and assist accordingly.

Every such assessor shall receive such fees for his attendance as the Court by rule prescribes. Such fees shall be paid by such of the parties as the Court in each case may direct.

D. FITZPATRICK,

Secretary to the Government of India,
Legislative Department.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 12th March, 1880, and was promulgated for general information in the *Gazette of India* of the 13th March 1880.

Act No. VIII of 1880.

An Act to correct a clerical error in the Indian Limitation Act, 1877.

IN the second schedule to the Indian Limitation Act, 1877, No. 171A, column three, for the words "The date of the plaintiff's death," the words "The sixtieth day from the date of the plaintiff's death" shall be, and be deemed to have always been, substituted.

D. FITZPATRICK,

Secretary to the Government of India, Legislative Department.

[Published with the "Bombay Government Gazette" on the 25th March 1880.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 2nd March 1880, and was promulgated for general information in the *Gazette of India* on the 6th March 1880 :—

Act No. VI. of 1880.

An Act to amend the law relating to the licensing of Trades and Dealings.

WHEREAS it is expedient to amend the law at present in force for the licensing of trades, dealings, and industries in certain parts of British India; It is hereby enacted as follows :

1. This Act may be called "The Indian License Acts Amendment Act, 1880."

The Northern India License Act, 1878.

2. The following portions of the Northern India License Act, 1878, are hereby repealed, that is to say—

the portion of section one from and including the words "but nothing herein contained" to the end;

section two;

and the portion of the schedule from and including the words and figures "class III" to the end.

3. In the same Act, to section three the following shall be added, that is to say—

"In this Act the word 'trade,' 'dealing' or 'calling' shall not be deemed to include the following, that is to say—

"(a) agriculture;

"(b) the performance by a cultivator or receiver of rent in kind of any process ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to market;

"(c) the sale by a cultivator or receiver of rent in kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce."

IV.—9 a

Substitution of new section for section 4 of same Act.

4. In the same Act, to section four the following shall be added, that is to say—

"Provided that if such person carries on such trade or dealing in more than one such district, he shall take out such license in the district in which his principal place of business in the said territories is situate.

"When any question arises as to what shall, for the purposes of this Act, be deemed to be the principal place of any business, the Governor General in Council, or such authority as the Governor General in Council may from time to time appoint in this behalf, shall decide such question, and his or its decision thereof shall be final."

5. In sections six, seven and eight of the same Act, for the words "such district," wherever they occur, the words "the said territories" shall be substituted.

6. In section seven of the same Act, for the words "first day of January" the words "thirty-first day of March" shall be substituted.

7. In sections nine and ten of the same Act, for the figures "1878" the figures "1880" shall be substituted.

In section ten of the same Act, for the word "thirty" the word "sixty" and for the word "February" the word "June" shall be substituted.

Madras License Act, 1878.

8. In section five of the Madras License Act, 1878, the words "and whose annual net earnings or profits exceed two hundred rupees," and the portion of the schedule of the same Act from and including the words and figures "class XII," to the end, are hereby repealed.

9. In the same Act, for section three the following section shall be substituted:—

"In this Act the word 'trade,' 'dealing' or 'industry' shall not be deemed to include the following, that is to say:—

"(a) agriculture;

SECTION.

CHAPTER III.

DISTRESSED SEAMEN.

54. Chapter to be taken as part of Act I of 1859.
Saving of provisions of Merchant Shipping Acts, 1854 and 1855.
Power to suspend or dismiss.
55. Relief of distressed seamen at Indian ports.
56. Distressed seamen to be sent home on board British ship wanting seamen to make up its crew.
57. In default of such ship, on board of any ship.
58. Name and other particulars with regard to seamen to be indorsed on agreement of British ship.
59. Master of British ship compelled to convey and give subsistence to such seamen.
60. Penalty for refusing so to do.
61. Conditions under which master may claim payment.
62. Wages and expenses incurred in respect of distressed seamen to be charged on ship to which they belong in certain cases.
63. Mode of recovering such wages and expenses.
64. Local Government may authorize persons to recover same.

Such persons to be deemed persons filling a public office.

65. Board of Trade may recover such amount from master or owner in certain cases.
66. What shall be evidence of distress and expenses incurred.
67. Power of Governor-General in Council to make rules.

CHAPTER IV.

SHIP SURVEYORS.

68. Local Government to appoint examiners, and to make rules as to qualification, &c., of marine surveyors.
Publication of rules.
69. No person to practise as marine surveyor unless qualified.
70. Penalty for practising as marine surveyor without certificate.

CHAPTER V.

RECEIVERS OF WRECK.

71. "Wreck" defined.
72. Repeal of Chapter V of Indian Ports Act, 1875.
73. Appointment of receivers.
74. Rules to be observed by persons finding wreck,
if he be the owner;
if he be not the owner.
75. Government or person finding wreck entitled to salvage.
Disputes concerning amount of salvage.
76. Notice to be given by receiver.
77. Wreck may in certain cases be sold.
78. Proceeds how applied.
79. Penalty for failure to give notice of, or to deliver, wreck to the receiver of wreck.

SECTION.

CHAPTER VI.

INSPECTION OF SHIPS WITH REGARD TO LIGHT AND FOG-SIGNALS.

80. Saving clause.
81. Appointment of inspectors of lights and fog-signals.
82. Notice of deficiency to be given to master or owner by such Inspectors.
83. Ship not to be cleared by Customs-collector till inspector certifies it is properly provided with lights, &c.

CHAPTER VII.

MISCELLANEOUS.

84. Offences triable where offender found.
85. Assessors in causes of salvage, &c.

An Act to amend the law relating to Merchant Shipping, and for other purposes.

WHEREAS it is expedient to prevent the departure of certain ships from British India ;

and whereas it is also expedient to provide for the relief of distressed seamen and apprentices at ports in British India, and for the recovery of wages due to and expenses incurred in respect of such seamen and apprentices in cases to which section 211 of the Merchant Shipping Act, 1854, and section 16 of the Merchant Shipping Act, 1855, do not apply of their own force ;

and whereas it is also expedient to provide in other respects hereinafter appearing for the regulation and control of merchant shipping ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Indian Merchant Shipping Act, 1880" :
Short title. Merchant Shipping Act, 1880" :
and it shall come into force on the first day of June 1880.
Commencement. force on the first day of June 1880.
2. In this Act, unless there be something repugnant in the subject or context,—
Interpretation-clause. repugnant in the subject or context,—
"ship", includes every description of vessel used in navigation, not propelled by oars :
"ship": used in navigation, not propelled by oars :
"master" means any person (except a pilot or harbour-master) having for the time being the charge or control of a ship :
"master": harbour-master) having for the time being the charge or control of a ship :
"port" in any provision of this Act includes also any part of a river or channel leading to a port which for the purposes of such provision the Local Government may, from time to time, by notification in the official Gazette, declare to be included in such port.
"port". also any part of a river or channel leading to a port which for the purposes of such provision the Local Government may, from time to time, by notification in the official Gazette, declare to be included in such port.

CHAPTER II.

UNSEAWORTHY AND UNSAFE SHIPS.

Saving clause. 3. Nothing in this chapter contained shall apply—

(a) to any ship belonging to, or hired by, Her Majesty or the Secretary of State for India in Council;

(b) to any ship of less than one hundred and fifty tons register employed solely in fishing or in plying coastwise between ports situate in India and Ceylon.

(c) to any pleasure yacht.

4. In this chapter, "British Indian ship" means a ship registered under Act No. XIX of 1833, Act No. X of 1841, or Act No. XI of 1850, or under any other law passed by the Governor General in Council and for the time being in force for the registration of ships in India; and

"British ship" includes a British Indian ship: "manner prescribed" means such manner as the Local Government, with the previous sanction of the Governor General in Council, may from time to time, by rules published in the official Gazette prescribe.

A ship is "unseaworthy" within the meaning of this chapter when the materials of which she is made, her construction, the qualifications of the master, the number and description of the crew, the weight, description and stowage of cargo, the tackle, sails, rigging, stores, ballast and other equipment generally are not such as to render her in every respect fit for the proposed voyage or service.

A ship is "unsafe" within the meaning of this chapter when by reason of the defective condition of her hull, equipments or machinery, or by reason of overloading or improper loading, she is unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended.

Sending or taking Unseaworthy Ship to Sea.

5. Every person who sends or attempts to send a British Indian ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, shall, unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished, with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

Every master of a British Indian ship who knowingly takes such ship to sea in such unseaworthy state that the life of any person is

likely to be thereby endangered shall, unless he proves that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

For the purpose of giving such proof, every person charged under this section may give evidence in the same manner as any other witness.

Prosecution to be by, or with consent of, Local Government. No prosecution under this section shall be instituted except by, or with the consent of, the Local Government.

Implied Condition of Seaworthiness in Contract of Service.

6. In every contract of service, express or implied, between the owner of a British ship and the master or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any such ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner that such owner and the master, and every agent charged with the loading of such ship or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to secure the seaworthiness of such ship for the voyage at the time when such voyage commences, and to keep her in a seaworthy state for the voyage during the same:

Provided that nothing in this section shall subject such owner to any liability by reason of such ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending her to sea is reasonable and justifiable.

Proviso. Provisional detention by Local Government. believe, on complaint or otherwise, that a British ship in any port to which it may from time to time specially extend this section, is unsafe, may provisionally order the detention of such ship for the purpose of being surveyed.

A written statement of the grounds of such detention shall be forthwith served on the master of such ship.

Detention of Unsafe Ships by the Local Government.

7. The Local Government, if it has reason to believe, on complaint or otherwise, that a British ship in any port to which it may from time to time specially extend this section, is unsafe, may provisionally order the detention of such ship for the purpose of being surveyed.

A written statement of the grounds of such detention shall be forthwith served on the master of such ship.

8. When the Local Government provisionally orders the detention of a ship, it shall forthwith appoint some competent person to survey such ship and report thereon, and, on receiving his report, may either order the ship to be released or, if in its opinion the ship is unsafe, may order her to be finally detained.

An order of final detention under this section may be either absolute or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Local Government thinks necessary for the protection

of human life; and the Local Government may, from time to time, vary or add to any such order:

Provided that, before an order for final detention is made, a copy of the report shall be served upon the master of the ship, and within seven days after such service the owner or master may appeal against such report, in the manner prescribed, to the Court of Survey (hereinafter mentioned) for the port where the ship is detained.

9. Where a ship has been provisionally detained and a person has been appointed under section eight to survey such ship, the owner or master of the ship, at any time before such person makes such survey, may require that he shall take with him as assessor such person as such owner or master may select, being a person named in the list of assessors prepared under section fifteen, or, if there is no such list, or if it is impracticable to procure the attendance of any person named in such list, a person of nautical, engineering or other special skill and experience; and

in such case, if the surveyor and assessor agree that the ship should be detained or released, the Local Government shall cause the ship to be detained or released accordingly, and the owner or master shall have no appeal;

but if the surveyor and assessor differ in their report the Local Government may act as if the requisition had not been made, and the owner or master shall have such appeal touching the report of the surveyor as is hereinbefore provided.

10. Notwithstanding anything contained in section eight the Local Government may at any time, when a ship has been provisionally detained, instead of following the procedure hereinbefore provided, refer the matter to the Court of Survey for the port where the ship is detained.

Detaining-officers.

11. For the better execution of this chapter, the Local Government may, from time to time, appoint a sufficient number of fit persons as its officers, and may suspend or remove any of them.

Every officer so appointed (hereinafter referred to as a detaining-officer) shall have, for the purpose of his duties under this chapter, the following powers, (that is to say) :—

(a) he may go on board any British ship and may inspect the same or any part thereof, or any of the machinery, equipments and cargo on board thereof, and may require the unloading or removal of any cargo, ballast or tackle, not unnecessarily detaining or delaying her from discharging, unloading or proceeding on any voyage;

(b) he may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him, may examine such

persons, and may, by a like summons, require returns in writing to any enquiries he thinks fit to make;

(c) he may require and enforce the production of all books, papers or documents which he considers important; and

(d) he may administer oaths, or may, in lieu of administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

12. Every detaining-officer shall, in addition to the powers herein-provisional detention and before conferred, have the same power as the Local Government has under sections seven and eight, respectively, of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person to survey her; and if he thinks that a ship so detained by him is not unsafe, may order her to be released.

Every such officer shall forthwith report to the Local Government any order made by him for the detention or release of a ship.

Of the Court of Survey and of Appeals and References thereto.

13. A Court of Survey for a port shall consist of a Judge sitting with two assessors.

14. The Judge shall be a District Judge, Judge of a Court of Small Causes, Presidency Magistrate, Magistrate of the first class or other fit person appointed in this behalf by the Local Government either generally or for any specified case.

15. The assessors shall be persons of nautical, engineering or other special skill and experience.

One of them shall be appointed by the Local Government either generally or in each case, and the other shall be summoned by the Judge, in the manner prescribed, out of a list of persons from time to time prepared for the purpose and published by the Local Government in the official Gazette, or, if there is no such list, or if it is impracticable to procure the attendance of any person named in such list, shall be appointed by the Judge.

16. The Judge shall, on receiving notice of an appeal or a reference from the Local Government, immediately summon the assessors, in the manner prescribed, to meet forthwith.

17. Every such appeal and reference shall be heard in open Court.

18. The Judge and each assessor shall, for the purposes of this chapter, have the same powers as are by section eleven conferred on a detaining-officer.

19. The Judge may appoint any competent person to survey the ship and report thereon to the Court.

Judge may appoint surveyor.

20. The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Local Government, may attend at any inspection or survey made in exercise or pursuance of the powers conferred by section eighteen or section nineteen.

Owner or master may attend at survey.

21. The Judge shall have the same power as the Local Government has to order the ship to be released or finally detained; but, unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

Power of Judge to detain or release ship.

22. The Judge shall report the proceedings of the Court in each case to the Local Government in the manner prescribed, and each assessor shall either sign such report or report to the Local Government the reasons for his dissent.

Report to Local Government by Court.

23. The Local Government may, with the previous sanction of the Governor General in Council, from time to time make rules to carry into effect the provisions of this chapter with respect to a Court of Survey, and in particular with respect to—

Power of Local Government to make rules with respect to Court of Survey.

- (a) the procedure before the Court;
- (b) the requiring, on an appeal, of security for costs and damages;
- (c) the amount and application of fees; and
- (d) the ascertainment, in case of dispute, of the proper amount of costs under this chapter.

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

Scientific Referees.

24. If the Local Government is of opinion that an appeal under this chapter involves a question of construction or design, or of scientific difficulty or important principle, it may refer the matter to such one or more out of a list of scientific referees, to be from time to time prepared by the Local Government, as may appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Port officer and the appellant, or, in default of any such agreement, by the Local Government; and thereupon the appeal shall be determined by the referee or referees instead of by the Court of Survey.

Power to appoint referee to hear appeal.

25. The Local Government, if the appellant in any such appeal so requires and gives security to its satisfaction to pay the costs of and incidental to the reference, shall refer such appeal to a referee or referees selected as aforesaid.

Option to appellant to require referee to be appointed.

26. The referee or referees to whom an appeal is referred under section twenty-four or section twenty-five shall have the same powers as a Judge of the Court of Survey.

Referee to have powers of Court of Survey.

Costs of Detention and Damages incidental thereto.

27. If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of a ship, the Government shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

Liability of Government for costs and damages when ship wrongly detained.

28. If a ship is finally detained under this chapter or if it appears that a ship provisionally detained was at the time of such detention unsafe, the owner of the ship shall be liable to pay to Government its costs of and incidental to the detention and survey of the ship; and such costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

Liability of shipowner for costs when ship rightly detained.

29. For the purposes of this chapter the costs of and incidental to any proceeding before a Court of Survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Local Government, shall be deemed to be part of the costs of the detention and survey of the ship.

What included in costs of detention and survey.

30. When a complaint is made to the Local Government or a detaining-officer that a British ship is unsafe, it shall be in the discretion of such Government or officer (as the case may be) to require the complainant to give security to the satisfaction of such Government or officer for the costs and compensation which such complainant may become liable to pay as hereinafter mentioned.

Power to require from complainant security for costs, &c.

Provided that, where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship, and is not in the opinion of such Government or officer frivolous or vexatious, such security shall not be required; and such Government or officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps to ascertain whether the ship ought to be detained under this chapter.

Proviso as to complaint by one-fourth of crew.

31. Where a ship is detained in consequence of any complaint, and the circumstances are such that the Government is liable under this chapter to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to the Government all such costs and compensation as the Government incurs, or is liable to pay, in respect of the detention and survey of the ship.

Costs, &c., payable by Government recoverable from complainant.

Grain Cargoes.

32. No cargo of which more than one-third consists of any kind of grain, corn, rice, paddy, pulse, seeds, nuts or nut-kernels (hereinafter referred to as grain cargo) shall be carried on board any British Indian ship unless the same be contained in bags, sacks or barrels, or secured from shifting by boards or bulkheads or otherwise.

If the owner or master of any ship, or any agent of such owner who is charged with the loading of such ship or the sending her to sea, knowingly allows any grain cargo or part of a grain cargo to be shipped therein for carriage contrary to the provisions of this section, he shall be punished with fine which may extend to three thousand rupees.

Deck and Load Lines.

33. Every British Indian ship shall be permanently and conspicuously marked with lines of not less than twelve inches in length and one inch in breadth painted longitudinally on each side amidships or as near thereto as is practicable, and indicating the position of each deck which is above water.

The upper edge of each of these lines shall be level with the upper side of the deck plank next the waterway at the place of marking. The lines shall be white or yellow on a dark ground or black on a light ground.

34. The master of every British ship not being a coasting-vessel within the meaning of the Sea Customs Act, 1878, shall, before his ship is entered outwards from any port in British India upon any voyage, or if that is not practicable, as soon after as may be, mark outside upon each of her sides amidship, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre.

The centre of such disc shall indicate the maximum load-line in salt water to which it is intended to load such ship for that voyage.

35. The person applying for entry of any such ship outwards shall insert, in the form of application made to the Customs-collector, a statement in writing of the distances in feet and inches between the centre of such disc and the upper edge of each of the lines indicating the position of the ship's deck which is above such centre: and if default is made in delivering this statement, the Customs-collector may refuse to enter the ship outwards.

36. A copy of this statement shall be entered in the agreement with the crew before it is signed by any member of the crew; and no shipping-master shall proceed with the engagement of the crew till this entry is made.

The master shall enter a copy of this statement in the official log-book (if any).

37. When a ship has been marked as by section thirty-four required, she shall be kept so marked until she next returns to a port of discharge in British India or arrives at a port in the United Kingdom.

38. The master of every British ship which is a coasting vessel within the meaning of the Sea Customs Act, 1878 shall, before proceeding to sea from any port, mark outside upon each of her sides amidship, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre:

The centre of this disc shall indicate the maximum load-line in salt-water to which it is intended to load the ship, until notice is given of an alteration.

39. He shall also once in every twelve months, immediately before the ship proceeds to sea, send or deliver to the Collector, or other principal officer of Customs of such port as the Local Government may from time to time appoint on this behalf, a statement in writing of the distance in feet and inches between the centre of the disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre.

The master, before the ship proceeds to sea after any renewal or alteration of the disc, shall send or deliver to the collector or other principal officer of Customs aforesaid notice in writing of such renewal or alteration, together with such statement in writing as before mentioned of the distance between the centre of the disc and the upper edge of each of the deck-lines.

If default is made in sending or delivering any notice or statement required by this section to be sent or delivered, the master shall be punished with fine which may extend to one thousand rupees.

40. When a ship has been marked as required by section thirty-eight, she shall be kept so marked until notice is given of an alteration.

41. Any master of a ship who neglects to cause his ship to be marked as by this chapter required, or to keep her so marked, or who allows the ship to be so loaded that when in perfectly smooth salt-water the centre of the disc is submerged,

and any person who conceals, removes, alters, defaces or obliterates, or suffers any person under his control to conceal, remove, alter, deface or obliterate, any of the said marks, except in the event of the particulars thereby denoted being lawfully altered, or except for the purpose of escaping capture by an enemy,

shall be punished for each such offence with fine which may extend to one thousand rupees.

42. If any of the marks required by this chapter is in any respects inaccurate so as to be likely to mislead, the master of the ship shall be punished with fine which may extend to one thousand rupees.

Penalty on master for having misleading marks.

43. The provisions of this chapter as to load-lines shall not apply to ships coming from ports in the United Kingdom and marked with such lines in accordance with the provisions of the laws for the time being there in force.

Saving of ships marked in the United Kingdom.

Supplemental Provisions.

44. The Local Government may at any time, if satisfied that a ship detained under this chapter is not unsafe, order her to be released either upon or without any conditions.

Release of ship at any time by Local Government.

45. When under this chapter a ship is authorized or ordered to be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, any commander or first officer of any of Her Majesty's Indian Government ships, or any Port-officer, Harbour-master, Conservator of a port or officer of Customs, may detain the ship.

Who may enforce detention of ship.

46. If any ship after such detention, or after service on the master of any notice of or order for such detention proceeds to sea before she is released by competent authority, the master of the ship shall be punished with fine which may extend to one thousand rupees.

Penalty for proceeding to sea after detention.

47. When a ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty, any person authorized under this chapter to detain or survey such ship, the owner and master of such ship shall each be liable to pay all expenses of and incidental to such person being so taken to sea, and shall also each be punished with fine which may extend to one thousand rupees.

Penalty for carrying to sea officer in execution of his duty.

When any owner or master is convicted of an offence under this section, the convicting Magistrate may inquire into and determine the amount payable on account of expenses by such owner or master under this section, and may direct that the same shall be recovered from him in manner provided for the recovery of fines.

48. When a ship has been detained under this chapter, she shall not be released by reason of her British or British Indian register being subsequently closed.

Detained ship not to be released because British registry closed.

49. For the purposes of the survey of a ship under this chapter, any person authorized to make the same may go on board the ship and inspect the same, and every

Powers of person authorized to survey ship.

part thereof, and the machinery, equipments and cargo, and may require the unloading or removal of any cargo, ballast or tackle.

50. Every Judge, assessor, officer or surveyor under this chapter shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Certain persons to be deemed public servants.

51. Where any order, notice, statement or document is required for the purpose of any provision of this chapter to be served on the master of a ship, the same shall be served, where there is no master, on the owner of the ship if he resides in the port where the ship is detained, or, if there is no owner residing there, on some agent of the owner residing there; or where such owner or agent is unknown or cannot be found, a copy of such order, notice, statement or document shall be affixed to the mast of the ship, and shall thereupon be deemed to be duly served.

Service of order where there is no master or resident owner, &c.

52. Any such order, notice, statement or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or, in the case of a master, by leaving it for him on board the ship with the person being or appearing to be in command or charge of the ship.

Order, &c., how to be served.

53. The Local Government may, from time to time, by notification in the official Gazette, delegate either absolutely or subject to such conditions or restrictions as it thinks fit, to any body of Commissioners or trustees appointed for managing the affairs of a port all or any of the powers, and require the said body to discharge all or any of the functions of a Local Government under the foregoing sections of this Act, except the powers conferred by section fourteen, the power of preparing a list of assessors under section fifteen and the power of making rules, and may cancel any such notification.

Delegation of powers to Port Commissioners, &c.

While any such notification remains in force, all costs and damages which would otherwise be recoverable under this Act by or from the Government shall be recoverable in like manner by or from such body; and such body shall, notwithstanding anything to the contrary contained in any enactment now in force credit or pay, as the case may be, the amount of any costs or damages so recovered to or from the funds held by them in trust as such body.

CHAPTER III.

DISTRESSED SEAMEN.

54. This chapter shall be read with, and taken as part of, Act No. I of 1859 (for the amendment of the law relating to Merchant Seamen).

Chapter to be taken as part of Act I of 1859.

But nothing in this chapter contained applies to seamen or apprentices to whom the provisions of section 211 of the Merchant Shipping Act, 1854, or section 16 of the Merchant Shipping Act Amendment Act, 1855, apply.

In this chapter "local authority" means such person as the Local Government may, from time to time, subject to the control of the Governor General in Council, appoint by name or in virtue of his office to exercise the powers conferred, and to perform the duties imposed on the local authority under this chapter.

Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

Power to suspend or dismiss.

55. The local authority may, subject to the rules hereinafter mentioned, provide for the subsistence—

Relief of distressed seamen at Indian ports.

(a) of all seamen and apprentices, being Native Indian subjects of Her Majesty, who have been shipwrecked, discharged or left behind at any place in British India, whether from any British ship employed in the merchant service, or from any of Her Majesty's ships, or who have been engaged by any person acting either as principal or agent to serve in any ship belonging to any foreign power, or to the subject of any foreign State, and who are in distress in any such place; and

(b) of all seamen and apprentices not being Native Indian subjects who have been shipwrecked, discharged or left behind at any place in British India from any British ship, registered in British India and who are in distress in any such place,

until such time as such authority is able to provide them with a passage as hereinafter provided.

56. Subject as aforesaid, the local authority may cause such seamen or apprentices to be put on board some ship belonging to any subject of Her Majesty which is in want of men to make up its complement, and is bound—

(a) in the case of seamen or apprentices who are Native Indian subjects of Her Majesty, to their home or to a port in British India near their home;

(b) in the case of other British seamen or apprentices, to any port in the United Kingdom or the British possession to which they belong (as the case requires); and

(c) in the case of seamen or apprentices not being subjects of Her Majesty, to such place as the local authority, subject to the control of the Governor General in Council, may in each case determine.

57. In default of any such ship, the local authority may, subject as aforesaid, provide such seamen or appren-

In default of such ship, on board of any ship.

tices with a passage in any ship (whether British or foreign) bound as aforesaid.

58. The local authority shall indorse on the agreement of any British ship on board of which any seaman or apprentice is sent under section fifty-six or section fifty-seven, the name of every person so sent on board thereof, with such particulars concerning the case as the Governor General in Council may from time to time by rule prescribe.

Name and other particulars with regard to seamen to be indorsed on agreement of British ship.

59. The master of every British ship bound as aforesaid shall receive and afford a passage and subsistence to all seamen and apprentices whom he is required to take on board his ship under the provisions of section fifty-six or section fifty-seven not exceeding one for every fifty tons burden, and shall, during the passage, provide every such seaman or apprentice with a proper berth or sleeping-place effectually protected against sea and weather.

Master of British ship compelled to convey and give subsistence to such seamen.

60. If the master of any such ship fails or refuses to receive on board his ship, or to give a passage or subsistence to, or to provide for, any such seaman or apprentice contrary to the provisions of section fifty-nine, he shall, for each seaman and apprentice with respect to whom he so fails or refuses, be punished with fine which may extend to one thousand rupees, or, when he is tried at any place beyond the limits of British India, to the equivalent of one thousand rupees in the currency of such place.

Penalty for refusing so to do.

61. When any master of a British ship has conveyed a seaman or apprentice in excess of the number (if any) wanted to make up the complement of his crew to any place in accordance with the requisition of a local authority under this chapter, such master shall be entitled to be paid by the Secretary of State for India in Council in respect of the subsistence and passage of such seaman or apprentice such sum per diem as the Governor General in Council from time to time appoints:

Provided that no payment shall be made under this section except on the production of the following documents (that is to say):—

(a) a certificate signed by the local authority by whose direction such seaman or apprentice was received on board, specifying the name of such seaman or apprentice, and the time when he was received on board; and

(b) a declaration in writing by such master made and verified in manner hereinafter provided, and stating—

(1) the number of days during which such seaman or apprentice received subsistence and was provided for as aforesaid on board his ship;

(2) the number of men and boys forming the complement of his crew;

(3) the number of seamen and apprentices employed on board his ship during the time such seaman or apprentice was on board; and

(4) every variation (if any) of such number.

The declaration required by this section shall, in the case of a ship conveying Native Indian subjects of Her Majesty to a port in British India, be made before a Shipping-master or such other officer as the Local Government may appoint. In other cases such declaration shall be made and verified in the same manner as declarations made under section 212 of the Merchant Shipping Act, 1854.

62. (a). If any seaman or apprentice, being a Native Indian subject of Her Majesty and belonging to any British ship, is discharged or left behind at any place in British India without full compliance on the part of the master with all the provisions in that behalf of the law for the time being in force, and becomes distressed and is relieved under the provisions of this chapter; or

(b) if any such seaman or apprentice, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign power or to the subject of any foreign power, become distressed and is relieved as aforesaid; or

(c) if any seaman or apprentice belonging to any British ship, registered in British India, and not being a Native Indian subject of Her Majesty, is discharged or left behind at any place in British India without full compliance as aforesaid, and becomes distressed and is relieved as aforesaid,

the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and, in case he should die before reaching home, for his burial, shall be a charge upon the ship, whether British or foreign, to which he so belonged as aforesaid.

63. All such wages and expenses shall be recoverable with costs either from the master of such ship or from the person who is owner thereof for the time being, or in the case of an engagement for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made, in the same manner as other debts due to the Secretary of State for India in Council, or in the same manner and by the same form and process in which wages due to the seaman or apprentice would be recoverable by him.

64. The Local Government may, from time to time, by notification in the official Gazette, authorize, either generally or specially, such persons as it thinks fit to sue for any such wages and expenses and recover the same.

And every person so authorized shall be entitled to sue and recover accordingly, and shall be deemed to be a person filling a public office within the meaning of the Indian Evidence Act, 1872, section 57, clause 7.

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65. When any such wages and expenses are due to or in respect of a seaman or apprentice mentioned in section sixty-two, clause (c), they may, instead of being recovered by a person authorized under section sixty-four, be recovered by the Board of Trade in manner provided by the Merchant Shipping Act, 1854, section 213, and when so recovered shall be paid by the said Board to the Secretary of State for India in Council.

66. In all proceedings under this chapter, whether in India or elsewhere, the production of a certificate signed by the local authority by which any seaman or apprentice named therein was relieved, or any expenses were incurred, under this chapter, to the effect that such seaman or apprentice was in distress, and that such expenses were incurred in respect of such seaman or apprentice, shall be sufficient evidence that such seaman or apprentice was relieved, conveyed home or buried (as the case may be) at the expense of the revenues of India.

67. The Governor General in Council may, from time to time, make rules to determine under what circumstances and subject to what conditions seamen or apprentices may be relieved and provided with passages under this chapter and generally to carry out the provisions of this chapter.

All such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

CHAPTER IV.

SHIP SURVEYORS.

68. The Local Government may, from time to time, appoint competent persons for the purpose of examining the qualifications of persons desirous of practising the profession of a ship surveyor at any port in the territories administered by such Government, and subject to the control of the Governor-General in Council, make rules—

(a) for the conduct of such examinations and the qualifications to be required,

(b) for the grant of certificates to qualified persons,

(c) for the fees to be paid for such examinations and certificates,

(d) for holding inquiries into charges of incompetency and misconduct on the part of holders of such certificates, and

(e) for the suspension and cancelment of such certificates.

All such rules shall be published in the official Gazette, and shall thereupon have the force of law.

69. No person shall, in any port in which there is a person exercising the profession of a ship surveyor and holding a certificate granted under section sixty-eight, exercise such profession in such port unless he holds a certificate granted under that section.

Provided that nothing herein contained shall prevent any person employed by Lloyd's Register of British and Foreign Shipping or Bureau Veritas from discharging any of the duties of such employment, or apply to any person specially exempted by the Local Government from the operation of this section.

70. Any person exercising the profession of a ship surveyor in contravention of the provisions of section sixty-nine shall be punished with fine not exceeding one thousand rupees, and shall be incapable of maintaining any suit for any fee or reward for anything done by him in such exercise of such profession.

CHAPTER V.

RECEIVERS OF WRECK.

71. In this Chapter "wreck" includes the following when found in the sea or any tidal water or on the shores thereof, that is to say:—

goods which have been cast into the sea and then sink and remain under water;

goods which have been cast or fall into the sea and remain floating on the surface;

goods which are sunk in the sea, but are attached to a floating object in order that they may be found again,

goods which are thrown away or abandoned, and a vessel abandoned without hope or intention of recovery.

72. Chapter V of the Indian Ports Act, 1875, and section 5 of Act No. XIII of 1878 (*An Act to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices, and to amend the Indian Merchant Shipping Act, 1875, and the Indian Ports Act, 1875*) are hereby repealed.

But nothing in this chapter shall be deemed to affect section 40 of the Indian Ports Act, 1875, or entitle any person to salvage in respect of any property recovered by creeping or sweeping in contravention of that section.

73. The Local Government may, from time to time, by notification in the official Gazette, with the previous sanction of the Governor General in Council, appoint such persons as it thinks fit to receive and take possession of wreck and to perform such duties connected therewith as are hereinafter mentioned

within such local limits as it may from time to time prescribe.

Persons so appointed shall be called receivers of wreck.

74. Any person finding and taking possession of any wreck within any local limits for which a receiver of wreck has been so appointed, shall as soon as practicable—

(a) if he be the owner thereof, give the receiver of wreck notice in writing of the finding thereof and of the marks by which such wreck is distinguished;

(b) if he be not the owner of such wreck, deliver the same to the receiver of wreck.

75. Whenever any wreck is found by the receiver of wreck or has been delivered to him in accordance with the provisions of section seventy-four by any person, not being the owner thereof, the Government or such other person so delivering such wreck, as the case may be, shall be entitled to receive a reasonable sum for salvage, having regard to all the circumstances of the case.

Any dispute arising concerning the amount due under this section shall be determined by a Magistrate, upon application to him for that purpose by either of the disputing parties.

76. The receiver of wreck shall, on taking possession of any wreck, publish a notification, in such manner and at such place as the Local Government may from time to time prescribe in this behalf, containing a description of the same and the time at which and the place where the same was found.

77. If after the publication of such notification the wreck is unclaimed,

or if the person claiming the same fails to pay the amount due for salvage and for charges incurred by the receiver of wreck in respect thereof,

the receiver of wreck may sell such wreck by public auction, if of a perishable nature, forthwith, and if not of a perishable nature, at any period not less than six months after such notification as aforesaid.

78. On the realization of the proceeds of such sale, the amount due for salvage and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the balance shall be paid to the owner of the wreck, or, if no such person appear and claim the same, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same.

Provided that he makes his claim within one year from the date of the sale.

79. Any person omitting to give notice of the finding of, or to deliver, any wreck to the receiver of wreck as required by section seventy-four shall be punished with fine which may extend to one thousand rupees, and in the case of omission to deliver any wreck, shall, in addition to such fine, forfeit all claim to salvage, and pay to the owner of such wreck if the same is claimed, or if the same is unclaimed to the Government, a penalty not exceeding twice the value of such wreck.

CHAPTER VI.

INSPECTION OF SHIPS WITH REGARD TO LIGHT AND FOG-SIGNALS.

80. Nothing in this chapter contained shall apply to any ship belonging to, or hired by, Her Majesty or the Secretary of State for India in Council, or belonging to any foreign Prince or State.

81. The Local Government may, from time to time, appoint persons to inspect in any port, ships to which the regulations for preventing collisions at sea, issued under the provisions of the Merchant Shipping Act Amendment Act, 1862, or any other similar law for the time being in force, may apply for the purpose of seeing that such ships are properly provided with lights and with the means of making fog-signals, in pursuance of such regulations or law, and may suspend or remove any person so appointed.

Every person so appointed shall in the port for which he is appointed have, for the purposes of such inspection, the powers given to detaining-officers by section eleven.

82. If any such person finds that any ship is not so provided, he shall give to the master or owner notice in writing pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same.

83. Every notice so given shall be communicated in such manner as the Local Government may direct to the Customs-collector at any port from which such ship may seek to clear; and no Customs-collector to whom such communication is made shall grant such ship a port clearance or allow her to proceed to sea without a certificate under the hand of some person appointed as aforesaid, to the effect that the said ship is properly provided with lights and with the means of making fog-signals in pursuance of the said regulations or law.

CHAPTER VII.

MISCELLANEOUS.

84. Every offence punishable under chapter II, chapter III or chapter V, may be tried in any district or presidency-town in which the offender is found, as well as in any district or presidency town in which it might be tried under the law relating to criminal procedure for the time being in force.

85. And whereas it is also expedient to provide for the assistance of assessors in certain causes in Courts exercising Admiralty or Vice-Admiralty jurisdiction; it is hereby further enacted as follows:—

In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the court, whether it be exercising its original or its appellate jurisdiction, may if it think fit, and upon request of either party to such cause, shall, summon to its assistance, in such manner as the Court may by rule, from time to time, direct, two competent assessors; and such assessors shall attend and assist accordingly.

Every such assessor shall receive such fees for his attendance as the Court by rule prescribes. Such fees shall be paid by such of the parties as the Court in each case may direct.

D. FITZPATRICK,

Secretary to the Government of India,
Legislative Department.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 12th March, 1880, and was promulgated for general information in the *Gazette of India* of the 13th March 1880.

Act No. VIII of 1880.

An Act to correct a clerical error in the Indian Limitation Act, 1877.

IN the second schedule to the Indian Limitation Act, 1877, No. 171A, column three, for the words "The date of the plaintiff's death," the words "The sixtieth day from the date of the plaintiff's death" shall be, and be deemed to have always been, substituted.

D. FITZPATRICK,
Secretary to the Government of India, Legislative Department.

[Published with the "Bombay Government Gazette" on the 1st April 1880.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 11th March 1880, and was promulgated for general information in the *Gazette of India* on the 13th March 1880:—

Act No. VII of 1880.

THE INDIAN MERCHANT SHIPPING ACT, 1880.

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An Act to amend the law relating to Merchant Shipping, and for other purposes.

WHEREAS it is expedient to prevent the departure of certain ships from
British India ;

and whereas it is also expedient to provide for the relief of distressed seamen and apprentices at ports in British India, and for the recovery of wages due to and expenses incurred in respect of such seamen and apprentices in cases to which section 211 of the Merchant Shipping Act, 1854, and section 16 of the Merchant Shipping Act, 1855, do not apply of their own force ;

and whereas it is also expedient to provide in other respects hereinafter appearing for the regulation and control of merchant shipping ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Indian Merchant Shipping Act, 1880" :
Short title.
and it shall come into force on the first day of June 1880.
Commencement.
2. In this Act, unless there be something repugnant in the subject or context,—
Interpretation-clause.
"ship", includes every description of vessel used in navigation, not propelled by oars :
"ship" :
"master" means any person (except a pilot or harbour-master) having for the time being the charge or control of a ship :
"master" :
"port" in any provision of this Act includes also any part of a river or channel leading to a port which for the purposes of such provision the Local Government may, from time to time, by notification in the official Gazette, declare to be included in such port..
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CHAPTER II.

UNSEAWORTHY AND UNSAFE SHIPS.

Saving clause.

3. Nothing in this chapter contained shall apply—

(a) to any ship belonging to, or hired by, Her Majesty or the Secretary of State for India in Council;

(b) to any ship of less than one hundred and fifty tons register employed solely in fishing or in plying coastwise between ports situate in India and Ceylon.

(c) to any pleasure yacht.

4. In this chapter, "British Indian ship" means a ship registered under Act No. XIX of 1838, Act No. X of 1841, or Act No. XI of 1850, or under any other law passed by the Governor General in Council and for the time being in force for the registration of ships in India; and

"British ship" includes a British Indian ship: .
"manner prescribed" means such manner as the Local Government, with the previous sanction of the Governor General in Council, may from time to time, by rules published in the official Gazette prescribe.

A ship is "unseaworthy" within the meaning of this chapter when the materials of which she is made, her construction, the qualifications of the master, the number and description of the crew, the weight, description and stowage of cargo, the tackle, sails, rigging, stores, ballast and other equipment generally are not such as to render her in every respect fit for the proposed voyage or service.

A ship is "unsafe" within the meaning of this chapter when by reason of the defective condition of her hull, equipments or machinery, or by reason of overloading or improper loading, she is unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended.

Sending or taking Unseaworthy Ship to Sea.

5. Every person who sends or attempts to send a British Indian ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, shall, unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished, with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

Every master of a British Indian ship who knowingly takes such ship to sea in such unseaworthy state that the life of any person is

likely to be thereby endangered shall, unless he proves that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

For the purpose of giving such proof, every person charged under this section may give evidence in the same manner as any other witness.

Prosecution to be by, or with consent of, Local Government. No prosecution under this section shall be instituted except by, or with the consent of, the Local Government.

Implied Condition of Seaworthiness in Contract of Service.

6. In every contract of service, express or implied, between the owner of a British ship and the master or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any such ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner that such owner and the master, and every agent charged with the loading of such ship or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to secure the seaworthiness of such ship for the voyage at the time when such voyage commences, and to keep her in a seaworthy state for the voyage during the same:

Obligation of owner to crew with respect to seaworthiness. Provided that nothing in this section shall subject such owner to any liability by reason of such ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending her to sea is reasonable and justifiable.

Proviso. Provided that nothing in this section shall subject such owner to any liability by reason of such ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending her to sea is reasonable and justifiable.

Detention of Unsafe Ships by the Local Government.

7. The Local Government, if it has reason to believe, on complaint or otherwise, that a British ship in any port to which it may from time to time specially extend this section, is unsafe, may provisionally order the detention of such ship for the purpose of being surveyed.

A written statement of the grounds of such detention shall be forthwith served on the master of such ship.

8. When the Local Government provisionally orders the detention of a ship, it shall forthwith appoint some competent person to survey such ship and report thereon, and, on receiving his report, may either order the ship to be released or, if in its opinion the ship is unsafe, may order her to be finally detained.

An order of final detention under this section may be either absolute or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Local Government thinks necessary for the protection

of human life; and the Local Government may, from time to time, vary or add to any such order:

Provided that, before an order for final detention is made, a copy of the report shall be served upon the master of the ship, and within seven days after such service the owner or master may appeal against such report, in the manner prescribed, to the Court of Survey (hereinafter mentioned) for the port where the ship is detained.

9. Where a ship has been provisionally detained and a person has been appointed under section eight to survey such ship, the owner or master of the ship, at any time before such person makes such survey, may require that he shall take with him as assessor such person as such owner or master may select, being a person named in the list of assessors prepared under section fifteen, or, if there is no such list, or if it is impracticable to procure the attendance of any person named in such list, a person of nautical, engineering or other special skill and experience; and

in such case, if the surveyor and assessor agree that the ship should be detained or released, the Local Government shall cause the ship to be detained or released accordingly, and the owner or master shall have no appeal;

but if the surveyor and assessor differ in their report the Local Government may act as if the requisition had not been made, and the owner or master shall have such appeal touching the report of the surveyor as is hereinbefore provided.

10. Notwithstanding anything contained in section eight the Local Government may at any time, when a ship has been provisionally detained, instead of following the procedure hereinbefore provided, refer the matter to the Court of Survey for the port where the ship is detained.

Detaining-officers.

11. For the better execution of this chapter, the Local Government may, from time to time, appoint a sufficient number of fit persons as its officers, and may suspend or remove any of them.

Every officer so appointed (hereinafter referred to as a detaining-officer) shall have, for the purpose of his duties under this chapter, the following powers, (that is to say):—

(a) he may go on board any British ship and may inspect the same or any part thereof, or any of the machinery, equipments and cargo on board thereof, and may require the unloading or removal of any cargo, ballast or tackle, not unnecessarily detaining or delaying her from discharging, unloading or proceeding on any voyage;

(b) he may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him, may examine such

persons, and may, by a like summons, require returns in writing to any enquiries he thinks fit to make;

(c) he may require and enforce the production of all books, papers or documents which he considers important; and

(d) he may administer oaths, or may, in lieu of administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

12. Every detaining-officer shall, in addition to the powers hereinbefore conferred, have the same power as the Local Government has under sections seven and eight, respectively, of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person to survey her; and if he thinks that a ship so detained by him is not unsafe, may order her to be released.

Every such officer shall forthwith report to the Local Government any order made by him for the detention or release of a ship.

Of the Court of Survey and of Appeals and References thereto.

13. A Court of Survey for a port shall consist of a Judge sitting with two assessors.

14. The Judge shall be a District Judge, Judge of a Court of Small Causes, Presidency Magistrate, Magistrate of the first class or other fit person appointed in this behalf by the Local Government either generally or for any specified case.

15. The assessors shall be persons of nautical, engineering or other special skill and experience.

One of them shall be appointed by the Local Government either generally or in each case, and the other shall be summoned by the Judge, in the manner prescribed, out of a list of persons from time to time prepared for the purpose and published by the Local Government in the official Gazette, or, if there is no such list, or if it is impracticable to procure the attendance of any person named in such list, shall be appointed by the Judge.

16. The Judge shall, on receiving notice of an appeal or a reference from the Local Government, immediately summon the assessors, in the manner prescribed, to meet forthwith.

17. Every such appeal and reference shall be heard in open Court.

18. The Judge and each assessor shall, for the purposes of this chapter, have the same powers as are by section eleven conferred on a detaining-officer.

19. The Judge may appoint any competent person to survey the ship and report thereon to the Court.

Judge may appoint surveyor.

20. The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Local Government, may attend at any inspection or survey made in exercise or pursuance of the powers conferred by section eighteen or section nineteen.

Owner or master may attend at survey.

21. The Judge shall have the same power as the Local Government has to order the ship to be released or finally detained; but, unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

Power of Judge to detain or release ship.

22. The Judge shall report the proceedings of the Court in each case to the Local Government in the manner prescribed, and each assessor shall either sign such report or report to the Local Government the reasons for his dissent.

Report to Local Government by Court.

23. The Local Government may, with the previous sanction of the Governor General, in Council, from time to time make rules to carry into effect the provisions of this chapter with respect to a Court of Survey, and in particular with respect to—

Power of Local Government to make rules with respect to Court of Survey.

- (a) the procedure before the Court;
- (b) the requiring, on an appeal, of security for costs and damages;
- (c) the amount and application of fees; and
- (d) the ascertainment, in case of dispute, of the proper amount of costs under this chapter.

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

Scientific Referees.

24. If the Local Government is of opinion that an appeal under this chapter involves a question of construction or design, or of scientific difficulty or important principle, it may refer the matter to such one or more out of a list of scientific referees, to be from time to time prepared by the Local Government, as may appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Port officer and the appellant, or, in default of any such agreement, by the Local Government; and thereupon the appeal shall be determined by the referee or referees instead of by the Court of Survey.

Power to appoint referee to hear appeal.

25. The Local Government, if the appellant in any such appeal also requires and gives security to its satisfaction to pay the costs of and incidental to the reference, shall refer such appeal to a referee or referees selected as aforesaid.

Option to appellant to require referee to be appointed.

26. The referee or referees to whom an appeal is referred under section twenty-four or section twenty-five shall have the same powers as a Judge of the Court of Survey.

Referee to have powers of Court of Survey.

Costs of Detention and Damages incidental thereto.

27. If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of a ship, the Government shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

Liability of Government for costs and damages when ship wrongly detained.

28. If a ship is finally detained under this chapter or if it appears that a ship provisionally detained was at the time of such detention unsafe, the owner of the ship shall be liable to pay to Government its costs of and incidental to the detention and survey of the ship; and such costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

Liability of shipowner for costs when ship rightly detained.

29. For the purposes of this chapter the costs of and incidental to any proceeding before a Court of Survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Local Government, shall be deemed to be part of the costs of the detention and survey of the ship.

What included in costs of detention and survey.

30. When a complaint is made to the Local Government or a detaining-officer that a British ship is unsafe, it shall be in the discretion of such Government or officer (as the case may be) to require the complainant to give security to the satisfaction of such Government or officer for the costs and compensation which such complainant may become liable to pay as hereinafter mentioned.

Power to require from complainant security for costs, &c.

Provided that, where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship, and is not in the opinion of such Government or officer frivolous or vexatious, such security shall not be required; and such Government or officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps to ascertain whether the ship ought to be detained under this chapter.

Proviso as to complaint by one-fourth of crew.

31. Where a ship is detained in consequence of any complaint, and the circumstances are such that the Government is liable under this chapter to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to the Government all such costs and compensation as the Government incurs, or is liable to pay, in respect of the detention and survey of the ship.

Costs, &c., payable by Government recoverable from complainant.

Grain Cargoes.

32. No cargo of which more than one-third consists of any kind of grain, corn, rice, paddy, pulse, seeds, nuts or nut-kernels (hereinafter referred to as grain cargo) shall be carried on board any British Indian ship unless the same be contained in bags, sacks or barrels, or secured from shifting by boards or bulkheads or otherwise.

If the owner or master of any ship, or any agent of such owner who is charged with the loading of such ship or the sending her to sea, knowingly allows any grain cargo or part of a grain cargo to be shipped therein for carriage contrary to the provisions of this section, he shall be punished with fine which may extend to three thousand rupees.

Deck and Load Lines.

33. Every British Indian ship shall be permanently and conspicuously marked with lines of not less than twelve-inches in length and one inch in breadth painted longitudinally on each side amidships or as near thereto as is practicable, and indicating the position of each deck which is above water.

The upper edge of each of these lines shall be level with the upper side of the deck plank next the waterway at the place of marking. The lines shall be white or yellow on a dark ground or black on a light ground.

34. The master of every British ship not being a coasting-vessel within the meaning of the Sea Customs Act, 1878, shall, before his ship is entered outwards from any port in British India upon any voyage, or if that is not practicable, as soon after as may be, mark outside upon each of her sides amidship, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre.

The centre of such disc shall indicate the maximum load-line in salt water to which it is intended to load such ship for that voyage.

35. The person applying for entry of any such ship outwards shall insert, in the form of application made to the Customs-collector, a statement in writing of the distances in feet and inches between the centre of such disc and the upper edge of each of the lines indicating the position of the ship's deck which is above such centre: and if default is made in delivering this statement, the Customs-collector may refuse to enter the ship outwards.

36. A copy of this statement shall be entered in the agreement with the crew before it is signed by any member of the crew; and no shipping-master shall proceed with the engagement of the crew till this entry is made.

The master shall enter a copy of this statement in the official log-book (if any).

37. When a ship has been marked as by section thirty-four required, she shall be kept so marked until she next returns to a port of discharge in British India or arrives at a port in the United Kingdom.

38. The master of every British ship which is a coasting vessel within the meaning of the Sea Customs Act, 1878 shall, before proceeding to sea from any port, mark outside upon each of her sides amidship, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre:

The centre of this disc shall indicate the maximum load-line in salt-water to which it is intended to load the ship, until notice is given of an alteration.

39. He shall also once in every twelve months, immediately before the ship proceeds to sea, send or deliver to the Collector, or other principal officer of Customs of such port as the Local Government may from time to time appoint on this behalf, a statement in writing of the distance in feet and inches between the centre of the disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre.

The master, before the ship proceeds to sea after any renewal or alteration of the disc, shall send or deliver to the collector or other principal officer of Customs aforesaid notice in writing of such renewal or alteration, together with such statement in writing as before mentioned of the distance between the centre of the disc and the upper edge of each of the deck-lines.

If default is made in sending or delivering any notice or statement required by this section to be sent or delivered, the master shall be punished with fine which may extend to one thousand rupees.

40. When a ship has been marked as required by section thirty-eight, she shall be kept so marked until notice is given of an alteration.

41. Any master of a ship who neglects to cause his ship to be marked as by this chapter required, or to keep her so marked, or who allows the ship to be so loaded that when in perfectly smooth salt-water the centre of the disc is submerged,

and any person who conceals, removes, alters, defaces or obliterates, or suffers any person under his control to conceal, remove, alter, deface or obliterate, any of the said marks, except in the event of the particulars thereby denoted being lawfully altered, or except for the purpose of escaping capture by an enemy,

shall be punished for each such offence with fine which may extend to one thousand rupees.

42. If any of the marks required by this chapter is in any respects inaccurate so as to be likely to mislead, the master of the ship shall be punished with fine which may extend to one thousand rupees.

43. The provisions of this chapter as to load-lines shall not apply to ships coming from ports in the United Kingdom and marked with such lines in accordance with the provisions of the laws for the time being there in force.

Supplemental Provisions.

44. The Local Government may at any time, if satisfied that a ship detained under this chapter is not unsafe, order her to be released either upon or without any conditions.

45. When under this chapter a ship is authorized or ordered to be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, any commander or first officer of any of Her Majesty's Indian Government ships, or any Port-officer, Harbour-master, Conservator of a port or officer of Customs, may detain the ship.

46. If any ship after such detention, or after service on the master of any notice of or order for such detention proceeds to sea before she is released by competent authority, the master of the ship shall be punished with fine which may extend to one thousand rupees.

47. When a ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty, any person authorized under this chapter to detain or survey such ship, the owner and master of such ship shall each be liable to pay all expenses of and incidental to such person being so taken to sea, and shall also each be punished with fine which may extend to one thousand rupees.

When any owner or master is convicted of an offence under this section, the convicting Magistrate may inquire into and determine the amount payable on account of expenses by such owner or master under this section, and may direct that the same shall be recovered from him in manner provided for the recovery of fines.

48. When a ship has been detained under this chapter, she shall not be released by reason of her British or British Indian register being subsequently closed.

49. For the purposes of the survey of a ship under this chapter, any person authorized to make the same may go on board the ship and inspect the same, and every

part thereof, and the machinery, equipments and cargo, and may require the unloading or removal of any cargo, ballast or tackle.

50. Every Judge, assessor, officer or surveyor under this chapter shall be deemed to be a public servant within the meaning of the Indian Penal Code.

51. Where any order, notice, statement or document is required for the purpose of any provision of this chapter to be served on the master of a ship, the same shall be served, where there is no master, on the owner of the ship if he resides in the port where the ship is detained, or, if there is no owner residing there, on some agent of the owner residing there; or where such owner or agent is unknown or cannot be found, a copy of such order, notice, statement or document shall be affixed to the mast of the ship, and shall thereupon be deemed to be duly served.

52. Any such order, notice, statement or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or, in the case of a master, by leaving it for him on board the ship with the person being or appearing to be in command or charge of the ship.

53. The Local Government may, from time to time, by notification in the official *Gazette*, delegate either absolutely or subject to such conditions or restrictions as it thinks fit, to any body of Commissioners or trustees appointed for managing the affairs of a port all or any of the powers, and require the said body to discharge all or any of the functions of a Local Government under the foregoing sections of this Act, except the powers conferred by section fourteen, the power of preparing a list of assessors under section fifteen and the power of making rules, and may cancel any such notification.

While any such notification remains in force, all costs and damages which would otherwise be recoverable under this Act by or from the Government shall be recoverable in like manner by or from such body; and such body shall, notwithstanding anything to the contrary contained in any enactment now in force credit or pay, as the case may be, the amount of any costs or damages so recovered to or from the funds held by them in trust as such body.

CHAPTER III.

DISTRESSED SEAMEN.

54. This chapter shall be read with, and taken as part of, Act No. I of 1859 (for the amendment of the law relating to Merchant Seamen).

But nothing in this chapter contained applies to seamen or apprentices to whom the provisions of section 211 of the Merchant Shipping Act, 1854, or section 16 of the Merchant Shipping Act Amendment Act, 1855, apply.

In this chapter "local authority" means such person as the Local Government may, from time to time, subject to the control of the Governor General in Council, appoint by name or in virtue of his office to exercise the powers conferred, and to perform the duties imposed on the local authority under this chapter.

Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

Power to suspend or dismiss.

55. The local authority may, subject to the rules hereinafter mentioned, provide for the subsistence—

Relief of distressed seamen at Indian ports.

(a) of all seamen and apprentices, being Native Indian subjects of Her Majesty, who have been shipwrecked, discharged or left behind at any place in British India, whether from any British ship employed in the merchant service, or from any of Her Majesty's ships, or who have been engaged by any person acting either as principal or agent to serve in any ship belonging to any foreign power, or to the subject of any foreign State, and who are in distress in any such place; and

(b) of all seamen and apprentices not being Native Indian subjects who have been shipwrecked, discharged or left behind at any place in British India from any British ship, registered in British India and who are in distress in any such place,

until such time as such authority is able to provide them with a passage as hereinafter provided.

56. Subject as aforesaid, the local authority may cause such seamen or apprentices to be put on board some ship belonging to any subject of Her Majesty which is in want of men to make up its complement, and is bound—

Distressed seamen to be sent home on board British ship wanting seamen to make up its crew.

(a) in the case of seamen or apprentices who are Native Indian subjects of Her Majesty, to their home or to a port in British India near their home;

(b) in the case of other British seamen or apprentices, to any port in the United Kingdom or the British possession to which they belong (as the case requires); and

(c) in the case of seamen or apprentices not being subjects of Her Majesty, to such place as the local authority, subject to the control of the Governor General in Council, may in each case determine.

57. In default of any such ship, the local authority may, subject as aforesaid, provide such seamen or appren-

In default of such ship, on board of any ship.

tices with a passage in any ship (whether British or foreign) bound as aforesaid.

58. The local authority shall indorse on the agreement of any British ship on board of which any seaman or apprentice is sent under section fifty-six or section fifty-seven, the name of every person so sent on board thereof, with such particulars concerning the case as the Governor General in Council may from time to time by rule prescribe.

Name and other particulars with regard to seamen to be indorsed on agreement of British ship.

59. The master of every British ship bound as aforesaid shall receive and afford a passage and subsistence to all seamen and apprentices whom he is required to take on board his ship under the provisions of section fifty-six or section fifty-seven not exceeding one for every fifty tons burden, and shall, during the passage, provide every such seaman or apprentice with a proper berth or sleeping-place effectually protected against sea and weather.

Master of British ship compelled to convey and give subsistence to such seamen.

60. If the master of any such ship fails or refuses to receive on board his ship, or to give a passage or subsistence to, or to provide for, any such seaman or apprentice contrary to the provisions of section fifty-nine, he shall, for each seaman and apprentice with respect to whom he so fails or refuses, be punished with fine which may extend to one thousand rupees, or, when he is tried at any place beyond the limits of British India, to the equivalent of one thousand rupees in the currency of such place.

Penalty for refusing so to do.

61. When any master of a British ship has conveyed a seaman or apprentice in excess of the number (if any) wanted to make up the complement of his crew to any place in accordance with the requisition of a local authority under this chapter, such master shall be entitled to be paid by the Secretary of State for India in Council in respect of the subsistence and passage of such seaman or apprentice such sum per diem as the Governor General in Council from time to time appoints:

Provided that no payment shall be made under this section except on the production of the following documents (that is to say):—

(a) a certificate signed by the local authority by whose direction such seaman or apprentice was received on board, specifying the name of such seaman or apprentice, and the time when he was received on board; and

(b) a declaration in writing by such master made and verified in manner hereinafter provided, and stating—

(1) the number of days during which such seaman or apprentice received subsistence and was provided for as aforesaid on board his ship;

(2) the number of men and boys forming the complement of his crew;

(3) the number of seamen and apprentices employed on board his ship during the time such seaman or apprentice was on board; and

(4) every variation (if any) of such number.

The declaration required by this section shall, in the case of a ship conveying Native Indian subjects of Her Majesty to a port in British India, be made before a Shipping-master or such other officer as the Local Government may appoint. In other cases such declaration shall be made and verified in the same manner as declarations made under section 212 of the Merchant Shipping Act, 1854.

62. (a). If any seaman or apprentice, being a Native Indian subject of Her Majesty and belonging to any British ship, is discharged or left behind at any place in British India without full compliance on the part of the master with all the provisions in that behalf of the law for the time being in force, and becomes distressed and is relieved under the provisions of this chapter; or

(b) if any such seaman or apprentice, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign power or to the subject of any foreign power, become distressed and is relieved as aforesaid; or

(c) if any seaman or apprentice belonging to any British ship, registered in British India, and not being a Native Indian subject of Her Majesty, is discharged or left behind at any place in British India without full compliance as aforesaid, and becomes distressed and is relieved as aforesaid,

the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and, in case he should die before reaching home, for his burial; shall be a charge upon the ship, whether British or foreign, to which he so belonged as aforesaid.

63. All such wages and expenses shall be recoverable with costs either from the master of such ship or from the person who is owner thereof for the time being, or in the case of an engagement for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made, in the same manner as other debts due to the Secretary of State for India in Council, or in the same manner and by the same form and process in which wages due to the seaman or apprentice would be recoverable by him.

64. The Local Government may, from time to time, by notification in the official Gazette, authorize, either generally or specially, such persons as it thinks fit to sue for any such wages and expenses and recover the same.

And every person so authorized shall be entitled to sue and recover accordingly, and shall be deemed to be a person filling a public office within the meaning of the Indian Evidence Act, 1872, section 57, clause 7.

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65. When any such wages and expenses are due to or in respect of a seaman or apprentice mentioned in section sixty-two, clause (c), they may, instead of being recovered by a person authorized under section sixty-four, be recovered by the Board of Trade in manner provided by the Merchant Shipping Act, 1854, section 213, and when so recovered shall be paid by the said Board to the Secretary of State for India in Council.

Board of Trade may recover such amount from master or owner in certain cases.

66. In all proceedings under this chapter, whether in India or elsewhere, the production of a certificate signed by the local authority by which any seaman or apprentice named therein was relieved, or any expenses were incurred, under this chapter, to the effect that such seaman or apprentice was in distress, and that such expenses were incurred in respect of such seaman or apprentice, shall be sufficient evidence that such seaman or apprentice was relieved, conveyed home or buried (as the case may be) at the expense of the revenues of India.

What shall be evidence of distress and expenses incurred.

67. The Governor General in Council may, from time to time, make rules to determine, under what circumstances and subject to what conditions seamen or apprentices may be relieved and provided with passages under this chapter and generally to carry out the provisions of this chapter.

Power of Governor-General in Council to make rules.

All such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

CHAPTER IV.

SHIP SURVEYORS.

68. The Local Government may, from time to time, appoint competent persons for the purpose of examining the qualifications of persons desirous of practising the profession of a ship surveyor at any port in the territories administered by such Government; and subject to the control of the Governor-General in Council, make rules—

(a) for the conduct of such examinations and the qualifications to be required,

(b) for the grant of certificates to qualified persons,

(c) for the fees to be paid for such examinations and certificates,

(d) for holding inquiries into charges of incompetency and misconduct on the part of holders of such certificates, and

(e) for the suspension and cancelment of such certificates.

All such rules shall be published in the official Gazette, and shall thereupon have the force of law.

Publication of rules.

69. No person shall, in any port in which there is a person exercising the profession of a ship surveyor and holding a certificate granted under section sixty-eight, exercise such profession in such port unless he holds a certificate granted under that section.

Provided that nothing herein contained shall prevent any person employed by Lloyd's Register of British and Foreign Shipping or Bureau Veritas from discharging any of the duties of such employment, or apply to any person specially exempted by the Local Government from the operation of this section.

70. Any person exercising the profession, of a ship surveyor in contravention of the provisions of section sixty-nine shall be punished with fine not exceeding one thousand rupees, and shall be incapable of maintaining any suit for any fee or reward for anything done by him in such exercise of such profession.

CHAPTER V.

RECEIVERS OF WRECK.

71. In this Chapter "wreck" includes the following when found in the sea or any tidal water or on the shores thereof, that is to say:—

goods which have been cast into the sea and then sink and remain under water;

goods which have been cast or fall into the sea and remain floating on the surface;

goods which are sunk in the sea, but are attached to a floating object in order that they may be found again,

goods which are thrown away or abandoned, and a vessel abandoned without hope or intention of recovery.

72. Chapter V of the Indian Ports Act, 1875, and section 5 of Act No. XIII of 1878 (*An Act to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices, and to amend the Indian Merchant Shipping Act, 1875, and the Indian Ports Act, 1875*) are hereby repealed.

But nothing in this chapter shall be deemed to affect section 40 of the Indian Ports Act, 1875, or entitle any person to salvage in respect of any property recovered by creeping or sweeping in contravention of that section.

73. The Local Government may, from time to time, by notification in the official Gazette, with the previous sanction of the Governor General in Council, appoint such persons as it thinks fit to receive and take possession of wreck and to perform such duties connected therewith as are hereinafter mentioned

within such local limits as it may from time to time prescribe.

Persons so appointed shall be called receivers of wreck.

74. Any person finding and taking possession of any wreck within any local limits for which a receiver of wreck has been so appointed, shall as soon as practicable—

(a) if he be the owner thereof, give the receiver of wreck notice in writing of the finding thereof and of the marks by which such wreck is distinguished;

(b) if he be not the owner of such wreck, deliver the same to the receiver of wreck.

75. Whenever any wreck is found by the receiver of wreck or has been delivered to him in accordance with the provisions of section seventy-four by any person, not being the owner thereof, the Government or such other person so delivering such wreck, as the case may be, shall be entitled to receive a reasonable sum for salvage, having regard to all the circumstances of the case.

Any dispute arising concerning the amount due under this section shall be determined by a Magistrate, upon application to him for that purpose by either of the disputing parties.

76. The receiver of wreck shall, on taking possession of any wreck, publish a notification, in such manner and at such place as the Local Government may from time to time prescribe in this behalf, containing a description of the same and the time at which and the place where the same was found.

77. If after the publication of such notification the wreck is unclaimed,

or if the person claiming the same fails to pay the amount due for salvage and for charges incurred by the receiver of wreck in respect thereof,

the receiver of wreck may sell such wreck by public auction, if of a perishable nature, forthwith, and if not of a perishable nature, at any period not less than six months after such notification as aforesaid.

78. On the realization of the proceeds of such sale, the amount due for salvage and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the balance shall be paid to the owner of the wreck, or, if no such person appear and claim the same, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same.

Provided that he makes his claim within one year from the date of the sale.

79. Any person omitting to give notice of the finding of, or to deliver, any wreck to the receiver of wreck as required by section seventy-four shall be punished with fine which may extend to one thousand rupees, and in the case of omission to deliver any wreck, shall, in addition to such fine, forfeit all claim to salvage, and pay to the owner of such wreck if the same is claimed, or if the same is unclaimed to the Government, a penalty not exceeding twice the value of such wreck.

CHAPTER VI.

INSPECTION OF SHIPS WITH REGARD TO LIGHT AND FOG-SIGNALS.

80. Nothing in this chapter contained shall apply to any ship belonging to, or hired by, Her Majesty or the Secretary of State for India in Council, or belonging to any foreign Prince or State.

81. The Local Government may, from time to time, appoint persons to inspect in any port, ships to which the regulations for preventing collisions at sea, issued under the provisions of the Merchant Shipping Act Amendment Act, 1862, or any other similar law for the time being in force, may apply for the purpose of seeing that such ships are properly provided with lights and with the means of making fog-signals, in pursuance of such regulations or law, and may suspend or remove any person so appointed.

Every person so appointed shall in the port for which he is appointed have, for the purposes of such inspection, the powers given to detaining-officers by section eleven.

82. If any such person finds that any ship is not so provided, he shall give to the master or owner notice in writing pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same.

83. Every notice so given shall be communicated in such manner as the Local Government may direct to the Customs-collector at any port from which such ship may seek to clear; and no Customs-collector to whom such communication is made shall grant such ship a port clearance or allow her to proceed to sea without a certificate under the hand of some person appointed as aforesaid, to the effect that the said ship is properly provided with lights and with the means of making fog-signals in pursuance of the said regulations or law.

CHAPTER VII.

MISCELLANEOUS.

84. Every offence punishable under chapter II, chapter III or chapter V, may be tried in any district or presidency-town in which the offender is found, as well as in any district or presidency town in which it might be tried under the law relating to criminal procedure for the time being in force.

85. And whereas it is also expedient to provide for the assistance of assessors in certain causes in Courts exercising Admiralty or Vice-Admiralty jurisdiction; it is hereby further enacted as follows:—

In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the court, whether it be exercising its original or its appellate jurisdiction, may if it think fit, and upon request of either party to such cause, shall, summon to its assistance, in such manner as the Court may by rule, from time to time, direct, two competent assessors; and such assessors shall attend and assist accordingly.

Every such assessor shall receive such fees for his attendance as the Court by rule prescribes. Such fees shall be paid, by such of the parties as the Court in each case may direct.

D. FITZPATRICK,

Secretary to the Government of India,
Legislative Department.

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 12th March 1880, and was promulgated for general information in the *Gazette of India* of the 13th March 1880 :—

Act No. VIII of 1880.

An Act to correct a clerical error in the Indian Limitation Act, 1877.

IN the second schedule to the Indian Limitation Act, 1877, No. 171A, column three, for the words "The date of the plaintiff's death," the words "The sixtieth day from the date of the plaintiff's death" shall be, and be deemed to have always been, substituted.

D. FITZPATRICK,
Secretary to the Government of India, Legislative Department.

THE



Bombay Government Gazette.

Published by Authority.

THURSDAY, 6TH MAY 1880.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 30th April 1880, and was promulgated for general information in the *Gazette of India* on the 1st May 1880 :—

Act No. IX. of 1880.

An Act to amend the Bombay Civil Courts Act, 1869.

WHEREAS it is expedient to empower the Governor of Bombay in Council to fix and, from time to time, to alter the local limits of the ordinary jurisdiction of the Subordinate Judges appointed under the Bombay Civil Courts Act, 1869; It is hereby enacted as follows :—

Short title.	1. This Act may be called "The Bombay Civil Courts Act, 1880";
Commencement.	and it shall come into force at once.

Insertion of a new section after section 22 of the Bombay Civil Courts Act.

2. In the said Act, after section 22, the following section shall be inserted :—

"22A. The Governor of Bombay in Council may, by notification in the official Gazette, fix, and, by a like notification, from time to time alter, the local limits of the ordinary jurisdiction of the Subordinate Judges."

3. All orders issued by the Governor of Bombay in Council previous to the passing of this Act, fixing or altering the local limits of the jurisdiction of a Subordinate Judge, shall be deemed to have been issued in accordance with law.

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

THE



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PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 10th January 1880, and the assent of His Excellency the Viceroy and Governor General on the 21st April 1880, and is published for general information:—

Bombay Act No. I. of 1880.

An Act to amend the law relating to the settlement of Villages held by Khots.

WHEREAS it is expedient to make special provision for the settlement and revenue administration of villages in the Ratnágiri district which are held by khots; It is enacted as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as "The
Short title. Khoti Settlement
Act, 1880."

It extends to all villages held by khots
Extent in the district of
Ratnágiri.

The Governor in Council may from time to time, by notification in the *Bombay Government Gazette*, extend all or any of its provisions to any such village in the Kolába District.

iv.—11

2. Sections thirty-seven and thirty-eight of the Bombay Survey and Settlement Act, 1865, are repealed so far as they apply to any village to which this Act extends, or may hereafter be extended: Provided that the said repeal shall not affect the validity of any settlement already made under the provisions of the said sections and which has been guaranteed by the Government for a fixed period under section twenty-eight of the said Act.
3. In this Act, unless there be something repugnant in the subject or context,
Interpretation.
(1) "village" means a village, or a portion or share of a village, to the extent
"Village."

to which a khot has any right or interest in such village, or portion or share thereof ;

(2) "Khot." "khot" includes :

- (a) a mortgagee lawfully in possession of a khotki,
- (b) all co-sharers in a khotki ;
- (3) "khotki" means the aggregate of the rights and interests vested in a khot as such ;
- "Khotki."
- (4) "jama" means land-revenue payable by a khot to Government ;
- "Jama."
- (5) "privileged occupant" means :
- (a) a dhárekari, or
- (b) a quasi-dhárekari, or
- (c) an occupancy-tenant ;
- (6) "dhárekari" means a land-holder who holds on the "dhára" tenure ;
- "Dhárekari."
- (7) "quasi-dhárekari" means a land-holder of any of the denominations named in the first column of the Schedule hereto annexed ;
- "Quasi-dhárekari."
- (8) "occupancy-tenant" means a holder of khoti land who has a right of occupancy in such land ;
- "Occupancy-tenant."
- (9) "dhára land" means land held by a dhárekari, or by a quasi-dhárekari ;
- "Dhára land."
- (10) "khoti land" means land in respect of which a khot has, as such, any right or interest, and which is not dhára land ;
- "Khoti land."
- (11) "part" and "section" mean respectively a part and section of this Act ;
- "Part," "Section."
- (12) any word or expression which is defined in the Bombay Land Revenue Code, 1879, and is not hereinbefore defined, shall be deemed to have the meaning given to it by that Code
- Expressions defined in the Bombay Land Revenue Code.

PART II.—GENERAL PROVISIONS RELATING TO KHOTS AND THEIR INFERIOR HOLDERS.

Khots.

4. Khots shall continue to hold their villages conditionally on the payment of the amounts due on account of the jama
- Continuance of khots' villages to be subject to payment of jama.

of the same, according to the provisions of this Act and of the Bombay Land Revenue Code, 1879, and of any rules for the time being in force made under this Act or under the said Code, and subject to the fulfilment of any other term or liability lawfully annexed or appertaining to their tenure.

Inferior Holders.

5. Every holder of khoti land who has actually occupied or cultivated the same continuously from any time previous to the commencement of the revenue year 1845-46 has a right of occupancy in the land so occupied or cultivated.

What holders are to be deemed occupancy-tenants.

The occupation or cultivating of the father or other person from whom the present holder inherits, and in the case of occupancy-rights which are transferable otherwise than by inheritance, the occupation or cultivating of any former holder through whom the present holder claims, or of any mortgagee or lessee of the present or any former holder, shall be deemed to be the occupation or cultivating of the present holder within the meaning of this section ;

and in the case of land which is periodically fallow, years of fallow shall be reckoned as years of occupation or cultivation for the purpose of this section.

6. If an occupancy right which is not transferable otherwise than by inheritance, has been so transferred, the actual holder of the land shall be deemed to be the tenant thereof, and if he, or his father, or other person from whom he inherits, has occupied or cultivated the land continuously from any time previous to the commencement of the revenue year 1845-46, he shall have a right of occupancy therein :

Right of occupancy when land has been wrongfully transferred.

Provided that if the actual holder is in possession of the land as mortgagee, or lessee merely, his occupation or cultivating shall for the purpose of this section and of section 5 be deemed to be the occupation or cultivating of the mortgagor or lessor, and that if such mortgagor or lessor has a right of occupancy in the land, such right shall, notwithstanding the provisions of section 9, be subject to the mortgage lien or lease of the said mortgagee or lessee until the same is duly discharged or determined.

7. Privileged occupants shall continue to hold their lands conditionally on the payment of the rent from time to time lawfully due by them to the khot or other person entitled to receive payment of the same.

Continuance of privileged occupants' tenures.

8. Tenants other than occupancy tenants shall continue to hold their lands subject to such terms and conditions as may have been, or may hereafter be, agreed upon between the khot and themselves, and in the absence of any such specific agreement shall be held to be yearly tenants liable to pay rent to the khot at the same rates as are paid by occupancy-tenants in the village in which the lands held by them are situate, provided that the said rates shall not exceed the maxima prescribed in section 33, clause (c.)

Ordinary tenants.

Transfer, &c., of Rights.

9. The rights of khots, dhárekaris and quasi-dhárekaris shall be heritable and transferable.

What rights are transferable

Occupancy-tenants' rights shall be heritable, but shall not be otherwise transferable, unless in any case the tenant proves that such right of transfer has been exercised in respect of the land in his occupancy, independently of the consent of the khot, at some time within the period of thirty years next previous to the commencement of the revenue year 1865-66, or unless in the case of an occupancy right conferred by the khot under section 11, the khot grants such right of transfer of the same.

10. If a privileged occupant resign the land or any portion of the land in his holding, or if any such occupant's land lapse for failure of heirs, or other persons entitled thereto, or is forfeited on the occupant's failing to pay the rent due in respect thereof, the land so resigned, lapsed, or forfeited, shall be at the disposal of the khot as khoti land free of all encumbrances, other than liens or charges created or existing in favor of Government.

But it shall not be competent to a privileged occupant at any time to resign a portion only of his entire holding except with the consent of the khot; and no privileged occupant shall be deemed to have forfeited his land on failure to pay rent unless such forfeiture is certified by the Collector.

Grant of Privileged Occupants' Rights by Khots.

11. It shall be competent to the khot at any time to confer on any tenant the right of a privileged occupant of any class, or on a privileged occupant of one class, the right of a privileged occupant of a superior class: Provided that the grant by the khot of any such right shall not affect any right of Government in respect of the land which is the subject of such grant or of the trees or other forest produce of such land.

Privileged occupants' rights may be conferred by khots.

12. On receipt of a written application from the khot, in such Record of grant. form as shall be prescribed in rules to be framed under section 40, the Collector shall cause an entry to be made in such record as may from time to time be prescribed by Government in this behalf, of any right conferred by the khot under the last preceding section, and an entry thus duly made and authenticated by the Collector's signature shall be conclusive proof of the facts therein recorded.

Nothing in this section or in section 11 shall be deemed to apply to a mortgagee lawfully in possession of a khotki unless such mortgagee shall have been expressly authorized by his mortgagor to exercise the powers conferred by the said sections.

Recovery of Rents.

13. Whenever application is made to the Collector under Commutation-rates for rent payable in section 86 of the kind. Bombay Land Revenue Code, 1879, for assistance to recover rent from a privileged occupant, tenant or co-sharer and the rent claimed is payable in kind, the Collector may, if he thinks fit, direct the recovery of the money-value of such rent, and in such case the money-value shall be estimated at such commutation-rates as the Collector may fix in this behalf for the year for which such rent is due.

14. If an occupancy-tenant neglect to raise a crop on any Rent of land which an occupancy-tenant neglects to cultivate. land in his holding on account of the rent of which he would, if he raised a crop, be liable to pay the khot a share of the produce, the khot shall be entitled to receive from him the same amount of rent as if he had raised a crop.

In the event of a dispute as to the amount of rent due under this section such amount shall be determined by the Collector, but no such rent shall be recoverable by the khot if the tenant shall satisfy the Collector that in the year for which such rent is claimed it was proper, having regard to the custom of the village in respect of lands of the same class, or to the nature and requirements of the soil, that the land should be left fallow.

Accounts.

15. The khot shall

(a) keep, or cause to be kept, such accounts as may from time to time be required by the Collector under the orders of Government; and

(b) produce such accounts, whenever and to produce them when required; required, to the Collector or to any officer subordinate to the Collector not lower in rank than a mahalkari, and

(c) give a written receipt for every payment of rent or land revenue made to him whether by a privileged occupant or tenant, or by a co-sharer in his khotki.

For disobedience of any order duly made under this section, or for any infraction of the provisions of this section, the khot shall, on conviction before the Collector, or the Assistant or Deputy Collector in charge of the taluka in which such khot's village is situate, be liable to a fine not exceeding one hundred rupees, which shall be recoverable as an arrear of jama.

PART III.—SURVEY AND SETTLEMENT.

Settlement Records.

16. Whenever a survey settlement of the land revenue of any village to which this Act extends is made, or revised under the provisions of Chapter VIII of the Bombay Land Revenue Code, 1879, the Settlement Register prepared under section 108 of the said Code shall show the area and assessment of each survey number and also whether such survey number is held by a privileged occupant or not.

Preparation of Settlement Register of khoti villages.

If a survey number is held by one or more privileged occupants, the said register shall further specify the tenure on which such number is held, the name of the registered occupant thereof, and, in the case of a survey number held by an occupancy-tenant, whether his interest therein is transferable otherwise than by inheritance or not.

Survey numbers which are not held by privileged occupants shall be entered in the said register in the name of the khot, or if a partition of the khotki has taken place, of the co-sharers to whose shares they respectively belong.

The said register shall also contain a list of all the co-sharers of the khotki, if the village be not held by one khot in his own sole right, and shall specify the extent of each such co-sharer's interest in the khotki.

17. The other records prepared under the said section shall specify the nature and amount of rent payable to the khot by each privileged occupant according to the provisions of section 33 of this Act, and any entry in any record duly made under this section shall be conclusive and final evidence of the liability thereby established.

18. If the khotki is undivided the said records shall also specify:—

(a) the survey numbers in the possession of each co-sharer and the rent payable by such co-sharer on account of the same, and

(b) the terms and particulars of any written agreement which the co-sharers, or any of them, have entered into, or may at the time of the framing of the said record enter into, determining their respective responsibility, and

(c) the order of rotation in which the said co-sharers agree in writing, if they do so agree, to take the management of the village under the provisions of section 27 of this Act.

19. If a partition has been effected and the co-sharers of the khotki hold their respective shares in severalty, the said records shall specify:—

(a) the extent and limits of each such separate share, and

Privileged occupants' rents to be fixed.

When the khotki is undivided, the co-sharers' respective rights to be recorded.

When the khotki is divided, each share to be treated separately.

(b) the same particulars in respect of the several sub-sharers, if any, of each such share as are required by the last preceding section to be given concerning all the co-sharers when a khotki is undivided.

Determination of Disputes.

20. If it shall appear to the survey officer, who frames the said register or other record, that there exists any dispute as to any matter which he is bound to record, he may, either on the application of any of the disputant parties, or of his own motion, investigate and determine such dispute and frame the said register or other record accordingly.

21. In any such matter the decision of the said survey officer, when not final, shall be binding upon all the parties affected thereby until reversed or modified by a final decree of a competent court.

22. No suit shall lie against the said survey officer, or against Government, or any officer of Government to set aside any such decision of a survey officer; but the record shall from time to time be amended by the said survey officer, or when the survey settlement is concluded, by the Collector, in accordance with any such decree as aforesaid which the parties may obtain *inter se* on an application, accompanied by a certified copy of such decree, being duly made to the said survey officer, or to the Collector for that purpose.

PART IV.—ADMINISTRATION OF SURVEY SETTLEMENTS MADE UNDER THIS ACT.

23. The provisions of this Part shall not apply to any village to which this Act extends until such time as the Governor in Council first after the passing of this Act sanctions a survey settlement, or a revised survey settlement of such village and declares the assessments settled thereunder fixed for a period of years, in accordance with section 102 of the Bombay Land Revenue Code, 1879.

Until such time, the rights and responsibilities of all parties so far as regards the matters treated of in this Part shall continue to be such as they would be if this Part had not been enacted.

Khots' Jama.

24. The jama payable to Government by the khot shall be the aggregate of the survey assessments of the lands of the village minus such percentage of deduction, if any, as Government may in each case direct.

The amount of the said jama shall be from time to time fixed for the same period for which the survey assessments are fixed.

Managing Khots.

25. The annual kabuláyats hitherto executed by khots shall no longer be required from them: Provided that nothing herein contained shall be deemed to affect the liability of khots to perform any condition of their tenure, or to do any act which they are now bound to perform or to do, or their obligation to refrain from doing anything which they are now bound not to do.

26. When a village is held by two or more co-sharers jointly, the said sharers shall be jointly and severally responsible for the jama, but one of their number shall be nominated every year to receive the inferior holders' rents, to pay the Government dues, and generally to perform all acts required by this Act or by any other law or rule having the force of law, to be performed by the khot.

The sharer so nominated shall be called "the managing khot" and shall for all the purposes of the Bombay Land Revenue Code, 1879, be deemed to be the registered occupant of all survey numbers in the village not held by privileged occupants.

27. If the co-sharers have, at the time of the framing of the survey settlement records or at any subsequent period, agreed in writing as to the order of rotation, the nomination of the managing khot shall be made by the Collector in the order so agreed upon.

In the absence of any such agreement, the co-sharers shall be called upon to nominate one of their number year by year, and in the event of their failing so to do within such time as may be prescribed by the Collector in this behalf, or if they are not unanimous as to the nomination, the Collector shall either select the managing

khot for the year, or cause the village to be attached and taken under the management of himself or any agent whom he appoints for that purpose in the manner provided in section 144 of the Bombay Land Revenue Code, 1879.

28. A managing khot nominated by the Collector under the last preceding section shall continue in that capacity throughout the year for which he is so appointed, and no suit shall lie against the Collector, or against Government, or any Government officer in respect of such nomination.

But it shall be lawful for any of the co-sharers at any time to sue for a decree *inter se* to declare which of them is entitled to the management, or the order in which they should respectively have the management, if more than one of them be entitled to the same; and from the commencement of the revenue year next after an application (accompanied by a certified copy of any such decree) is duly made to him for the purpose, the Collector shall nominate the managing khot in accordance with such decree.

29. Except as is hereinafter provided, the *mámlatdár* shall furnish every managing khot with a certificate under his hand and seal to the effect that the holder thereof is the recognized managing khot for the year to which such certificate relates and a certificate so signed and sealed shall be conclusive evidence of the right of the khot therein named to manage the village to which it relates for the year therein specified.

30. When a village is held by a khot in his own sole right, he shall be deemed to be the managing khot thereof for all the purposes of this Act, and it shall not be necessary to furnish him with any such certificate as is described in the last preceding section.

31. When a managing khot has been duly appointed under any of the foregoing provisions he alone shall be entitled to assistance for the recovery of rent from privileged occupants under sections 86 and 87 of the Bombay Land Revenue Code, 1879.

Separated Sharers.

32. When the khots have divided their khotki or a partition thereof has been effected by the civil court, or otherwise, and the separated sharers to be severally responsible for their respective shares. co-sharers hold their respective shares in severalty, the Collector shall determine the amount of jama payable in respect of each separate share, and the holders of the said shares shall be held severally liable for the portions of the jama so fixed on their respective shares, and all the provisions of this Act shall apply to them respectively as if they were independent holders of entire khotkis.

Privileged Occupants' Rents.

33. The rent payable to the khot by privileged occupants shall be as follows, (namely):—

(a) by a *dhárekari*: the survey assessment of his land;

(b) by a quasi-*dhárekari*: the survey assessment of his land and in addition thereto the amounts of grain or money respectively set forth in the schedule hereto annexed.

(c) by an occupancy-tenant: such fixed amount, whether in money or in kind, as may have been agreed upon or as may at the time of the framing of the survey record, or at any subsequent period, be agreed upon between the khot and the said tenant;

or on the expiry of the term for which any such agreement shall have been, or shall be made, or if no such agreement have been, or be made, such fixed share of the gross annual produce of the said tenant's land, not exceeding one-half in the case of rice-land, nor one-third in the case of warkas-land and such share, if any, of the produce of the fruit-trees on the said tenant's land, as the survey officer who frames the survey record, shall determine to be the customary amount hitherto paid by occupancy tenants in the village in which the said land is situate.

34. The rents due by privileged occupants shall be payable on such dates, in such instalments and subject to such rules not inconsistent with the provisions of this Act as may from time to time be prescribed in this behalf by the Governor in Council.

Cesses, &c.

35. It shall not be lawful for any khot to levy *phaski, veth, nángarveth, wartála,* or any other cess, rate, tax or service of any description, or denomination whatsoever from any privileged occupant other than the rent lawfully leviable under the provisions of this Act.

Local Fund Cess.

36. Local Fund cess at such rate as shall from time to time be fixed by Government under section 6 of the Bombay Local Funds Act, 1869, shall be leviable by Government from the khot on every rupee of his jama.

The khot shall be entitled to assistance under sections 86 and 87 of the Bombay Land Revenue Code, 1879, for recovery of the said cess at the said rate from dhárekaris and quasi-dhárekaris on every rupee of the survey assessment of the lands in their respective holdings.

Inferior holders of khoti lands shall not be liable to Local Fund cess, anything contained in section 8 of the Bombay Local Funds Act, 1869, to the contrary notwithstanding.

PART V.—MISCELLANEOUS.

37. Existing survey settlements of the land revenue of any village to which this Act extends, made, approved, and confirmed under the authority of the Governor in Council, shall be deemed to have been lawfully made, and, except as is hereinafter otherwise provided, shall continue in force for the terms for which they have been respectively guaranteed, subject to all the provisions of law which would be applicable thereto if this Act had not been passed, and anything in this Act which is inconsistent with any of the said provisions shall be deemed not to apply to such settlements.

38. Upon the expiry of the period of any such guarantee, or if it shall appear to the Governor in Council that a majority of the landholders affected by any such guarantee so desire, at any time previous

to the expiry of the said period (such time being fixed by the Governor in Council), a new survey settlement shall be introduced into the village in which such guarantee was in force and the provisions of this Act shall thenceforward apply to the said settlement, anything in any other law to the contrary notwithstanding.

39. Nothing in sections 68, 72, 73, 74, 99 clause (b), 104 para. 2, 112, 150 clause (b), and 153 of the Bombay Land Revenue Code, 1879, how far inapplicable to khoti villages, shall be deemed to apply to any village to which this Act extends.

The provisions of the said Code when applied to any such village shall be subject to the following modifications (namely) :—

(a) when a survey settlement is being introduced under section 103, the rent payable by each privileged occupant, and the amount of jama payable by the khot shall be announced in lieu of the assessment fixed on each survey number.

(b) sections 118, 119, and 123 shall be read and understood as if the word "khots" were substituted for the words "patels and other village officers," and the words "village officers" and the words "village officers and servants," wherever they occur.

(c) the khot shall for the purposes of section 136 be deemed to be the person primarily responsible to Government for the jama of his village.

(d) the word alienated in clause (f) of section 150 shall be deemed to be omitted, and

(e) if such village is under attachment at the date of this Act coming into force, applications may be made under section 162 for the restoration thereof at any time within 12 years from the first day of August next after such date.

40. The Governor in Council may, by Rules to be made by notification in the the Governor in Council. *Bombay Government Gazette*, from time to time frame, and from time to time vary, or rescind rules not inconsistent with the provisions of this Act—

(a) for the inspection and appraisal of crops when the rent payable to a khot consists of a share of the produce of a privileged occupant's land ;

(b) for determining what land is dhára land ;

(c) for allotting to each privileged occupant, when the exact limits of his warkas holding are not ascertainable, such portion of the entire warkas land of the village or such rights or privileges in respect of any warkas land, or both a portion of the entire warkas land and such rights or privileges in respect of any other such land as may be fair and reasonable;

(d) determining to what extent, if any, any rule, or order made under section 214 of the Bombay Land Revenue Code, 1879, shall be applicable to villages to which this Act extends;

(e) for the furtherance of the objects of this Act in matters not expressly provided for therein;

(f) generally for the guidance of all persons in matters connected with the enforcement of this Act.

41. And whereas it is necessary in the general interests of the people to enable Government to promote the extension of forests in villages held by khots, it is hereby enacted that Government may at any time constitute any uncultivated land in any village to which this Act extends, or may hereafter be extended, a reserved forest. But nothing in this section con-

tained shall derogate from any rights conferred by any sanad or other grant made by any lawful authority.

Explanation.—For the purposes of this section “uncultivated land” means land which has not been tilled for a period of 20 years next before the 1st June 1879, or the date of the order constituting such reserved forest.

42. Every reserved forest constituted under the last preceding section shall be subject to all the provisions of the Indian Forest Act, 1878, and of any other law relating to forests for the time being in force, provided

(1) that upon the condition of duly performing such service connected with such forest as shall from time to time be prescribed by Government, the khot shall be entitled to a share of one-third of the net profits derived by Government from such forest after deducting the cost of management.

(2) that in the event of the service prescribed by Government as aforesaid not being duly performed by the khot, the provisions of section 80 of the Indian Forest Act, 1878, shall be applicable.

SCHEDULE (see Section 3, Cl. 7, and Section 33.)

Denomination of Quasi-dhārekāris.	EXCESS AMOUNT OF RENT PAYABLE FOR EVERY RUPEE AND PROPORTIONATELY FOR EVERY FRACTION OF A RUPEE OF THE SURVEY ASSESSMENT IN RESPECT OF		
	Rice lands.	Warkas lands.	Bagayat or Kabi lands.
Daspatkari ...	2 annas...	2 annas ...	2 annas.
Dupatkari ...	$\frac{1}{2}$ maund of rice in the husk.	$6\frac{1}{4}$ pailis of grain (half <i>nachani</i> and half <i>vari</i>).	8 annas.
Didpatkari or Didi-wala.	3 pailis of rice in the husk.	2 pailis of grain (half <i>nachani</i> and half <i>vari</i>).	3 annas.
Paunedupatkari ...	6 pailis of rice in the husk.	4 pailis of grain (half <i>nachani</i> and half <i>vari</i>).	6 annas.

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
Acting Under Secretary to Government.

Bombay Castle, 5th May 1880.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 27th January 1880, and the assent of His Excellency the Viceroy and Governor General on the 21st April 1880, and is published for general information :—

Bombay Act No. II. of 1880.

An Act to secure the payment to Government of certain sums of money by the Municipal Corporation of the City of Bombay.

WHEREAS the Government of India has agreed to advance to the Municipal Corporation of the City of Bombay a sum not exceeding thirty-six lakhs of rupees for the purpose of constructing new water-works, and a further sum not exceeding six lakhs of rupees for the purpose of improving the surface-drainage of the Island of Bombay; and to permit the balances still due on account of the two loans of fifteen lakhs of rupees and four lakhs of rupees, of which the payment is secured by Bombay Act II. of 1872, to be repaid on the same terms as the said new loans;

And whereas in accordance with the terms of the said agreement the said Municipal Corporation has since the 2nd November 1876 ceased to pay the monthly instalments accruing due under Bombay Act II. of 1872, but has since the said date paid interest at the rate of four and a half per cent. per annum upon the said balances and upon the portions of the said new loans of thirty-six and six lakhs of rupees from time to time taken up by the said Municipal Corporation;

And whereas it is necessary to provide for the re-payment of the consolidated amount of the said new loans and of the balances of the said former loans out of the Municipal Fund of the City of Bombay in manner hereinafter appearing; It is enacted as follows :—

1. This Act may be cited as "The Bombay Municipality's Consolidated Loan Act, 1880."

It shall come into force on such date as may be notified by the Governor in Council in the *Bombay Government Gazette*.

2. Bombay Act II. of 1872 is repealed.

3. In this Act;

(1.) "The Corporation" means the "The Corporation." Municipal Corporation of the City of Bombay as constituted by Bombay Acts III. of 1872 and IV. of 1878, or by any other law for the time being in force;

(2.) "Municipal Fund" means the "Municipal Fund." Municipal Fund as defined by Section 65 of Bombay Act III. of 1872 or by any other law for the time being in force relating to the Municipal affairs of the City of Bombay.

(3.) "Consolidated loan" means the aggregate amount of "Consolidated loan." the following sums, that is to say :

- (a) The sum of thirty-six lakhs of rupees to be advanced by the Government of India to the Corporation for the purpose of constructing new water-works, or such portion thereof as may be taken up by the Corporation;
- (b) The sum of six lakhs of rupees to be similarly advanced for the purpose of carrying out the surface-drainage of the Island of Bombay, or such portion thereof as may be taken up by the Corporation;
- (c) The sum of rupees twelve lakhs and seventy thousand certified by the Accountant General of Bombay as the balance due by the Corporation to the Government of India on the 2nd November 1876 on account of the loan of fifteen lakhs of rupees secured by Bombay Act II. of 1872;
- (d) The sum of rupees three lakhs and seventy thousand certified by the said Accountant General as the balance due by the Corporation to the Government of India on the said date on account of the loan of four lakhs of rupees secured by the said Act.

4. Until the 1st January 1881 the Municipal Commissioner on behalf of the Corporation shall continue to pay interest on the portion of the consolidated loan for the time being due by the Corporation to the Government of India at the rate of four-and-a-half per centum per annum.

The said payments of interest shall be made half-yearly on the first of January and the first of July.

5. The whole of the consolidated loan shall be repaid with interest at the aforesaid rate within thirty years next after the 1st January 1881:

And for the better securing of the repayment of the consolidated loan with interest as aforesaid within the said period, the Municipal Commissioner on behalf of the Corporation shall after the aforesaid date until the whole of the consolidated loan be liquidated, pay half-yearly on the first of January and the first of July the sum of one lakh seventy-eight thousand three hundred and twenty-six rupees and two annas and five pies, the first of such payments to be made on the 1st of July 1881.

Every payment made by the Corporation under this Section and all moneys recovered from the Corporation in any of the manners hereinafter prescribed shall be appropriated first to the payment of the interest due at the time of such payment or recovery and secondly to the reduction of the principal.

6. All payments to be made by the Municipal Commissioner under either of the last two sections shall be made out of the Municipal Fund into Her Majesty's Treasury at Bombay, or to the credit of the Secretary of State in Council in any Bank which may now or hereafter be appointed to act as bankers and receive money in Bombay in behalf of the Government.

Notice of every such payment having been made shall be forthwith published by the Municipal

Commissioner in the *Bombay Government Gazette*.

7. If the Municipal Commissioner fail to make any of the said payments at the prescribed time, the Accountant General shall, within seven days after the day on which such payment ought to have been made, report the fact to the Chief Secretary to Government or other officer acting in that capacity.

8. It shall be lawful for the Chief Secretary, or other officer acting in that capacity, when any of the said payments is in arrear, to direct any Government officer, not being an officer of the Bombay Municipality, to detain to the extent of any payment or payments then in arrear any moneys due or that may become due to the Corporation, which he may then or thereafter have in his custody or control, and such officer shall be bound to detain the moneys which he is so directed to detain and to pay the same as they become due to the Corporation into Her Majesty's Treasury or into any Bank as aforesaid to the credit of the Secretary of State for India in Council, and the moneys so paid shall be applied in or towards satisfaction of the amount for the time being due in respect of the consolidated loan and of all other sums payable under this Act, in preference to and with priority over all incumbrances on and claims to such moneys other than those created under Bombay Act III. of 1870.

9. If the amount in arrear cannot be recovered in the manner provided in the last preceding section, the Governor in Council may attach the municipal fund, or any rate, tax, toll, or duty leviable by the Corporation.

After such attachment no person, except an officer appointed by the Governor in Council, shall in any way deal with the attached fund, rate, tax, toll, or duty; but such officer may do all acts in respect thereof which the Corporation or the Municipal Commissioner might have done, if such attachment had not taken place, and may apply the proceeds in satisfaction of the amount in arrear and of all expenses involved by the attachment and subsequent proceedings:

Provided that no such attachment shall defeat or prejudice any debt for which the fund, rate, tax, toll, or duty attached was previously pledged in accordance with law; but all such prior charges shall be paid out of the proceeds of the fund, rate, tax, toll, or duty attached before any part of the proceeds is applied to the satisfaction of a liability incurred under this Act.

10. Nothing in this Act shall affect the rights or remedies of the Government of India not to be affected. rights or remedies which the Government of India has or shall have independently of this Act for the recovery of the moneys advanced or to be advanced under this Act or any part thereof.

11. The Municipal Commissioner shall in the month of January in each year publish in the *Bombay Government Gazette* an account showing the Account of balances due to Government of India to be published by the Municipal Commissioner yearly.

balances due by the Corporation on the 31st December preceding on account of the consolidated loan, and of every other loan, if any, still repayable to the Government of India.

12. Unless under the provisions of Section 7 of Act XI. of 1879, the Corporation shall not hereafter borrow money except from Government of India or with its sanction. after borrow money except from the Government of India.

If any new loan shall hereafter be granted to the Corporation by the Government of India, the same shall be subject, as regards re-payment and security and in every other respect, to the same provisions as are hereinbefore contained in respect of the consolidated loan; save only that the rate of interest, the period of re-payment, and the number and amount of the instalments shall, in the case of every such new loan, be fixed under the orders of the Government of India by the Governor in Council.

By order of His Excellency the Right Honourable the Governor in Council,

G. G. W. MACPHERSON,
Acting Under Secretary to Government.

Bombay Castle, 5th May 1880.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 11th March 1880, and the assent of His Excellency the Viceroy and Governor General on the 21st April 1880, and is published for general information :—

Bombay Act No. III. of 1880.

An Act to amend the Bombay Irrigation Act No. VII. of 1879.

Whereas it is deemed expedient to repeal
Preamble. certain sections of
 the Bombay Irriga-
 tion Act No. VII. of
 1879,

It is hereby enacted as follows :—
 Sections 49 to 56, both inclusive, of the
 Repeal of Sections 49 Bombay Irrigation
 to 56 of Bombay Irri- Act No. VII. of 1879
 gation Act, 1879. are hereby repealed.

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
 Acting Under Secretary to Government.

Bombay Castle, 5th May 1880.

[Published with the "Bombay Government Gazette" on the 13th May 1880.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 10th January 1880, and the assent of His Excellency the Viceroy and Governor General on the 21st April 1880, and is published for general information:—

Bombay Act No. I. of 1880.

An Act to amend the law relating to the settlement of Villages held by Khots.

WHEREAS it is expedient to make special provision for the settlement and revenue administration of villages in the Ratnágiri district which are held by khots; It is enacted as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as "The
Short title. Khoti Settlement
Act, 1880."

It extends to all villages held by khots
Extent. in the district of
Ratnágiri.

The Governor in Council may from time to time, by notification in the *Bombay Government Gazette*, extend all or any of its provisions to any such village in the Kolába District.

2. Sections thirty-seven and thirty-eight of the Bombay Survey and Settlement Act, 1865, are repealed so far as they apply to any village to which this Act extends, or may hereafter be extended: Provided that the said repeal shall not affect the validity of any settlement already made under the provisions of the said sections and which has been guaranteed by the Government for a fixed period under section twenty-eight of the said Act.

3. In this Act, unless there be something repugnant in the subject or context,
Interpretation.

(1) "village" means a village, or a portion or share of a village, to the extent to which a khot has any right or interest in such village, or portion or share thereof;

"Village."
"Khot." (2) "khot" includes:

(a) a mortgagee lawfully in possession of a khotki,

(b) all co-sharers in a khotki;

(3) "khotki" means the aggregate of the rights and interests vested in a khot as such;

(4) "jama" means land-revenue payable by a khot to Government;

"Privileged occupant." (5) "privileged occupant" means:

(a) a dhárekari, or

(b) a quasi-dhárekari, or

(c) an occupancy-tenant;

(6) "dhárekari" means a land-holder who holds on the "dhára" tenure;

(7) "quasi-dhárekari" means a land-holder of any of the denominations named in the first column of the Schedule hereto annexed;

(8) "occupancy-tenant" means a holder of khoti land who has a right of occupancy in such land;

(9) "dhára land" means land held by a dhárekari, or by a quasi-dhárekari;

(10) "khoti land" means land in respect of which a khot has, as such, any right or interest and which is not dhára land;

(11) "part" and "section" mean respectively a part and section of this Act;

(12) any word or expression which is defined in the Bombay Land Revenue Code, 1879, and is not hereinbefore defined, shall be deemed to have the meaning given to it by that Code

PART II.—GENERAL PROVISIONS RELATING TO KHOTS AND THEIR INFERIOR HOLDERS.

Khots.

4. Khots shall continue to hold their villages conditionally on the payment of the amounts due on account of the jama of the same, according to the provisions of this Act and of the Bombay Land Revenue Code, 1879, and of any rules for the time being in force made under this Act or under the said Code, and subject to the fulfilment of any other term or liability lawfully annexed or appertaining to their tenure.

Inferior Holders.

5. Every holder of khoti land who has actually occupied or cultivated the same continuously from any time previous to the commencement of the revenue year 1845-46 has a right of occupancy in the land so occupied or cultivated.

The occupation or cultivating of the father or other person from whom the present holder inherits, and in the case of occupancy-rights which are transferable otherwise than by inheritance, the occupation or cultivating of any former holder through whom the present holder claims, or of any mortgagee or lessee of the present or any former holder, shall be deemed to be

the occupation or cultivating of the present holder within the meaning of this section;

and in the case of land which is periodically fallow, years of fallow shall be reckoned as years of occupation or cultivation for the purpose of this section.

6. If an occupancy right which is not transferable otherwise than by inheritance, has been so wrongfully transferred, the actual holder of the land shall be deemed to be the tenant thereof, and if he, or his father, or other person from whom he inherits, has occupied or cultivated the land continuously from any time previous to the commencement of the revenue year 1845-46, he shall have a right of occupancy therein :

Provided that if the actual holder is in possession of the land as mortgagee, or lessee merely, his occupation or cultivating shall for the purpose of this section and of section 5 be deemed to be the occupation or cultivating of the mortgagor or lessor, and that if such mortgagor or lessor has a right of occupancy in the land, such right shall, notwithstanding the provisions of section 9, be subject to the mortgage lien or lease of the said mortgagee or lessee until the same is duly discharged or determined.

7. Privileged occupants shall continue to hold their lands conditionally on the payment of the rent from time to time lawfully due by them to the khot or other person entitled to receive payment of the same.

8. Tenants other than occupancy tenants shall continue to hold their lands subject to such terms and conditions as may have been, or may hereafter be, agreed upon between the khot and themselves, and in the absence of any such specific agreement shall be held to be yearly tenants liable to pay rent to the khot at the same rates as are paid by occupancy-tenants in the village in which the lands held by them are situate, provided that the said rates shall not exceed the maxima prescribed in section 33, clause (c.)

Transfer, &c., of Rights.

9. The rights of khots, dhárekaris and quasi-dhárekaris shall be heritable and transferable.

Occupancy-tenants' rights shall be heritable, but shall not be otherwise transferable, unless in any case the tenant proves that such right of transfer has been exercised in respect of the land in his occupancy, independently of the consent of the khot, at some time within the period of thirty years next previous to the commencement of the revenue year 1865-66, or unless in the case of an occupancy right conferred by the khot under section 11, the khot grants such right of transfer of the same.

10. If a privileged occupant resign the land or any portion of the land in his holding, or if any such occupant's land lapse

Resignation, lapse, or forfeiture of privileged occupants' lands.

for failure of heirs, or other persons entitled thereto, or is forfeited on the occupant's failing to pay the rent due in respect thereof, the land so resigned, lapsed, or forfeited, shall be at the disposal of the khot as khoti land free of all encumbrances, other than liens or charges created or existing in favor of Government.

But it shall not be competent to a privileged occupant at any time to resign a portion only of his entire holding except with the consent of the khot; and no privileged occupant shall be deemed to have forfeited his land on failure to pay rent unless such forfeiture is certified by the Collector.

Grant of Privileged Occupants' Rights by Khots.

11. It shall be competent to the khot at any time to confer on any tenant the right of a privileged occupant of any class, or on a privileged occupant of one class, the right of a privileged occupant of a superior class: Provided that the grant by the khot of any such right shall not affect any right of Government in respect of the land which is the subject of such grant or of the trees or other forest produce of such land.

12. On receipt of a written application from the khot, in such form as shall be prescribed in rules to be framed under section 40, the Collector shall cause an entry to be made in such record as may from time to time be prescribed by Government in this behalf, of any right conferred by the khot under the last preceding section, and an entry thus duly made and authenticated

by the Collector's signature shall be conclusive proof of the facts therein recorded.

Nothing in this section or in section 11 shall be deemed to apply to a mortgagee lawfully in possession of a khotki unless such mortgagee shall have been expressly authorized by his mortgagor to exercise the powers conferred by the said sections.

Recovery of Rents.

13. Whenever application is made to the Collector under section 86 of the Commutation-rates for rent payable in the Bombay Land Revenue Code, 1879, for assistance to recover rent from a privileged occupant, tenant or co-sharer and the rent claimed is payable in kind, the Collector may, if he thinks fit, direct the recovery of the money-value of such rent, and in such case the money-value shall be estimated at such commutation-rates as the Collector may fix in this behalf for the year for which such rent is due.

14. If an occupancy-tenant neglect to raise a crop on any land in his holding on account of the rent of which he would, if he raised a crop, be liable to pay the khot a share of the produce, the khot shall be entitled to receive from him the same amount of rent as if he had raised a crop.

In the event of a dispute as to the amount of rent due under this section such amount shall be determined by the Collector, but no such rent shall be recoverable by the khot if the tenant shall satisfy the Collector that in the year for which such rent is claimed it was proper, having regard to the custom of the village in respect of lands of the same class, or to the nature and requirements of the soil, that the land should be left fallow.

Accounts.

15. The khot shall

(a) keep, or cause to be kept, such accounts as may from time to time be required by the Collector under the orders of Government; and

(b) produce such accounts, whenever and to produce them when required; Collector or to any officer subordinate to the Collector not lower in rank than a mahalkari, and

(c) give a written receipt for every payment of rent or land revenue made to him whether by a privileged occupant or tenant, or by a co-sharer in his khotki.

For disobedience of any order duly made under this section, or for any infraction of the provisions of this section, the khot shall, on conviction before the Collector, or the Assistant or Deputy Collector in charge of the taluka in which such khot's village is situate, be liable to a fine not exceeding one hundred rupees, which shall be recoverable as an arrear of jama.

PART III.—SURVEY AND SETTLEMENT.

Settlement Records.

16. Whenever a survey settlement of the land revenue of any village to which this Act extends is made, or revised under the provisions of Chapter VIII of the Bombay Land Revenue Code, 1879, the Settlement Register prepared under section 108 of the said Code shall show the area and assessment of each survey number and also whether such survey number is held by a privileged occupant or not.

If a survey number is held by one or more privileged occupants, the said register shall further specify the tenure on which such number is held, the name of the registered occupant thereof, and, in the case of a survey number held by an occupancy-tenant, whether his interest therein is transferable otherwise than by inheritance or not.

Survey numbers which are not held by privileged occupants shall be entered in the said register in the name of the khot, or if a partition of the khotki has taken place, of the co-sharers to whose shares they respectively belong.

The said register shall also contain a list of all the co-sharers of the khotki, if the village be not held by one khot in his own sole right, and shall specify the extent of each such co-sharer's interest in the khotki.

17. The other records prepared under the said section shall specify the nature and amount of rent

payable to the khot by each privileged occupant according to the provisions of section 33 of this Act, and any entry in any record duly made under this section shall be conclusive and final evidence of the liability thereby established.

18. If the khotki is undivided the said records shall also specify:—
When the khotki is undivided, the co-sharers' respective rights to be recorded.

(a) the survey numbers in the possession of each co-sharer and the rent payable by such co-sharer on account of the same, and

(b) the terms and particulars of any written agreement which the co-sharers, or any of them, have entered into, or may at the time of the framing of the said record enter into, determining their respective responsibility, and

(c) the order of rotation in which the said co-sharers agree in writing, if they do so agree, to take the management of the village under the provisions of section 27 of this Act.

19. If a partition has been effected and the co-sharers of the khotki hold their respective shares in severalty, the said records shall specify:—

(a) the extent and limits of each such separate share, and

(b) the same particulars in respect of the several sub-sharers, if any, of each such share as are required by the last preceding section to be given concerning all the co-sharers when a khotki is undivided.

Determination of Disputes.

20. If it shall appear to the survey officer, who frames the said register or other record, that there exists any dispute as to any matter which he is bound to record, he may, either on the application of any of the disputant parties, or of his own motion, investigate and determine such dispute and frame the said register or other record accordingly.

21. In any such matter the decision of the said survey officer, when not final, shall be binding upon all the parties affected thereby until reversed.

Survey officer's decision when not final to be set aside only by a decree of court.

or modified by a final decree of a competent court.

22. No suit shall lie against the said survey officer, or against Government, or any officer of Government to set aside any such decision of a survey officer; but the record shall from time to time be amended by the said survey officer, or when the survey settlement is concluded, by the Collector, in accordance with any such decree as aforesaid which the parties may obtain *inter se* on an application, accompanied by a certified copy of such decree, being duly made to the said survey officer, or to the Collector for that purpose.

PART IV.—ADMINISTRATION OF SURVEY SETTLEMENTS MADE UNDER THIS ACT.

23. The provisions of this Part shall not apply to any village to which this Act extends until such time as the Governor in Council first after the passing of this Act sanctions a survey settlement, or a revised survey settlement of such village and declares the assessments settled thereunder fixed for a period of years, in accordance with section 102 of the Bombay Land Revenue Code, 1879.

Until such time, the rights and responsibilities of all parties so far as regards the matters treated of in this Part shall continue to be such as they would be if this Part had not been enacted.

Khots' Jama.

24. The jama payable to Government by the khot shall be the aggregate of the survey assessments of the lands of the village minus such percentage of deduction, if any, as Government may in each case direct.

The amount of the said jama shall be from time to time fixed for the same period for which the survey assessments are fixed.

Managing Khots.

25. The annual *kafuláyats* hitherto executed by khots shall no longer be required from them: Provided that nothing herein contained shall be deemed to affect the liability of khots to perform any condition of their

tenure, or to do any act which they are now bound to perform or to do, or their obligation to refrain from doing anything which they are now bound not to do.

26. When a village is held by two or more co-sharers jointly, the said sharers shall be jointly and severally responsible for the jama, but one of their number shall be nominated every year to receive the inferior holders' rents, to pay the Government dues, and generally to perform all acts required by this Act or by any other law or rule having the force of law, to be performed by the khot.

The sharer so nominated shall be called "the managing khot" and shall for all the purposes of the Bombay Land Revenue Code, 1879, be deemed to be the registered occupant of all survey numbers in the village not held by privileged occupants.

27. If the co-sharers have, at the time of the framing of the survey settlement records or at any subsequent period, agreed in writing as to the order of rotation, the nomination of the managing khot shall be made by the Collector in the order so agreed upon.

In the absence of any such agreement, the co-sharers shall be called upon to nominate one of their number year by year, and in the event of their failing so to do within such time as may be prescribed by the Collector in this behalf, or if they are not unanimous as to the nomination, the Collector shall either select the managing khot for the year, or cause the village to be attached and taken under the management of himself or any agent whom he appoints for that purpose in the manner provided in section 144 of the Bombay Land Revenue Code, 1879.

28. A managing khot nominated by the Collector under the last preceding section shall continue in that capacity throughout the year for which he is so appointed, and no suit shall lie against the Collector, or against Government, or any Government officer in respect of such nomination.

But it shall be lawful for any of the co-sharers at any time to sue for a decree *inter se* to declare which of them is entitled to the man-

agement, or the order in which they should respectively have the management, if more than one of them be entitled to the same; and from the commencement of the revenue year next after an application (accompanied by a certified copy of any such decree) is duly made to him for the purpose, the Collector shall nominate the managing khot in accordance with such decree.

29. Except as is hereinafter provided, the *mámlatdár* shall furnish every managing khot with a certificate under his hand and seal to the effect that the holder thereof is the recognized managing khot for the year to which such certificate relates and a certificate so signed and sealed shall be conclusive evidence of the right of the khot therein named to manage the village to which it relates for the year therein specified.

30. When a village is held by a khot in his own sole right, he shall be deemed to be the managing khot thereof for all the purposes of this Act, and it shall not be necessary to furnish him with any such certificate as is described in the last preceding section.

31. When a managing khot has been duly appointed under any of the foregoing provisions he alone shall be entitled to assistance for the recovery of rent from privileged occupants under sections 86 and 87 of the Bombay Land Revenue Code, 1879.

Separated Sharers.

32. When the khots have divided their khotki or a partition thereof has been effected by the civil court, or otherwise, and the co-sharers hold their respective shares in severalty, the Collector shall determine the amount of jama payable in respect of each separate share, and the holders of the said shares shall be held severally liable for the portions of the jama so fixed on their respective shares, and all the provisions of this Act shall apply to them respectively as if they were independent holders of entire khotkis.

Privileged Occupants' Rents.

33. The rent payable to the khot by privileged occupants shall be as follows, (namely):—

(a) by a *dhárekari*: the survey assessment of his land;

(b) by a quasi-*dhárekari*: the survey assessment of his land and in addition thereto the amounts of grain or money respectively set forth in the schedule hereto annexed.

(c) by an occupancy-tenant: such fixed amount, whether in money or in kind, as may have been agreed upon or as may at the time of the framing of the survey record, or at any subsequent period, be agreed upon between the khot and the said tenant;

or on the expiry of the term for which any such agreement shall have been, or shall be made, or if no such agreement have been, or be made, such fixed share of the gross annual produce of the said tenant's land, not exceeding one-half in the case of rice-land, nor one-third in the case of warkas-land and such share, if any, of the produce of the fruit-trees on the said tenant's land, as the survey officer who frames the survey record, shall determine to be the customary amount hitherto paid by occupancy tenants in the village in which the said land is situate.

34. The rents due by privileged occupants shall be payable on such dates, in such instalments and subject to such rules not inconsistent with the provisions of this Act as may from time to time be prescribed in this behalf by the Governor in Council.

Cesses, &c.

35. It shall not be lawful for any khot to levy *phaski*, *veth*, *nángarveth*, *wartála*, or any other cess, rate, tax or service of any description, or denomination whatsoever from any privileged occupant other than the rent lawfully leviable under the provisions of this Act.

Local Fund Cess.

36. Local Fund cess at such rate as shall from time to time be fixed by Government under section 6 of the Bombay Local Funds Act, 1869, shall be leviable by Government from the khot on every rupee of his jama.

The khot shall be entitled to assistance under sections 86 and 87 of the Bombay Land Revenue Code, 1879, for recovery of the said cess at the said rate from dhárekaris and quasi-dhárekaris on every rupee of the survey assessment of the lands in their respective holdings.

Inferior holders of khoti lands shall not be liable to Local Fund cess, anything contained in section 8 of the Bombay Local Funds Act, 1869, to the contrary notwithstanding.

PART V.—MISCELLANEOUS.

37. Existing survey settlements of the land revenue of any village to which this Act extends, made, approved, and confirmed under the authority of the Governor in Council, shall be deemed to have been lawfully made, and, except as is hereinafter otherwise provided, shall continue in force for the terms for which they have been respectively guaranteed, subject to all the provisions of law which would be applicable thereto if this Act had not been passed, and anything in this Act which is inconsistent with any of the said provisions shall be deemed not to apply to such settlements.

38. Upon the expiry of the period of any such guarantee, or if it shall appear to the Governor in Council that a majority of the landholders affected by any such guarantee so desire, at any time previous to the expiry of the said period (such time being fixed by the Governor in Council), a new survey settlement shall be introduced into the village in which such guarantee was in force and the provisions of this Act shall thenceforward apply to the said settlement, anything in any other law to the contrary notwithstanding.

39. Nothing in sections 68, 72, 73, 74, 99 clause (b), 104 para. 2, 112, 150 clause (b), and 153 of the Bombay Land Revenue Code, 1879, shall be deemed to apply to any village to which this Act extends.

The provisions of the said Code when applied to any such village shall be subject to the following modifications (namely) :—

(a) when a survey settlement is being introduced under section 103, the rent payable by each privileged occupant, and the amount of jama payable by the khot shall be announced in lieu of the assessment fixed on each survey number;

(b) sections 118, 119, and 123 shall be read and understood as if the word "khots" were substituted for the words "patels and other village officers," and the words "village officers" and the words "village officers and servants," wherever they occur;

(c) the khot shall for the purposes of section 136 be deemed to be the person primarily responsible to Government for the jama of his village;

(d) the word alienated in clause (f) of section 150 shall be deemed to be omitted; and

(e) if such village is under attachment at the date of this Act coming into force, applications may be made under section 162 for the restoration thereof at any time within 12 years from the first day of August next after such date.

40. The Governor in Council may, by notification in the *Bombay Government Gazette*, from time to time frame, and from time to time vary, or rescind rules not inconsistent with the provisions of this Act—

(a) for the inspection and appraisement of crops when the rent payable to a khot consists of a share of the produce of a privileged occupant's land;

(b) for determining what land is dhára land;

(c) for allotting to each privileged occupant, when the exact limits of his warkas holding are not ascertainable, such portion of the entire warkas land of the village or such rights or privileges in respect of any warkas land, or both a portion of the entire warkas land and such rights or privileges in respect of any other such land as may be fair and reasonable;

(d) determining to what extent, if any, any rule, or order made under section 214 of the Bombay Land Revenue Code, 1879, shall be applicable to villages to which this Act extends;

(e) for the furtherance of the objects of this Act in matters not expressly provided for therein;

(f) generally for the guidance of all persons in matters connected with the enforcement of this Act.

41. And whereas it is necessary in the general interests of the people to enable Government to promote the extension of

Government may constitute uncultivated land a reserved forest.

forests in villages held by khots, it is hereby enacted that Government may at any time constitute any uncultivated land in any village to which this Act extends, or may hereafter be extended, a reserved forest. But nothing in this section contained shall derogate from any rights conferred by any sanad or other grant made by any lawful authority.

Explanation.—For the purposes of this section “uncultivated land” means land which has not been tilled for a period of 20 years next before the 1st June 1879, or the date of the order constituting such reserved forest.

42. Every reserved forest constituted under the last preceding section shall be subject to all the provisions of the Indian Forest Act, 1878, and of any other law relating to forests for the time being in force, provided

(1) that upon the condition of duly performing such service connected with such forest as shall from time to time be prescribed by Government, the khot shall be entitled to a share of one-third of the net profits derived by Government from such forest after deducting the cost of management;

(2) that in the event of the service prescribed by Government as aforesaid not being duly performed by the khot, the provisions of section 80 of the Indian Forest Act, 1878, shall be applicable.

SCHEDULE (see Section 3, Cl. 7, and Section 33.)

Denomination of Quasi-dhārekaris.	EXCESS AMOUNT OF RENT PAYABLE FOR EVERY RUPEE AND PROPORTIONATELY FOR EVERY FRACTION OF A RUPEE OF THE SURVEY ASSESSMENT IN RESPECT OF		
	Rice lands.	Warkas lands.	Bagayat or Kabi lands.
Daspatkari ...	2 annas...	2 annas ...	2 annas.
Dupatkari ...	$\frac{1}{2}$ maund of rice in the husk.	$5\frac{1}{2}$ pails of grain (half <i>nachani</i> and half <i>vari</i>).	8 annas.
Didpatkari or Didi-wala.	3 pails of rice in the husk.	2 pails of grain (half <i>nachani</i> and half <i>vari</i>).	3 annas.
Paunedupatkari ...	6 pails of rice in the husk.	4 pails of grain (half <i>nachani</i> and half <i>vari</i>).	6 annas.

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,

Acting Under Secretary to Government.

Bombay Castle, 5th May 1880.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 27th January 1880, and the assent of His Excellency the Viceroy and Governor General on the 21st April 1880, and is published for general information :—

Bombay Act No. II. of 1880.

An Act to secure the payment to Government of certain sums of money by the Municipal Corporation of the City of Bombay.

WHEREAS the Government of India has agreed to advance to the Municipal Corporation of the City of Bombay a sum not exceeding thirty-six lakhs of rupees for the purpose of constructing new water-works, and a further sum not exceeding six lakhs of rupees for the purpose of improving the surface-drainage of the Island of Bombay; and to permit the balances still due on account of the two loans of fifteen lakhs of rupees and four lakhs of rupees, of which the payment is secured by Bombay Act II. of 1872, to be repaid on the same terms as the said new loans;

And whereas in accordance with the terms of the said agreement the said Municipal Corporation has since the 2nd November 1876 ceased to pay the monthly instalments accruing due under Bombay Act II. of 1872, but has since the said date paid interest at the rate of four-and-a-half per cent. per annum upon the said balances and upon the portions of the said new loans of thirty-six and six lakhs of rupees from time to time taken up by the said Municipal Corporation;

And whereas it is necessary to provide for the re-payment of the consolidated amount of the said new loans and of the balances of the said former loans out of the Municipal Fund of the City of Bombay in manner hereinafter appearing; It is enacted as follows :—

1. This Act may be cited as “The Bombay Municipality’s Consolidated Loan Act, 1880.”

It shall come into force on such date as may be notified by the Governor in Council in the *Bombay Government Gazette*.

2. Bombay Act II. of 1872 is repealed.

3. In this Act :

(1.) “The Corporation” means the “The Corporation.” Municipal Corporation of the City of Bombay as constituted by Bombay Acts III. of 1872 and IV. of 1878, or by any other law for the time being in force;

(2.) “Municipal Fund” means the “Municipal Fund.” Municipal Fund as defined by Section 65 of Bombay Act III. of 1872 or by any other law for the time being in force relating to the Municipal affairs of the City of Bombay.

(3.) “Consolidated loan” means the aggregate amount of “Consolidated loan.” the following sums, that is to say :

- (a) The sum of thirty-six lakhs of rupees to be advanced by the Government of India to the Corporation for the purpose of constructing new water-works, or such portion thereof as may be taken up by the Corporation;
- (b) The sum of six lakhs of rupees to be similarly advanced for the purpose of carrying out the surface-drainage of the Island of Bombay, or such portion thereof as may be taken up by the Corporation;
- (c) The sum of rupees twelve lakhs and seventy thousand certified by the Accountant General of Bombay as the balance due by the Corporation to the Government of India on the 2nd November 1876 on account of the loan of fifteen lakhs of rupees secured by Bombay Act II. of 1872;
- (d) The sum of rupees three lakhs and seventy thousand certified by the said Accountant General as the balance due by the Corporation to the Government of India on the said date on account of the loan of four lakhs of rupees secured by the said Act.

4. Until the 1st January 1881 the Municipal Commissioner on behalf of the Corporation shall continue to pay interest on the portion of the consolidated loan for the time being due by the Corporation to the Government of India at the rate of four-and-a-half per centum per annum.

The said payments of interest shall be made half-yearly on the first of January and the first of July.

5. The whole of the consolidated loan shall be repaid with interest at the aforesaid rate within thirty years next after the 1st January 1881 :

And for the better securing of the repayment of the consolidated loan with interest as aforesaid within the said period, the Municipal Commissioner on behalf of the Corporation shall after the aforesaid date until the whole of the consolidated loan be liquidated, pay half-yearly on the first of January and the first of July the sum of one lakh seventy-eight thousand three hundred and twenty-six rupees and two annas and five pies, the first of such payments to be made on the 1st of July 1881.

Every payment made by the Corporation under this Section and all moneys recovered from the Corporation in any of the manners hereinafter prescribed shall be appropriated first to the payment of the interest due at the time of such payment or recovery and secondly to the reduction of the principal.

6. All payments to be made by the Municipal Commissioner under either of the last two sections shall be made out of the Municipal Fund into Her Majesty's Treasury at Bombay, or to the credit of the Secretary of State in Council in any Bank which may now or hereafter be appointed to act as bankers and receive money in Bombay in behalf of the Government;

and notice of every such payment having been made shall be forthwith published by the Municipal

Commissioner in the *Bombay Government Gazette*.

7. If the Municipal Commissioner fail to make any of the said payments at the prescribed time, the Accountant General shall, within seven days after the day on which such payment ought to have been made, report the fact to the Chief Secretary to Government or other officer acting in that capacity.

8. It shall be lawful for the Chief Secretary, or other officer acting in that capacity, when any of the said payments is in arrear, to direct any Government officer, not being an officer of the Bombay Municipality, to detain to the extent of any payment or payments then in arrear any moneys due or that may become due to the Corporation, which he may then or thereafter have in his custody or control, and such officer shall be bound to detain the moneys which he is so directed to detain and to pay the same as they become due to the Corporation into Her Majesty's Treasury or into any Bank as aforesaid to the credit of the Secretary of State for India in Council, and the moneys so paid shall be applied in or towards satisfaction of the amount for the time being due in respect of the consolidated loan and of all other sums payable under this Act, in preference to and with priority over all incumbrances on and claims to such moneys other than those created under Bombay Act III. of 1870.

9. If the amount in arrear cannot be recovered in the manner provided in the last preceding section, the Governor in Council may attach the municipal fund, or any rate, tax, toll, or duty leviable by the Corporation.

After such attachment no person, except an officer appointed by the Governor in Council, shall in any way deal with the attached fund, rate, tax, toll, or duty; but such officer may do all acts in respect thereof which the Corporation or the Municipal Commissioner might have done, if such attachment had not taken place, and may apply the proceeds in satisfaction of the amount in arrear and of all expenses involved by the attachment and subsequent proceedings :

Provided that no such attachment shall defeat or prejudice any debt for which the fund, rate, tax, toll, or duty attached was previously pledged in accordance with law; but all such prior charges shall be paid out of the proceeds of the fund, rate, tax, toll, or duty attached before any part of the proceeds is applied to the satisfaction of a liability incurred under this Act.

10. Nothing in this Act shall affect the rights or remedies of the Government of India which the Government of India has or shall have independently of this Act for the recovery of the moneys advanced or to be advanced under this Act or any part thereof.

11. The Municipal Commissioner shall in the month of January in each year publish in the *Bombay Government Gazette* an account showing the Account of balances due to Government of India to be published by the Municipal Commissioner yearly.

balances due by the Corporation on the 31st December preceding on account of the consolidated loan, and of every other loan, if any, still repayable to the Government of India.

12. Unless under the provisions of Section 7 of Act XI. of 1879, the Corporation shall not hereafter borrow money except from Government of India or with its sanction.

If any new loan shall hereafter be granted to the Corporation by the Government of India, the same shall be subject, as regards re-payment and security and in every other respect, to the same provisions as are hereinbefore contained in respect of the consolidated loan; save only that the rate of interest, the period of re-payment, and the number and amount of the instalments shall, in the case of every such new loan, be fixed under the orders of the Government of India by the Governor in Council.

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
Acting Under Secretary to Government.

Bombay Castle, 5th May 1880.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 11th March 1880, and the assent of His Excellency the Viceroy and Governor General on the 21st April 1880, and is published for general information :—

Bombay Act No. III. of 1880.

An Act to amend the Bombay Irrigation Act No. VII. of 1879.

Whereas it is deemed expedient to repeal
 certain sections of
 the Bombay Irriga-
 tion Act No. VII. of
 1879,

Preamble.

It is hereby enacted as follows :—
 Sections 49 to 56, both inclusive, of the
 Bombay Irrigation
 Act.No. VII. of 1879
 are hereby repealed.
 Repeal of Sections 49
 to 56 of Bombay Irri-
 gation Act, 1879.

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
 Acting Under Secretary to Government.

Bombay Castle, 5th May 1880.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 30th April 1880, and was promulgated for general information in the *Gazette of India* on the 1st May 1880 :—

Act No. IX. of 1880.

An Act to amend the Bombay Civil Courts Act, 1869.

WHEREAS it is expedient to empower the Governor of Bombay in Council to fix and, from time to time, to alter the local limits of the ordinary jurisdiction of the Subordinate Judges appointed under the Bombay Civil Courts Act, 1869; It is hereby enacted as follows :—

Short title.	1. This Act may be called "The Bombay Civil Courts Act, 1880";
Commencement.	and it shall come into force at once.

Insertion of a new section after section 22 of the Bombay Civil Courts Act.

2. In the said Act, after section 22, the following section shall be inserted :—

"22A. The Governor of Bombay in Council may, by notification in the official Gazette, fix, and, by a like notification, from time to time alter, the local limits of the ordinary jurisdiction of the Subordinate Judges."

3. All orders issued by the Governor of Bombay in Council previous to the passing of this Act, fixing or altering the local limits of the jurisdiction of a Subordinate Judge, shall be deemed to have been issued in accordance with law.

D. FITZPATRICK,
*Secy. to the Govt. of India,
Legislative Dept.*

[Published with the "Bombay Government Gazette" on the 20th May 1880.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 10th January 1880, and the assent of His Excellency the Viceroy and Governor General on the 21st April 1880, and is published for general information:—

Bombay Act No. I. of 1880.

An Act to amend the law relating to the settlement of Villages held by Khots.

WHEREAS it is expedient to make special provision for the settlement and revenue administration of villages in the Ratnágiri district which are held by khots; It is enacted as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as "The
Short title. Khoti Settlement
Act, 1880."

It extends to all villages held by khots
Extent. in the district of
Ratnágiri.

The Governor in Council may from time to time, by notification in the *Bombay Government Gazette*, extend all or any of its provisions to any such village in the Kolába District.

2. Sections thirty-seven and thirty-eight of the Bombay Survey and Settlement Act, 1865, are repealed so far as they apply to any village to which this Act extends, or may hereafter be extended: Provided that the said repeal shall not affect the validity of any settlement already made under the provisions of the said sections and which has been guaranteed by the Government for a fixed period under section twenty-eight of the said Act.

3. In this Act, unless there be something repugnant in
Interpretation. the subject or context,

iv.—13 f

(1) "village" means a village, or a portion or share of a village, to the extent to which a khot has any right or interest in such village, or portion or share thereof;

"Khot." (2) "khot" includes:

(a) a mortgagee lawfully in possession of a khotki,

(b) all co-sharers in a khotki;

(3) "khotki" means the aggregate of the rights and interests vested in a khot as such;

(4) "jama" means land-revenue payable by a khot to Government;

"Privileged occupant." (5) "privileged occupant" means:

(a) a dhárekari, or

(b) a quasi-dhárekari, or

(c) an occupancy-tenant;

(6) "dhárekari" means a land-holder who holds on the "dhára" tenure;

(7) "quasi-dhárekari" means a land-holder of any of the denominations named in the first column of the Schedule hereto annexed;

(8) "occupancy-tenant" means a holder of khoti land who has a right of occupancy in such land;

(9) "dhára land" means land held by a dhárekari, or by a quasi-dhárekari;

(10) "khoti land" means land in respect of which a khot has, as such, any right or interest and which is not dhára land;

(11) "part" and "section" mean respectively a part and section of this Act;

(12) any word or expression which is defined in the Bombay Land Revenue Code, 1879, and is not hereinbefore defined, shall be deemed to have the meaning given to it by that Code

PART II.—GENERAL PROVISIONS RELATING TO KHOTS AND THEIR INFERIOR HOLDERS.

Khots.

4. Khots shall continue to hold their villages conditionally on the payment of the amounts due on account of the jama of the same, according to the provisions of this Act and of the Bombay Land Revenue Code, 1879, and of any rules for the time being in force made under this Act or under the said Code, and subject to the fulfilment of any other term or liability lawfully annexed or appertaining to their tenure.

Inferior Holders.

5. Every holder of khoti land who has actually occupied or cultivated the same continuously from any time previous to the commencement of the revenue year 1845-46 has a right of occupancy in the land so occupied or cultivated.

The occupation or cultivating of the father or other person from whom the present holder inherits, and in the case of occupancy-rights which are transferable otherwise than by inheritance, the occupation or cultivating of any former holder through whom the present holder claims, or of any mortgagee or lessee of the present or any former holder, shall be deemed to be

the occupation or cultivating of the present holder within the meaning of this section;

and in the case of land which is periodically fallow, years of fallow shall be reckoned as years of occupation or cultivation for the purpose of this section.

6. If an occupancy right which is not transferable otherwise than by inheritance, has been so transferred, the actual holder of the land shall be deemed to be the tenant thereof, and if he, or his father, or other person from whom he inherits, has occupied or cultivated the land continuously from any time previous to the commencement of the revenue year 1845-46, he shall have a right of occupancy therein :

Provided that if the actual holder is in possession of the land as mortgagee, or lessee merely, his occupation or cultivating shall for the purpose of this section and of section 5 be deemed to be the occupation or cultivating of the mortgagor or lessor, and that if such mortgagor or lessor has a right of occupancy in the land, such right shall, notwithstanding the provisions of section 9, be subject to the mortgage lien or lease of the said mortgagee or lessee until the same is duly discharged or determined.

7. Privileged occupants shall continue to hold their lands conditionally on the payment of the rent from time to time lawfully due by them to the khot or other person entitled to receive payment of the same.

8. Tenants other than occupancy tenants shall continue to hold their lands subject to such terms and conditions as may have been, or may hereafter be, agreed upon between the khot and themselves, and in the absence of any such specific agreement shall be held to be yearly tenants liable to pay rent to the khot at the same rates as are paid by occupancy-tenants in the village in which the lands held by them are situate, provided that the said rates shall not exceed the maxima prescribed in section 33, clause (c.)

Transfer, &c., of Rights.

9. The rights of khots, dhárekaris and quasi-dhárekaris shall be heritable and transferable.

Occupancy-tenants' rights shall be heritable, but shall not be otherwise transferable, unless in any case the tenant proves that such right of transfer has been exercised in respect of the land in his occupancy, independently of the consent of the khot, at some time within the period of thirty years next previous to the commencement of the revenue year 1865-66, or unless in the case of an occupancy right conferred by the khot under section 11, the khot grants such right of transfer of the same.

10. If a privileged occupant resign the land or any portion of the land in his holding, or if any such occupant's land lapse for failure of heirs, or other persons entitled thereto, or is forfeited on the occupant's failing to pay the rent due in respect thereof, the land so resigned, lapsed, or forfeited, shall be at the disposal of the khot as khoti land free of all encumbrances, other than liens or charges created or existing in favor of Government.

But it shall not be competent to a privileged occupant at any time to resign a portion only of his entire holding except with the consent of the khot; and no privileged occupant shall be deemed to have forfeited his land on failure to pay rent unless such forfeiture is certified by the Collector.

Grant of Privileged Occupants' Rights by Khots.

11. It shall be competent to the khot at any time to confer on any tenant the right of a privileged occupant of any class, or on a privileged occupant of one class, the right of a privileged occupant of a superior class: Provided that the grant by the khot of any such right shall not affect any right of Government in respect of the land which is the subject of such grant or of the trees or other forest produce of such land.

12. On receipt of a written application from the khot, in such form as shall be prescribed in rules to be framed under section 40, the Collector shall cause an entry to be made in such record as may from time to time be prescribed by Government in this behalf, of any right conferred by the khot under the last preceding section, and an entry thus duly made and authenticated

by the Collector's signature shall be conclusive proof of the facts therein recorded.

Nothing in this section or in section 11 shall be deemed to apply to a mortgagee lawfully in possession of a khotki unless such mortgagee shall have been expressly authorized by his mortgagor to exercise the powers conferred by the said sections.

Recovery of Rents.

13. Whenever application is made to the Collector under section 86 of the Bombay Land Revenue Code, 1879, for assistance to recover rent from a privileged occupant, tenant or co-sharer and the rent claimed is payable in kind, the Collector may, if he thinks fit, direct the recovery of the money-value of such rent, and in such case the money-value shall be estimated at such commutation-rates as the Collector may fix in this behalf for the year for which such rent is due.

14. If an occupancy-tenant neglect to raise a crop on any land in his holding on neglects to cultivate, account of the rent of which he would, if he raised a crop, be liable to pay the khot a share of the produce, the khot shall be entitled to receive from him the same amount of rent as if he had raised a crop.

In the event of a dispute as to the amount of rent due under this section such amount shall be determined by the Collector, but no such rent shall be recoverable by the khot if the tenant shall satisfy the Collector that in the year for which such rent is claimed it was proper, having regard to the custom of the village in respect of lands of the same class, or to the nature and requirements of the soil, that the land should be left fallow.

Accounts.

15. The khot shall

(a) keep, or cause to be kept, such accounts as may from time to time be required by the Collector under the orders of Government; and

(b) produce such accounts, whenever and to produce required, to the Collector or to any officer subordinate to the Collector not lower in rank than a mahalkari, and

(c) give a written receipt for every payment of rent or and to give land revenue made to written receipts. him whether by a privileged occupant or tenant, or by a co-sharer in his khotki.

For disobedience of any order duly made under this section, or Penalty. for any infraction of the provisions of this section, the khot shall, on conviction before the Collector, or the Assistant or Deputy Collector in charge of the taluka in which such khot's village is situate, be liable to a fine not exceeding one hundred rupees, which shall be recoverable as an arrear of jama.

PART III.—SURVEY AND SETTLEMENT.

Settlement Records.

16. Whenever a survey settlement of the land revenue of any village to which this Act extends is made, or revised under the provisions of Chapter VIII of the Bombay Land Revenue Code, 1879, the Settlement Register prepared under section 108 of the said Code shall show the area and assessment of each survey number and also whether such survey number is held by a privileged occupant or not.

If a survey number is held by one or more privileged occupants, the said register shall further specify the tenure on which such number is held, the name of the registered occupant thereof, and, in the case of a survey number held by an occupancy-tenant, whether his interest therein is transferable otherwise than by inheritance or not.

Survey numbers which are not held by privileged occupants shall be entered in the said register in the name of the khot, or if a partition of the khotki has taken place, of the co-sharers to whose shares they respectively belong.

The said register shall also contain a list of all the co-sharers of the khotki, if the village be not held by one khot in his own sole right, and shall specify the extent of each such co-sharer's interest in the khotki.

17. The other records prepared under the said section shall specify the nature and amount of rent

payable to the khot by each privileged occupant according to the provisions of section 33 of this Act, and any entry in any record duly made under this section shall be conclusive and final evidence of the liability thereby established.

18. If the khotki is undivided the said records shall also specify:—
When the khotki is undivided, the co-sharers' respective rights to be recorded.

(a) the survey numbers in the possession of each co-sharer and the rent payable by such co-sharer on account of the same, and

(b) the terms and particulars of any written agreement which the co-sharers, or any of them, have entered into, or may at the time of the framing of the said record enter into, determining their respective responsibility, and

(c) the order of rotation in which the said co-sharers agree in writing, if they do so agree, to take the management of the village under the provisions of section 27 of this Act.

19. If a partition has been effected and the co-sharers of the khotki hold their respective shares in severalty, the said records shall specify:—

(a) the extent and limits of each such separate share, and

(b) the same particulars in respect of the several sub-sharers, if any, of each such share as are required by the last preceding section to be given concerning all the co-sharers when a khotki is undivided.

Determination of Disputes.

20. If it shall appear to the survey officer, who frames the said register or other record, that there exists any dispute as to any matter which he is bound to record, he may, either on the application of any of the disputant parties, or of his own motion, investigate and determine such dispute and frame the said register or other record accordingly.

21. In any such matter the decision of the said survey officer, when not final, shall be binding upon all the parties affected thereby until reversed

Survey officer's decision when not final to be set aside only by a decree of court.

or modified by a final decree of a competent court.

22. No suit shall lie against the said survey officer, or against Government, or any officer of Government to set aside any such decision of a survey officer; but the record shall from time to time be amended by the said survey officer, or when the survey settlement is concluded, by the Collector, in accordance with any such decree as aforesaid which the parties may obtain *inter se* on an application, accompanied by a certified copy of such decree, being duly made to the said survey officer, or to the Collector for that purpose.

PART IV.—ADMINISTRATION OF SURVEY SETTLEMENTS MADE UNDER THIS ACT.

23. The provisions of this Part shall not apply to any village to which this Act extends until such time as the Governor in Council first after the passing of this Act sanctions a survey settlement, or a revised survey settlement of such village and declares the assessments settled thereunder fixed for a period of years, in accordance with section 102 of the Bombay Land Revenue Code, 1879.

Until such time, the rights and responsibilities of all parties so far as regards the matters treated of in this Part shall continue to be such as they would be if this Part had not been enacted.

Khots' Jama.

24. The jama payable to Government by the khot shall be the aggregate of the survey assessments of the lands of the village minus such percentage of deduction, if any, as Government may in each case direct.

The amount of the said jama shall be from time to time fixed for the same period for which the survey assessments are fixed.

Managing Khots.

25. The annual *kafuláyats* hitherto executed by khots shall no longer be required from them: Provided that nothing herein contained shall be deemed to affect the liability of khots to perform any condition of their

tenure, or to do any act which they are now bound to perform or to do, or their obligation to refrain from doing anything which they are now bound not to do.

26. When a village is held by two or more co-sharers jointly, the said sharers shall be jointly and severally responsible for the jama, but one of their number shall be nominated every year to receive the inferior holders' rents, to pay the Government dues, and generally to perform all acts required by this Act or by any other law or rule having the force of law, to be performed by the khot.

The sharer so nominated shall be called "the managing khot" and shall for all the purposes of the Bombay Land Revenue Code, 1879, be deemed to be the registered occupant of all survey numbers in the village not held by privileged occupants.

27. If the co-sharers have, at the time of the framing of the survey settlement records or at any subsequent period, agreed in writing as to the order of rotation, the nomination of the managing khot shall be made by the Collector in the order so agreed upon.

In the absence of any such agreement, the co-sharers shall be called upon to nominate one of their number year by year, and in the event of their failing so to do within such time as may be prescribed by the Collector in this behalf, or if they are not unanimous as to the nomination, the Collector shall either select the managing khot for the year, or cause the village to be attached and taken under the management of himself or any agent whom he appoints for that purpose in the manner provided in section 144 of the Bombay Land Revenue Code, 1879.

28. A managing khot nominated by the Collector under the last preceding section shall continue in that capacity throughout the year for which he is so appointed, and no suit shall lie against the Collector, or against Government, or any Government officer in respect of such nomination.

But it shall be lawful for any of the co-sharers at any time to sue for a decree *inter se* to declare which of them is entitled to the man-

agement, or the order in which they should respectively have the management, if more than one of them be entitled to the same; and from the commencement of the revenue year next after an application (accompanied by a certified copy of any such decree) is duly made to him for the purpose, the Collector shall nominate the managing khot in accordance with such decree.

29. Except as is hereinafter provided, the *mámlatdár* shall furnish every managing khot with a certificate under his hand and seal to the effect that the holder thereof is the recognized managing khot for the year to which such certificate relates and a certificate so signed and sealed shall be conclusive evidence of the right of the khot therein named to manage the village to which it relates for the year therein specified.

30. When a village is held by a khot in his own sole right, he shall be deemed to be the managing khot thereof for all the purposes of this Act, and it shall not be necessary to furnish him with any such certificate as is described in the last preceding section.

31. When a managing khot has been duly appointed under any of the foregoing provisions he alone shall be entitled to assistance for the recovery of rent from privileged occupants under sections 86 and 87 of the Bombay Land Revenue Code, 1879.

Separated Sharers.

32. When the khots have divided their khotki or a partition thereof has been effected by the civil court, or otherwise, and the co-sharers hold their respective shares in severalty, the Collector shall determine the amount of jama payable in respect of each separate share, and the holders of the said shares shall be held severally liable for the portions of the jama so fixed on their respective shares, and all the provisions of this Act shall apply to them respectively as if they were independent holders of entire khotkis.

Privileged Occupants' Rents.

33. The rent payable to the khot by privileged occupants shall be as follows, (namely):—

(a) by a dhárekari: the survey assessment of his land;

(b) by a quasi-dhárekari: the survey assessment of his land and in addition thereto the amounts of grain or money respectively set forth in the schedule hereto annexed.

(c) by an occupancy-tenant: such fixed amount, whether in money or in kind, as may have been agreed upon or as may at the time of the framing of the survey record, or at any subsequent period, be agreed upon between the khot and the said tenant;

or on the expiry of the term for which any such agreement shall have been, or shall be made, or if no such agreement have been, or be made, such fixed share of the gross annual produce of the said tenant's land, not exceeding one-half in the case of rice-land, nor one-third in the case of warkas-land and such share, if any, of the produce of the fruit-trees on the said tenant's land, as the survey officer who frames the survey record, shall determine to be the customary amount hitherto paid by occupancy tenants in the village in which the said land is situate.

34. The rents due by privileged occupants shall be payable on such dates, in such instalments and subject to such rules not inconsistent with the provisions of this Act as may from time to time be prescribed in this behalf by the Governor in Council.

Cesses, &c.

35. It shall not be lawful for any khot to levy *phaski*, *veth*, *nángarveth*, *wartála*, or any other cess, rate, tax or service of any description, or denomination whatsoever from any privileged occupant other than the rent lawfully leviable under the provisions of this Act.

Local Fund Cess.

36. Local Fund cess at such rate as shall from time to time be fixed by Government under section 6 of the Bombay Local Funds Act, 1869, shall be leviable by Government from the khot on every rupee of his jama.

The khot shall be entitled to assistance under sections 86 and 87 of the Bombay Land Revenue Code, 1879, for recovery of the said cess at the said rate from dhárekaris and quasi-dhárekaris on every rupee of the survey assessment of the lands in their respective holdings.

Inferior holders of khoti lands shall not be liable to Local Fund cess, anything contained in section 8 of the Bombay Local Funds Act, 1869, to the contrary notwithstanding.

PART V.—MISCELLANEOUS.

37. Existing survey settlements of the land revenue of any village to which this Act extends, made, approved, and confirmed under the authority of the Governor in Council, shall be deemed to have been lawfully made, and, except as is hereinafter otherwise provided, shall continue in force for the terms for which they have been respectively guaranteed, subject to all the provisions of law which would be applicable thereto if this Act had not been passed, and anything in this Act which is inconsistent with any of the said provisions shall be deemed not to apply to such settlements.

38. Upon the expiry of the period of any such guarantee, or if it shall appear to the Governor in Council that a majority of the landholders affected by any such guarantee so desire, at any time previous to the expiry of the said period (such time being fixed by the Governor in Council), a new survey settlement shall be introduced into the village in which such guarantee was in force and the provisions of this Act shall thenceforward apply to the said settlement, anything in any other law to the contrary notwithstanding.

39. Nothing in sections 68, 72, 73, 74, 99 clause (b), 104 para. 2, 112, 150 clause (b), and 153 of the Bombay Land Revenue Code, 1879, shall be deemed to apply to any village to which this Act extends.

The provisions of the said Code when applied to any such village shall be subject to the following modifications (namely):—

(a) when a survey settlement is being introduced under section 103, the rent payable by each privileged occupant, and the amount of jama payable by the khot shall be announced in lieu of the assessment fixed on each survey number;

(b) sections 118, 119, and 123 shall be read and understood as if the word "khóts" were substituted for the words "patels and other village officers," and the words "village officers" and the words "village officers and servants," wherever they occur;

(c) the khot shall for the purposes of section 136 be deemed to be the person primarily responsible to Government for the jama of his village;

(d) the word alienated in clause (f) of section 150 shall be deemed to be omitted; and

(e) if such village is under attachment at the date of this Act coming into force, applications may be made under section 162 for the restoration thereof at any time within 12 years from the first day of August next after such date.

40. The Governor in Council may, by Rules to be made by notification in the Bombay Government Gazette, from time to time frame, and from time to time vary, or rescind rules not inconsistent with the provisions of this Act—

(a) for the inspection and appraisement of crops when the rent payable to a khot consists of a share of the produce of a privileged occupant's land;

(b) for determining what land is dhára land;

(c) for allotting to each privileged occupant, when the exact limits of his warkas holding are not ascertainable, such portion of the entire warkas land of the village or such rights or privileges in respect of any warkas land, or both a portion of the entire warkas land and such rights or privileges in respect of any other such land as may be fair and reasonable;

(d) determining to what extent, if any, any rule, or order made under section 214 of the Bombay Land Revenue Code, 1879, shall be applicable to villages to which this Act extends;

(e) for the furtherance of the objects of this Act in matters not expressly provided for therein;

(f) generally for the guidance of all persons in matters connected with the enforcement of this Act.

41. And whereas it is necessary in the general interests of the people to enable Government to promote the extension of forests in villages held by khots, it is hereby enacted that Government may at any time constitute any uncultivated land in any village to which this Act extends, or may hereafter be extended, a reserved forest. But nothing in this section contained shall derogate from any rights conferred by any sanad or other grant made by any lawful authority.

Explanation.—For the purposes of this section “uncultivated land” means land which has not been tilled for a period of 20 years next before the 1st June 1879, or the date of the order constituting such reserved forest.

42. Every reserved forest constituted under the last preceding section shall be subject to all the provisions of the Indian Forest Act, 1878, and of any other law relating to forests for the time being in force, provided

(1) that upon the condition of duly performing such service connected with such forest as shall from time to time be prescribed by Government, the khot shall be entitled to a share of one-third of the net profits derived by Government from such forest after deducting the cost of management;

(2) that in the event of the service prescribed by Government as aforesaid not being duly performed by the khot, the provisions of section 80 of the Indian Forest Act, 1878, shall be applicable.

SCHEDULE (see Section 3, Cl. 7, and Section 33.)

Denomination of Quasi-dhārekaris.	EXCESS AMOUNT OF RENT PAYABLE FOR EVERY RUPEE AND PROPORTIONATELY FOR EVERY FRACTION OF A RUPEE OF THE SURVEY ASSESSMENT IN RESPECT OF		
	Rice lands.	Warkas lands.	Bagayat or Kabi lands.
Daspatkari ...	2 annas...	2 annas	2 annas.
Dupatkari ...	$\frac{1}{2}$ maund of rice in the husk.	$5\frac{1}{2}$ pails of grain (half <i>nachani</i> and half <i>vari</i>).	8 annas.
Didpatkari or Didi-wala.	3 pails of rice in the husk.	2 pails of grain (half <i>nachani</i> and half <i>vari</i>).	3 annas.
Faunedupatkari ...	6 pails of rice in the husk.	4 pails of grain (half <i>nachani</i> and half <i>vari</i>).	6 annas.

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
Acting Under Secretary to Government

Bombay Castle, 5th May 1880.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 27th January 1880, and the assent of His Excellency the Viceroy and Governor General on the 21st April 1880, and is published for general information :—

Bombay Act No. II. of 1880.

An Act to secure the payment to Government of certain sums of money by the Municipal Corporation of the City of Bombay.

WHEREAS the Government of India has agreed to advance to the Municipal Corporation of the City of Bombay a sum not exceeding thirty-six lakhs of rupees for the purpose of constructing new water-works, and a further sum not exceeding six lakhs of rupees for the purpose of improving the surface-drainage of the Island of Bombay; and to permit the balances still due on account of the two loans of fifteen lakhs of rupees and four lakhs of rupees, of which the payment is secured by Bombay Act II. of 1872, to be repaid on the same terms as the said new loans;

And whereas in accordance with the terms of the said agreement the said Municipal Corporation has since the 2nd November 1876 ceased to pay the monthly instalments accruing due under Bombay Act II. of 1872, but has since the said date paid interest at the rate of four-and-a-half per cent. per annum upon the said balances and upon the portions of the said new loans of thirty-six and six lakhs of rupees from time to time taken up by the said Municipal Corporation;

And whereas it is necessary to provide for the re-payment of the consolidated amount of the said new loans and of the balances of the said former loans out of the Municipal Fund of the City of Bombay in manner hereinafter appearing; It is enacted as follows :—

1. This Act may be cited as "The Bombay Municipality's Consolidated Loan Act, 1880."

It shall come into force on such date as may be notified by the Governor in Council in the *Bombay Government Gazette*.

2. Bombay Act II. of 1872 is repealed.

3. In this Act :

(1.) "The Corporation" means the "The Corporation." Municipal Corporation of the City of Bombay as constituted by Bombay Acts III. of 1872 and IV. of 1878, or by any other law for the time being in force;

(2.) "Municipal Fund" means the "Municipal Fund." Municipal Fund as defined by Section 65 of Bombay Act III. of 1872 or by any other law for the time being in force relating to the Municipal affairs of the City of Bombay.

(3.) "Consolidated loan" means the aggregate amount of "Consolidated loan." the following sums, that is to say :

(a) The sum of thirty-six lakhs of rupees to be advanced by the Government of India to the Corporation for the purpose of constructing new water-works, or such portion thereof as may be taken up by the Corporation;

(b) The sum of six lakhs of rupees to be similarly advanced for the purpose of carrying out the surface-drainage of the Island of Bombay, or such portion thereof as may be taken up by the Corporation;

(c) The sum of rupees twelve lakhs and seventy thousand certified by the Accountant General of Bombay as the balance due by the Corporation to the Government of India on the 2nd November 1876 on account of the loan of fifteen lakhs of rupees secured by Bombay Act II. of 1872;

(d) The sum of rupees three lakhs and seventy thousand certified by the said Accountant General as the balance due by the Corporation to the Government of India on the said date on account of the loan of four lakhs of rupees secured by the said Act.

4. Until the 1st January 1881 the Municipal Commissioner on behalf of the Corporation shall continue to pay interest on the portion of the consolidated loan for the time being due by the Corporation to the Government of India at the rate of four-and-a-half per centum per annum.

The said payments of interest shall be made half-yearly on the first of January and the first of July.

5. The whole of the consolidated loan shall be repaid with interest at the aforesaid rate within thirty years next after the 1st January 1881 :

And for the better securing of the repayment of the consolidated loan with interest as aforesaid within the said period, the Municipal Commissioner on behalf of the Corporation shall after the aforesaid date until the whole of the consolidated loan be liquidated, pay half-yearly on the first of January and the first of July the sum of one lakh seventy-eight thousand three hundred and twenty-six rupees and two annas and five pies, the first of such payments to be made on the 1st of July 1881.

Every payment made by the Corporation under this Section and all moneys recovered from the Corporation in any of the manners hereinafter prescribed shall be appropriated first to the payment of the interest due at the time of such payment or recovery and secondly to the reduction of the principal.

6. All payments to be made by the Municipal Commissioner under either of the last two sections shall be made out of the Municipal Fund into Her Majesty's Treasury at Bombay, or to the credit of the Secretary of State in Council in any Bank which may now or hereafter be appointed to act as bankers and receive money in Bombay in behalf of the Government;

and notice of every such payment having been made shall be forthwith published by the Municipal

Commissioner in the *Bombay Government Gazette*.

7. If the Municipal Commissioner fail to make any of the said payments at the prescribed time, the Accountant General shall, within seven days after the day on which such payment ought to have been made, report the fact to the Chief Secretary to Government or other officer acting in that capacity.

8. It shall be lawful for the Chief Secretary, or other officer acting in that capacity, when any of the said payments is in arrear, to direct any Government officer, not being an officer of the Bombay Municipality, to detain to the extent of any payment or payments then in arrear any moneys due or that may become due to the Corporation, which he may then or thereafter have in his custody or control, and such officer shall be bound to detain the moneys which he is so directed to detain and to pay the same as they become due to the Corporation into Her Majesty's Treasury or into any Bank as aforesaid to the credit of the Secretary of State for India in Council, and the moneys so paid shall be applied in or towards satisfaction of the amount for the time being due in respect of the consolidated loan and of all other sums payable under this Act, in preference to and with priority over all incumbrances on and claims to such moneys other than those created under Bombay Act III. of 1870.

9. If the amount in arrear cannot be recovered in the manner provided in the last preceding section, the Governor in Council may attach the municipal fund, or any rate, tax, toll, or duty leviable by the Corporation.

After such attachment no person, except an officer appointed by the Governor in Council, shall in any way deal with the attached fund, rate, tax, toll, or duty; but such officer may do all acts in respect thereof which the Corporation or the Municipal Commissioner might have done, if such attachment had not taken place, and may apply the proceeds in satisfaction of the amount in arrear and of all expenses involved by the attachment and subsequent proceedings :

Provided that no such attachment shall defeat or prejudice any debt for which the fund, rate, tax, toll; or duty attached was previously pledged in accordance with law; but all such prior charges shall be paid out of the proceeds of the fund, rate; tax, toll, or duty attached before any part of the proceeds is applied to the satisfaction of a liability incurred under this Act.

10. Nothing in this Act shall affect the rights or remedies of the Government of India which the Government of India has or shall have independently of this Act for the recovery of the moneys advanced or to be advanced under this Act or any part thereof.

11. The Municipal Commissioner shall in the month of January in each year publish in the *Bombay Government Gazette* an account showing the

Account of balances due to Government of India to be published by the Municipal Commissioner yearly.

balances due by the Corporation on the 31st December preceding on account of the consolidated loan, and of every other loan, if any, still repayable to the Government of India.

12. Unless under the provisions of Section 7 of Act XI of 1879, the Corporation shall not hereafter borrow money except from the Government of India or with its sanction.

If any new loan shall hereafter be granted to the Corporation by the Government of India, the same shall be subject, as regards re-payment and security and in every other respect, to the same provisions as are hereinbefore contained in respect of the consolidated loan; save only that the rate of interest, the period of re-payment, and the number and amount of the instalments shall, in the case of every such new loan, be fixed under the orders of the Government of India by the Governor in Council.

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
Acting Under Secretary to Government.

Bombay Castle, 5th May 1880.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 11th March 1880, and the assent of His Excellency the Viceroy and Governor General on the 21st April 1880, and is published for general information :—

Bombay Act No. III. of 1880.

An Act to amend the Bombay Irrigation Act No. VII. of 1879.

Whereas it is deemed expedient to repeal
 Preamble. certain sections of
 the Bombay Irriga-
 tion Act No. VII. of
 1879,

It is hereby enacted as follows :—
 Sections 49 to 56, both inclusive, of the
 Repeal of Sections 49 Bombay Irrigation
 to 56 of Bombay Irri- Act No. VII. of 1879
 gation Act, 1879. are hereby repealed.

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
 Acting Under Secretary to Government.

Bombay Castle, 5th May 1880.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 30th April 1880, and was promulgated for general information in the *Gazette of India* on the 1st May 1880:—

Act No. IX. of 1880.

An Act to amend the Bombay Civil Courts Act, 1869.

WHEREAS it is expedient to empower the Governor of Bombay in Council to fix and, from time to time, to alter the local limits of the ordinary jurisdiction of the Subordinate Judges appointed under the Bombay Civil Courts Act, 1869; It is hereby enacted as follows:—

Short title.	1. This Act may be called "The Bombay Civil Courts Act, 1880";
Commencement.	and it shall come into force at once.

Insertion of a new section after section 22 of the Bombay Civil Courts Act.

2. In the said Act, after section 22, the following section shall be inserted:—

"22A. The Governor of Bombay in Council may, by notification in the official Gazette, fix, and, by a like notification, from time to time alter, the local limits of the ordinary jurisdiction of the Subordinate Judges."

3. All orders issued by the Governor of Bombay in Council previous to the passing of this Act, fixing or altering the local limits of the jurisdiction of a Subordinate Judge, shall be deemed to have been issued in accordance with law.

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



Bombay Government Gazette.

Published by Authority.

THURSDAY, 15TH JULY 1880.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 9th July 1880, and was promulgated for general information in the *Gazette of India* on the 10th July 1880:—

Act No. XII. of 1880.

An Act for the appointment of persons to the office of Kázi.

WHEREAS by the preamble to Act No. XI. of 1864 (*An Act to repeal the law relating to the offices of Hindú and Muhammadan Law Officers and to the offices of Kázi-ul-Kuzáat and of Kázi and to abolish the former offices*) it was (among other things) declared that it was inexpedient that the appointment of the Kázi-ul-Kuzáat, or of City, Town or Pargana Kázis should be made by the Government, and by the same Act the enactments relating to the appointment by the Government of the said officers were repealed; and whereas by the usage of the Muhammadan community in some parts of British India the presence of Kázis appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Kázi; It is hereby enacted as follows:—

Short title. 1. This Act may be called "The Kázis Act, 1880"

Commencement. and it shall come into force at once.

Local extent. It extends, in the first instance, only to the territories administered by the Governor of Fort St. George in Council. But any other Local Government may, from time to time, by notification in the official Gazette, extend it to the whole or any part of the territories under its administration.

2. Whenever it appears to the Local Government that any considerable number of Muhammadans resident in any local area desire that one or more Kázis should be appointed for such local area, the Local Government may, if it thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons and appoint him or them to be Kázis for such local area.

If any question arises whether any person has been rightly appointed Kázi under this section, the decision thereof by the Local Government shall be conclusive.

The Local Government may, if it thinks fit, suspend or remove any Kázi appointed under this section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an insolvent, or desires to be discharged

from the office, or who refuses or becomes in the opinion of the Local Government unfit, or personally incapable, to discharge the duties of the office.

3. Any Kázi appointed under this Act may Náiib Kázis. appoint one or more persons as his náiib or náiibs to act in his place in all or any of the matters appertaining to his office throughout the whole or in any portion of the local area for which he is appointed, and may suspend or remove any náiib so appointed.

When any Kázi is suspended or removed under section two, his náiib or náiibs (if any) shall be deemed to be suspended or removed, as the case may be.

4. Nothing herein contained, and no appointment made hereunder, shall be deemed—

Nothing in Act to confer judicial or other powers on Kázi; or

(a) to confer any judicial or administrative powers on any Kázi or Náiib Kázi appointed hereunder; or

to render the presence of a Kázi necessary; or of any rite or ceremony; or

(b) to render the presence of a Kázi or Náiib Kázi necessary at the celebration of any marriage or the performance of any rite or ceremony; or

to prevent any one acting as Kázi.

(c) to prevent any person discharging any of the functions of a Kázi.

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

[Published with the "Bombay Government Gazette" on the 22nd July 1880.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 9th July 1880, and was promulgated for general information in the *Gazette of India* on the 10th July 1880:—

Act No. XII. of 1880.

An Act for the appointment of persons to the office of Kázi.

WHEREAS by the preamble to Act No. XI. of 1864 (*An Act to repeal the law relating to the offices of Hindú and Muhammadan Law Officers and to the offices of Kázi-ul-Kuzáat and of Kázi and to abolish the former offices*) it was (among other things) declared that it was inexpedient that the appointment of the Kázi-ul-Kuzáat, or of City, Town or Pargana Kázis should be made by the Government, and by the same Act the enactments relating to the appointment by the Government of the said officers were repealed; and whereas by the usage of the Muhammadan community in some parts of British India the presence of Kázis appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Kázi; It is hereby enacted as follows:—

1. This Act may be called "The Kázis Act, 1880"
- and it shall come into force at once.
- It extends, in the first instance, only to the territories administered by the Governor of Fort St. George in Council. But any other Local Government may, from time to time, by notification in the official Gazette, extend it to the whole or any part of the territories under its administration.
2. Whenever it appears to the Local Government that any considerable number of the Muhammadans resident in any local area desire that one or more Kázis should be appointed for such local area, the Local Government may, if

it thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons and appoint him or them to be Kázis for such local area.

If any question arises whether any person has been rightly appointed Kázi under this section, the decision thereof by the Local Government shall be conclusive.

The Local Government may, if it thinks fit, suspend or remove any Kázi appointed under this section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an insolvent, or desires to be discharged from the office, or who refuses or becomes in the opinion of the Local Government unfit, or personally incapable, to discharge the duties of the office.

3. Any Kázi appointed under this Act may appoint one or more persons as his náib or náibs to act in his place in all or any of the matters appertaining to his office throughout the whole or in any portion of the local area for which he is appointed, and may suspend or remove any náib so appointed.

When any Kázi is suspended or removed under section two, his náib or náibs (if any) shall be deemed to be suspended or removed, as the case may be.

4. Nothing herein contained, and no appointment made hereunder, shall be deemed—

- (a) to confer any judicial or administrative powers on any Kázi or Náib Kázi appointed hereunder; or
- (b) to render the presence of a Kázi or Náib Kázi necessary at the celebration of any marriage or the performance of any rite or ceremony; or
- (c) to prevent any person discharging any of the functions of a Kázi.

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

[Published with the "Bombay Government Gazette" on the 29th July 1880.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 9th July 1880, and was promulgated for general information in the *Gazette of India* on the 10th July 1880:—

Act No. XII. of 1880.

An Act for the appointment of persons to the office of Kázi.

WHEREAS by the preamble to Act No. XI. of 1864 (*An Act to repeal the law relating to the offices of Hindú and Muhammadan Law Officers and to the offices of Kázi-ul-Kuzáat and of Kázi and to abolish the former offices*) it was (among other things) declared that it was inexpedient that the appointment of the Kázi-ul-Kuzáat, or of City, Town or Pargana Kázis should be made by the Government, and by the same Act the enactments relating to the appointment by the Government of the said officers were repealed; and whereas by the usage of the Muhammadan community in some parts of British India the presence of Kázis appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Kázi; It is hereby enacted as follows:—

1. This Act may be called "The 'Kázis' Act, 1880";
- and it shall come into force at once.
- It extends, in the first instance, only to the territories administered by the Governor of Fort St. George in Council. But any other Local Government may, from time to time, by notification in the official Gazette, extend it to the whole or any part of the territories under its administration.
2. Whenever it appears to the Local Government that any considerable number of the Muhammadans resident in any local area desire that one or more Kázis should be appointed for such local area, the Local Government may, if
- Short title. called "The 'Kázis' Act, 1880";
- Commencement. and it shall come into force at once.
- Local extent. territories administered by the Governor of Fort St. George in Council. But any other Local Government may, from time to time, by notification in the official Gazette, extend it to the whole or any part of the territories under its administration.
- Power to appoint Kázis for any local area. considerable number of the Muhammadans resident in any local area desire that one or more Kázis should be appointed for such local area, the Local Government may, if

IV.—14 b

it thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons and appoint him or them to be Kázis for such local area.

If any question arises whether any person has been rightly appointed Kázi under this section, the decision thereof by the Local Government shall be conclusive.

The Local Government may, if it thinks fit, suspend or remove any Kázi appointed under this section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an insolvent, or desires to be discharged from the office, or who refuses or becomes in the opinion of the Local Government unfit, or personally incapable, to discharge the duties of the office.

3. Any Kázi appointed under this Act may appoint one or more persons as his náib or náibs to act in his place in all or any of the matters appertaining to his office throughout the whole or in any portion of the local area for which he is appointed, and may suspend or remove any náib so appointed.

When any Kázi is suspended or removed under section two, his náib or náibs (if any) shall be deemed to be suspended or removed, as the case may be.

4. Nothing herein contained, and no appointment made hereunder, shall be deemed—

(a) to confer any judicial or administrative powers on any Kázi or Náib Kázi appointed hereunder; or

(b) to render the presence of a Kázi or Náib Kázi necessary at the celebration of any marriage or the performance of any rite or ceremony; or

(c) to prevent any person discharging any of the functions of a Kázi.

D. FITZPATRICK,

*Secy. to the Govt. of India,
Legislative Department.*



Bombay Government Gazette.

Published by Authority.

THURSDAY, 11TH NOVEMBER 1880.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 3rd November 1880, and was promulgated for general information in the *Gazette of India* on the 6th November 1880:—

Act No. XIV. of 1880.

An Act to provide for certain matters in connection with the taking of the Census.

WHEREAS it has been determined to take a census of British India, and it is expedient to provide for certain matters in connection with the taking of such census; It is hereby enacted as follows:—

Preamble.

1. This Act may be called "The Indian Census Act, 1880," and shall come into force on the passing thereof.

Short title.
Commencement.

2. This section and sections three, four and thirteen extend to the whole of British India.

Local extent.

The remaining sections extend only to such parts of British India as the Local Government may, from time to time, by notification in the official Gazette, direct.

3. The Local Government may appoint any person by name or in virtue of his office to take, or aid in or supervise the taking of, the census within any specified local area.

Appointment of Census-officers.

Persons so appointed shall be called "Census-officers."

The Local Government may delegate to such authority as it thinks fit the power conferred by this section.

4. A declaration in writing, signed by any officer authorized by the Local Government in this behalf, that any person has been duly appointed a Census-officer for any local area shall be conclusive proof of such appointment.

All Census-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

Census-officers to be deemed public servants.

5. (a) Every military or naval officer in command of any body of men belonging to Her Majesty's military or naval forces or of any vessel of war,

Duties of Census-officers how to be discharged in certain cases.

(b) every person (except a pilot or harbour-master) having charge or control of a vessel,

(c) every person in charge of a lunatic asylum, hospital, workhouse, prison, reformatory or lock-up, or of any public, charitable, religious or educational institution,

(d) every keeper or manager of any serai, hotel, boarding-house, lodging-house, or club, and

(e) every occupant of immoveable property having at the time of taking the census not less than fifty persons employed under him on or in such property,

shall, if so required by the Magistrate of the District, or in the towns of Calcutta, Madras and Bombay, by such officer as the Local Government may appoint in this behalf, perform such of the duties of a Census-officer in relation to the persons who at the time of taking the census are under his command or charge, or inmates of his house, or present on or in such property, as such Magistrate or officer may, by an order written, printed or lithographed, direct:

All the provisions of this Act relating to Census-officers shall apply (so far as they are applicable) to all such persons while performing such duties; and any person refusing or neglecting to perform any duty which he is directed under this section to perform shall be deemed to have committed an offence under section 187 of the Indian Penal Code.

8. The Magistrate of the district may, by an order written, printed or lithographed, call upon certain persons to give assistance. Power of Magistrate of district to call upon certain persons to give assistance. of land, tenure-holders, farmers, assignees of land-revenue and lessees of fisheries under the Burma Fisheries Act, 1875, in his district, or their agents, and upon all members of panchayats appointed in his district under Bengal Act No. VI of 1870 (to provide for the appointment, dismissal and maintenance of Village Chaukidars), to give such assistance as he needs towards the taking of a census of the persons who are at the time of taking the census on the lands of such owners, occupiers, holders, farmers and assignees, within the limits of such fisheries or in the villages for which such panchayats are appointed, as the case may be.

Such order shall specify the nature of the assistance required, and such owners, occupiers, holders, farmers, assignees, lessees, or their agents, and the members of such panchayats, shall be bound to obey it.

7. Every Census-officer may ask all such questions of all persons within the limits of the local area for which he is appointed as, by instructions issued in this behalf by the Local Government and published in the official Gazette, he may be directed to ask. Census-officers empowered to ask questions.

8. Every person of whom any question is asked under section seven shall be legally bound to answer such question to the best of his knowledge or belief: Obligation to answer questions.

Provided that no person shall be bound to state the name of any female member of his household; and that no woman shall be bound to state the name of her husband or deceased husband.

9. Every person occupying any house, enclosure, vessel or other place shall allow the Census-officers such access thereto as they may require for the purposes of the census, and as, having regard to the customs of the country, may be reasonable. Occupier of house, &c., to allow access.

10. Subject to such orders as the Local Government may issue in this behalf, any Census-officer may leave, or cause to be left, at any dwelling-house within the local

area for which he is appointed, a schedule for the purpose of being filled up by the occupier of such house or of any specified part thereof with such particulars as the Local Government may direct regarding the persons present in such house or part at the time of taking the census.

When any such schedule has been so left, the occupier of the house or part to which it relates shall fill up the same to the best of his knowledge or belief, so far as regards the persons present in such house or part, as the case may be, at the time aforesaid, and shall sign his name thereto, and, when so required, shall deliver the schedule so filled up and signed to the Census-officer or to such person as he may direct.

Any occupier of a dwelling-house or part thereof who knowingly and without sufficient cause fails to comply with the provisions of this section, or makes any false return hereunder shall be punished for every such offence, if it does not amount to an offence within the provisions of the Indian Penal Code, with fine which may extend to fifty rupees. Penalty for failing to fill up schedule, &c., or making false return.

11. Any Census-officer who, knowingly and without sufficient cause, disobeys the instructions published by the Local Government under section seven, puts any offensive or improper question, or makes any false return, shall be punished for every such offence, if it does not amount to an offence within the provisions of the Indian Penal Code, with fine which may extend to fifty rupees. Penalty for misconduct of Census-officers.

12. The Local Government may, by notification in the official Gazette— Jurisdiction in prosecutions.

(a) declare before what classes of Magistrates prosecutions under this Act, or for neglecting or refusing to do anything required by this Act to be done, may be instituted; and

(b) direct that no such prosecution shall be instituted except with its previous sanction, or with the previous sanction of some officer authorized by it in this behalf.

Unless and until a notification is published, under Clause (a) of this section, all prosecutions under this Act shall, in the Towns of Calcutta, Madras, and Bombay, be instituted before a Presidency Magistrate, and elsewhere, before the Magistrate of the District.

13. Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872, no entry in any book, register or record made by a Census-officer in the discharge of his duty as such officer shall be admissible as evidence in any civil proceeding or any proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates Act, 1877. Records of census not admissible in evidence in certain proceedings.

D. FITZPATRICK,

Secy. to the Govt. of India,
Legislative Department.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 3rd November 1880, and was promulgated for general information in the *Gazette of India* on the 6th November 1880:—

Act No. XV. of 1880.

An Act to amend the Bombay Revenue Jurisdiction Act, 1876.

WHEREAS it is expedient to amend the Bombay Revenue Jurisdiction Act, 1876, in manner hereinafter appearing, and to make further provision for the recovery of certain advances made in the territories administered by the Governor of Bombay in Council for purposes other than those specified in the Land Improvement Act, 1871; It is hereby enacted as follows:—

1. This Act may be called "The Bombay Revenue Jurisdiction Act, 1880"; and it shall come into force at once.
2. Sections eight, nine, ten and seventeen of the said Bombay Revenue Jurisdiction Act, 1876, are hereby repealed:

Repeal of sections 8, 9, 10 and 17 of Act No. X. of 1876.

Provided that the repeal hereby effected, of the first clause of the said section seventeen, shall not operate in any Scheduled District unless and until the Bombay Land-revenue Code, 1879, has been extended to such district:

Provided also that the repeal of the second clause of the said section seventeen shall not be deemed to render invalid or illegal anything made valid or legal by the such clause.

3. To section thirty-two of the Bombay Civil Courts Act, No. XIV. of 1869, as amended by section fifteen of the said Bombay Revenue Jurisdiction Act, 1876, the following words shall be added:—

Addition to section 32 of Act No. XIV. of 1869 as amended by section 15 of Act No. X. of 1876.

Courts Act, No. XIV. of 1869, as amended by section fifteen of the said Bombay Revenue Jurisdiction Act, 1876, the following words shall be added:—

"Provided that nothing in this section shall be deemed to apply to any suit merely because—

Proviso.

"(a) a municipal corporation constituted under Bombay Act No. VI. of 1873, or any other enactment for the time being in force, is a party to such suit and an officer of Government is in his official capacity a member of such corporation, or

"(b) an officer of a Court appointed under the Code of Civil Procedure, section 456, last paragraph, or selected under Act No. XX. of 1864 (for making better provision for the care of the persons and property of minors in the Presidency of Bombay), section 9, is, in virtue of such appointment or selection, a party to such suit."

4. The Governor of Bombay in Council may, from time to time, with the previous sanction of the Governor General in Council, prescribe rules as to advances to be made in the territories administered by the said Governor in Council to holders (as defined in section 3 (11) of the Bombay Land-revenue Code, 1879) of arable land, for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Act, 1871, but connected with agricultural objects.

All such rules shall be published in the local official Gazette.

5. Every advance for any such purpose which may heretofore have been made by or on behalf of the Government in the said territories, and every advance which may hereafter be made under such rules, shall, when it becomes due, be recoverable, with the interest (if any) accrued due thereon, from the person to whom such advance was made, or from any person who has become surety for the repayment thereof, as if it were an arrear of land-revenue due by the person to whom the advance was made or by his surety.

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

[Published with the "Bombay Government Gazette" on the 18th November 1880.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 3rd November 1880, and was promulgated for general information in the *Gazette of India* on the 6th November 1880:—

Act No. XIV. of 1880.

An Act to provide for certain matters in connection with the taking of the Census.

WHEREAS it has been determined to take a census of British India, and it is expedient to provide for certain matters in connection with the taking of such census; It is hereby enacted as follows:—

1. This Act may be called "The Indian Census Act, 1880," and shall come into force on the passing thereof.

2. This section and sections three, four and thirteen extend to the whole of British India.

The remaining sections extend only to such parts of British India as the Local Government may, from time to time, by notification in the official Gazette, direct.

3. The Local Government may appoint any person by name or in virtue of his office to take, or aid in or supervise the taking of, the census within any specified local area.

Persons so appointed shall be called "Census-officers."

The Local Government may delegate to such authority as it thinks fit the power conferred by this section.

4. A declaration in writing, signed by any officer authorized by the Local Government in this behalf, that any person has been duly appointed a Census-officer for any local area shall be conclusive proof of such appointment.

All Census-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

5. (a) Every military or naval officer in command of any body of men belonging to Her Majesty's military or naval forces, or of any vessel of war,

(b) every person (except a pilot or harbour-master) having charge or control of a vessel,

(c) every person in charge of a lunatic asylum, hospital, workhouse, prison, reformatory or lock-up, or of any public, charitable, religious or educational institution,

(d) every keeper or manager of any serai, hotel, boarding-house, lodging-house, or club, and

(e) every occupant of immoveable property having at the time of taking the census not less than fifty persons employed under him, on or in such property,

shall, if so required by the Magistrate of the District, or in the towns of Calcutta, Madras and Bombay, by such officer as the Local Government may appoint in this behalf, perform such of the duties of a Census-officer in relation to the persons who at the time of taking the census are under his command or charge, or inmates of his house, or present on or in such property, as such Magistrate or officer may, by an order written, printed or lithographed, direct.

All the provisions of this Act relating to Census-officers shall apply (so far as they are applicable) to all such persons while performing such duties; and any person refusing or neglecting to perform any duty which he is directed under this section to perform shall be deemed to have committed an offence under section 187 of the Indian Penal Code.

6. The Magistrate of the district may, by an order written, printed or lithographed, call upon certain persons to give assistance of land, tenure-holders, farmers, assignees of land-revenue and lessees of fisheries under the Burma Fisheries Act, 1875, in his district, or their agents, and upon all members of panchayats appointed in his district under Bengal Act No. VI of 1870 (to provide for the appointment, dismissal and maintenance of Village Charukidars), to give such assistance as he needs towards the taking of a census of the persons who are at the time of taking the census on the lands of such owners, occupiers, holders, farmers and assignees, within the limits of such fisheries

or in the villages for which such pancháyats are appointed, as the case may be.

Such order shall specify the nature of the assistance required, and such owners, occupiers, holders, farmers, assignees, lessees, or their agents, and the members of such pancháyats, shall be bound to obey it.

7. Every Census-officer may ask all such questions of all persons within the limits of the local area for which he is appointed as, by instructions issued in this behalf by the Local Government and published in the official Gazette, he may be directed to ask.

8. Every person of whom any question is asked under section seven shall be legally bound to answer such question to the best of his knowledge or belief:

Provided that no person shall be bound to state the name of any female member of his household; and that no woman shall be bound to state the name of her husband or deceased husband.

9. Every person occupying any house, enclosure, vessel or other place shall allow the Census-officers such access thereto as they may require for the purposes of the census, and as, having regard to the customs of the country, may be reasonable.

10. Subject to such orders as the Local Government may issue in this behalf, any Census-officer may leave, or cause to be left, at any dwelling-house within the local area for which he is appointed, a schedule for the purpose of being filled up by the occupier of such house or of any specified part thereof with such particulars as the Local Government may direct regarding the persons present in such house or part at the time of taking the census.

When any such schedule has been so left, the occupier of the house or part to which it relates shall fill up the same to the best of his knowledge or belief, so far as regards the persons present in such house or part, as the case may be, at the time aforesaid, and shall sign his name thereto, and, when so required, shall deliver the schedule so filled up and signed to the Census-officer or to such person as he may direct.

Any occupier of a dwelling-house or part thereof who knowingly and without sufficient cause fails to comply with the provisions of this section, or makes any false return hereunder shall be punished for every such offence, if it does not amount to an offence within the provisions of the Indian Penal Code, with fine which may extend to fifty rupees.

11. Any Census-officer who, knowingly and without sufficient cause, disobeys the instructions published by the Local Government under section seven, puts any offensive or improper question, or makes any false return, shall be punished for every such offence, if it does not amount to an offence within the provisions of the Indian Penal Code, with fine which may extend to fifty rupees.

12. The Local Government may, by notification in the official Gazette,

(a) declare before what classes of Magistrates prosecutions under this Act, or for neglecting or refusing to do anything required by this Act to be done, may be instituted; and

(b) direct that no such prosecution shall be instituted except with its previous sanction, or with the previous sanction of some officer authorized by it in this behalf.

Unless and until a notification is published, under Clause (a) of this section, all prosecutions under this Act shall, in the Towns of Calcutta, Madras, and Bombay, be instituted before a Presidency Magistrate, and elsewhere, before the Magistrate of the District.

13. Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872, no entry in any book, register or record made by a Census-officer in the discharge of his duty as such officer shall be admissible as evidence in any civil proceeding or any proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates Act, 1877.

D. FITZPATRICK,

Secy. to the Govt. of India,
Legislative Department.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 3rd November 1880, and was promulgated for general information in the *Gazette of India* on the 6th November 1880:—

Act No. XV. of 1880.

An Act to amend the Bombay Revenue Jurisdiction Act, 1876.

WHEREAS it is expedient to amend the Bombay Revenue Jurisdiction Act, 1876, in manner hereinafter appearing, and to make further provision for the recovery of certain advances made in the territories administered by the Governor of Bombay in Council for purposes other than those specified in the Land Improvement Act, 1871; It is hereby enacted as follows:—

1. This Act may be called "The Bombay Revenue Jurisdiction Act, 1880"; and it shall come into force at once.
Short title.
Commencement.
2. Sections eight, nine, ten, and seventeen of the said Bombay Revenue Jurisdiction Act, 1876, are hereby repealed:
Repeal of sections 8, 9, 10 and 17 of Act No. X. of 1876.

Provided that the repeal hereby effected, of the first clause of the said section seventeen, shall not operate in any Scheduled District unless and until the Bombay Land-revenue Code, 1879, has been extended to such district;

Provided also that the repeal of the second clause of the said section seventeen shall not be deemed to render invalid or illegal anything made valid or legal by the such clause.

3. To section thirty-two of the Bombay Civil Courts Act, No. XIV. of 1869, as amended by section fifteen of the said Bombay Revenue Jurisdiction Act, 1876, the following words shall be added:—
Addition to section 32 of Act No. XIV. of 1869 as amended by section 15 of Act No. X. of 1876.

Provided that nothing in this section shall be deemed to apply to any suit merely because—
Proviso.

"(a) a municipal corporation constituted under Bombay Act No. VI. of 1873, or any other enactment for the time being in force, is a party to such suit and an officer of Government is in his official capacity a member of such corporation, or

"(b) an officer of a Court appointed under the Code of Civil Procedure, section 456, last paragraph, or selected under Act No. XX. of 1864 (for making better provision for the care of the persons and property of minors in the Presidency of Bombay), section 9, is, in virtue of such appointment or selection, a party to such suit."

4. The Governor of Bombay in Council may, from time to time, with the previous sanction of the Governor General in Council, prescribe rules as to advances to be made in the territories administered by the said Governor in Council to holders (as defined in section 3 (11) of the Bombay Land-revenue Code, 1879) of arable land, for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Act, 1871, but connected with agricultural objects.
Governor in Council to make rules as to certain advances for purposes other than those specified in Act No. XXVI. of 1871.

All such rules shall be published in the local official Gazette.

5. Every advance for any such purpose which may heretofore have been made by or on behalf of the Government in the said territories, and every advance which may hereafter be made under such rules, shall, when it becomes due, be recoverable, with the interest (if any) accrued due thereon, from the person to whom such advance was made, or from any person who has become surety for the repayment thereof, as if it were an arrear of land-revenue due by the person to whom the advance was made or by his surety.
Recovery of such advances.

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

[Published with the "Bombay Government Gazette" on the 25th November 1880.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 3rd November 1880, and was promulgated for general information in the *Gazette of India* on the 6th November 1880:—

Act No. XIV. of 1880.

An Act to provide for certain matters in connection with the taking of the Census.

WHEREAS it has been determined to take a census of British India, and it is expedient to provide for certain matters in connection with the taking of such census; It is hereby enacted as follows:—

1. This Act may be called "The Indian Census Act, 1880," and shall come into force on the passing thereof.

Short title.
Commencement.

2. This section and sections three, four and thirteen extend to the whole of British India.

Local extent.

The remaining sections extend only to such parts of British India as the Local Government may, from time to time, by notification in the official Gazette, direct.

3. The Local Government may appoint any person by name or in virtue of his office to take, or aid in or supervise the taking of, the census within any specified local area.

Persons so appointed shall be called "Census-officers."

The Local Government may delegate to such authority as it thinks fit the power conferred by this section.

4. A declaration in writing, signed by any officer authorized by the Local Government in this behalf, that any person has been duly appointed a Census-officer for any local area shall be conclusive proof of such appointment.

All Census-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

Census-officers to be deemed public servants.

5. (a) Every military or naval officer in command of any body of men belonging to Her Majesty's military or naval forces or of any vessel of war,

Duties of Census-officers how to be discharged in certain cases.

(b) every person (except a pilot or harbour-master) having charge or control of a vessel,

(c) every person in charge of a lunatic asylum, hospital, workhouse, prison, reformatory or lock-up, or of any public, charitable, religious or educational institution,

(d) every keeper or manager of any serái, hotel, boarding-house, lodging-house, or club, and

(e) every occupant of immoveable property having at the time of taking the census not less than fifty persons employed under him on or in such property,

shall, if so required by the Magistrate of the District, or in the towns of Calcutta, Madras and Bombay, by such officer as the Local Government may appoint in this behalf, perform such of the duties of a Census-officer in relation to the persons who at the time of taking the census are under his command or charge, or inmates of his house, or present on or in such property, as such Magistrate or officer may, by an order written, printed or lithographed, direct.

All the provisions of this Act relating to Census-officers shall apply (so far as they are applicable) to all such persons while performing such duties; and any person refusing or neglecting to perform any duty which he is directed under this section to perform shall be deemed to have committed an offence under section 187 of the Indian Penal Code.

6. The Magistrate of the district may, by an order written, printed or lithographed, call upon all owners and occupiers of land, tenure-holders, farmers, assignees of land-revenue and lessees of fisheries under the Burma Fisheries Act, 1875, in his district, or their agents, and upon all members of pancháyats appointed in his district under Bengal Act No. VI of 1870 (to provide for the appointment, dismissal and maintenance of Village Charukidárs), to give such assistance as he needs towards the taking of a census of the persons who are at the time of taking the census on the lands of such owners, occupiers, holders, farmers and assignees, within the limits of such fisheries

ro in the villages for which such panchâyats are appointed, as the case may be.

Such order shall specify the nature of the assistance required, and such owners, occupiers, holders, farmers, assignees, lessees, or their agents, and the members of such panchâyats, shall be bound to obey it.

7. Every Census-officer may ask all such questions of all persons within the limits of the local area for which he is appointed as, by instructions issued in this behalf by the Local Government and published in the official Gazette, he may be directed to ask.

8. Every person of whom any question is asked under section seven shall be legally bound to answer such question to the best of his knowledge or belief:

Provided that no person shall be bound to state the name of any female member of his household; and that no woman shall be bound to state the name of her husband or deceased husband.

9. Every person occupying any house, enclosure, vessel or other place shall allow the Census-officers such access thereto as they may require for the purposes of the census, and as, having regard to the customs of the country, may be reasonable.

10. Subject to such orders as the Local Government may issue in this behalf, any Census-officer may leave, or cause to be left, at any dwelling-house within the local area for which he is appointed, a schedule for the purpose of being filled up by the occupier of such house or of any specified part thereof with such particulars as the Local Government may direct regarding the persons present in such house or part at the time of taking the census.

When any such schedule has been so left, the occupier of the house or part to which it relates shall fill up the same to the best of his knowledge or belief, so far as regards the persons present in such house or part, as the case may be, at the time aforesaid, and shall sign his name thereto, and, when so required, shall deliver the schedule so filled up and signed to the Census-officer or to such person as he may direct.

Any occupier of a dwelling-house or part thereof who knowingly and without sufficient cause fails to comply with the provisions of this section, or makes any false return hereunder shall be punished for every such offence, if it does not amount to an offence within the provisions of the Indian Penal Code, with fine which may extend to fifty rupees.

11. Any Census-officer who, knowingly and without sufficient cause, disobeys the instructions published by the Local Government under section seven, puts any offensive or improper question, or makes any false return, shall be punished for every such offence, if it does not amount to an offence within the provisions of the Indian Penal Code, with fine which may extend to fifty rupees.

12. The Local Government may, by notification in the official Gazette,

(a) declare before what classes of Magistrates prosecutions under this Act, or for neglecting or refusing to do anything required by this Act to be done, may be instituted; and

(b) direct that no such prosecution shall be instituted except with its previous sanction, or with the previous sanction of some officer authorized by it in this behalf.

Unless and until a notification is published, under Clause (a) of this section, all prosecutions under this Act shall, in the Towns of Calcutta, Madras, and Bombay, be instituted before a Presidency Magistrate, and elsewhere, before the Magistrate of the District.

13. Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872, no entry in any book, register or record made by a Census-officer in the discharge of his duty as such officer shall be admissible as evidence in any civil proceeding or any proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates Act, 1877.

D. FITZPATRICK,

Secy. to the Govt. of India,
Legislative Department.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 3rd November 1880, and was promulgated for general information in the *Gazette of India* on the 6th November 1880 :—

Act No. XV. of 1880.

An Act to amend the Bombay Revenue Jurisdiction Act, 1876.

WHEREAS it is expedient to amend the Bombay Revenue Jurisdiction Act, 1876, in manner hereinafter appearing, and to make further provision for the recovery of certain advances made in the territories administered by the Governor of Bombay in Council for purposes other than those specified in the Land Improvement Act, 1871; It is hereby enacted as follows :—

1. This Act may be called "The Bombay Revenue Jurisdiction Act, 1880"; and it shall come into force at once.
2. Sections eight, nine, ten and seventeen of the said Bombay Revenue Jurisdiction Act, 1876, are hereby repealed :

Provided that the repeal hereby effected, of the first clause of the said section seventeen, shall not operate in any Scheduled District unless and until the Bombay Land-revenue Code, 1879, has been extended to such district :

Provided also that the repeal of the second clause of the said section seventeen shall not be deemed to render invalid or illegal anything made valid or legal by such clause.

3. To section thirty-two of the Bombay Civil Courts Act, No. XIV. of 1869, as amended by section fifteen of the said Bombay Revenue Jurisdiction Act, 1876, the following words shall be added :—

"Provided that nothing in this section shall be deemed to apply to any suit merely because—

Proviso.

"(a) a municipal corporation constituted under Bombay Act No. VI. of 1873, or any other enactment for the time being in force, is a party to such suit and an officer of Government is in his official capacity a member of such corporation, or

"(b) an officer of a Court appointed under the Code of Civil Procedure, section 456, last paragraph, or selected under Act No. XX. of 1864 (for making better provision for the care of the persons and property of minors in the Presidency of Bombay), section 9, is, in virtue of such appointment or selection, a party to such suit."

4. The Governor of Bombay in Council may, from time to time, with the previous sanction of the Governor General in Council, prescribe rules as to advances to be made in the territories administered by the said Governor in Council to holders (as defined in section 3 (11) of the Bombay Land-revenue Code, 1879) of arable land, for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Act, 1871, but connected with agricultural objects.

All such rules shall be published in the local official Gazette.

5. Every advance for any such purpose which may heretofore have been made by or on behalf of the Government in the said territories, and every advance which may hereafter be made under such rules, shall, when it becomes due, be recoverable, with the interest (if any) accrued due thereon, from the person to whom such advance was made, or from any person who has become surety for the repayment thereof, as if it were an arrear of land-revenue due by the person to whom the advance was made or by his surety.

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

THE



Bombay Government Gazette.

Published by Authority.

THURSDAY, 15TH JULY 1880.

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

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th July 1880, and was referred to a Select Committee:—

Bill No. 9 of 1880.

A Bill to amend the Bombay Revenue Jurisdiction Act, 1876.

WHEREAS it is expedient to amend the Bombay Revenue Jurisdiction Act, 1876, in manner hereinafter appearing, and to make further provision for the recovery of certain advances made in the territories administered by the Governor of Bombay in Council for purposes other than those specified in the Land Improvement Act, 1871; It is hereby enacted as follows:—

1. This Act may be called "The Bombay Revenue Jurisdiction Act, 1880"; and it shall come into force at once.

Short title.

Commencement.
2. Sections eight, nine, ten and seventeen of the said Bombay Revenue Jurisdiction Act, 1876, are hereby repealed:

Repeal of sections 8, 9, 10 and 17 of Act No. X. of 1876.

Provided that the repeal of the second clause of the said section seventeen shall not be deemed to render invalid or ille-

Proviso as to second paragraph of section 17.

gal anything made valid or legal by the said clause.

3. To section thirty-two of the Bombay Civil Courts Act, No. XIV. of 1869, as amended by section 15 of Act No. X. of 1876, the following words shall be added:—

Addition to section 32 of Act No. XIV. of 1869 as amended by section 15 of Act No. X. of 1876.

Courts Act, No. XIV. of 1869, as amended by section fifteen of the said Act, the following words shall be added:—

"Provided that nothing in this section shall be deemed to apply to any suit merely because a municipal corporation constituted under Bombay Act No. VI. of 1873, or any other enactment for the time being in force, is a party to such suit and an officer of Government is in his official capacity a member of such corporation."

4. The Governor of Bombay in Council may, from time to time, with the previous sanction of the Governor General in Council, prescribe rules as to advances to be made in the territories administered by the said Governor in Council to owners and occupiers of arable land for the relief of distress, the purchase of seed or cattle or any other purpose not specified in the Land Improvement Act, 1871, but connected with agricultural objects.

Act X. of 1879, s. 3.

Governor in Council to make rules as to certain advances for purposes other than those specified in Act No. XXVI. of 1871:

All such rules shall be published in the local official Gazette.

Act X. of
1879, s. 3.

5. Every advance for any such purpose which may heretofore have been made by or on behalf of the Government in the said territories, and every advance which may hereafter be made under such rules, shall, when

it becomes due, be recoverable from the person to whom it was made, or from any person who has become surety for the repayment thereof, as if it were an arrear of land-revenue due by the person to whom the advance was made or by his surety.

STATEMENT OF OBJECTS AND REASONS.

THE passing of the Bombay Land-Revenue Code (Bombay Act No. V. of 1879) has rendered certain of the provisions of the Bombay Revenue Jurisdiction Act (No. X. of 1876) superfluous. Thus, sections 9 and 10 of that Act, which provided for appeals from the proceedings of Revenue-officers and for review of the orders passed on such appeals in certain specified cases, are covered by the provisions of the Code, which provide for such appeals and reviews generally. Again, the need for paragraph 1 of section 17 of the Act is removed by section 151 of the Code, whilst Bombay Regulation XVII. of 1827, to which the second paragraph of the same section refers, is entirely repealed by the Code, sections 45 and 48 of which render lands within the sites of villages, towns and cities liable to assessment to the land-revenue.

2. The present Bill repeals all those provisions of the Revenue Jurisdiction Act. Care, however, has been taken, when repealing the second clause of section 17, to add a proviso maintaining the validity which that clause gives to things done before the Act was passed.

3. The opportunity has been taken to make one or two other amendments in connection with the Bombay Revenue Jurisdiction Act which have been suggested by the Bombay Government.

4. Section 8 of the Act had an intelligible meaning as it stood with its original context in Bombay Regulation V. of 1830, section 1, clause 6; but as it stands alone in the Act, its correct interpretation is by no means clear; and as the Bombay Government state that in practice its provisions are a dead-letter, it has been thought advisable to repeal it altogether by the present Bill.

5. It has recently been held by the Bombay High Court (Melvill J. and Kemball J.), in the case of the Ahmedabad municipality (I. L. R. 3 Bom. p. 146), that, in a suit by or against a municipality constituted under the Bombay Municipal Act (No. VI. of 1873), every individual Commissioner must be regarded as a party within the meaning of section 15 of the Revenue Jurisdiction Act, 1876; and that, consequently, if any officers of Government are in their official capacity Commissioners, such a suit can be entertained by the District Judge alone. A large number of the suits in which municipalities are concerned are of a trifling nature, and there appears to be no adequate reason for depriving the Subordinate Judges and the Judges of the Small Cause Courts of jurisdiction with regard to them, whilst the result of confining such suits to the Court of the District Judge is to impede that officer in the disposal of the more important suits and which properly fall within the jurisdiction of his Court. A proviso has, therefore, been added to section 34 of the Bombay Courts Act (No. XIV. of 1869) as amended by section 15 of the Revenue Jurisdiction Act, saving from the provisions of the section suits by or against municipalities in cases in which Government officials are, as such, members of such municipalities.

6. Lastly, the third paragraph of section 17 of the Revenue Jurisdiction Act, though rendering advances made by Government for purposes other than those specified in the Land Improvement Act, 1871, recoverable as arrears of land-revenue, is restricted in its operation to the case of the persons to whom such advances have been made, and does not extend to the sureties of such persons. This is an evident defect in the law. Instead, however, of merely amending the paragraph, it has been thought more expedient to repeal it altogether and to enact a new provision based on section 3 of the Northern India Takkávi Act, 1879.

(Signed) B. W. COLVIN.

The 6th July 1880.

D. FITZPATRICK,
Secretary to the Government of India,
Legislative Department.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 9th July 1880, and was referred to a Select Committee:—

Bill No. X. of 1880.

A Bill to exempt Pársís from certain provisions of the Administrator General's Act, 1874.

WHEREAS Hindús, Muhammadans and Buddhists are exempted from the operation of certain provisions of the Administrator General's Act (No. II), 1874, but are subject to the operation of certain other provisions of the said Act;

and whereas it is expedient that Pársís should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindús, Muhammadans and Buddhists; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Administrator General's Act, 1880":

Commencement.

and it shall come into force at once.

2. In sections 16, 17, 18, 36 and 64 respectively of the said Act, between the word "Muhammadan" and the words "or Buddhist," wherever they occur, the word "Pársi" shall be inserted.

3. Nothing herein contained shall affect any letters of administration or certificate granted under the said Act before the passing of this Act.

STATEMENT OF OBJECTS AND REASONS.

1. As the law now stands, all the provisions of the Administrator General's Act (No. II. of 1874) apply to Pársís to the same extent as to their European and Christian fellow-subjects. On the other hand, Hindús, Muhammadans and Buddhists, though subject to certain portions of the Act which are expressly declared applicable to all persons without exception, are by the terms of the

Act itself exempted from some of its most important provisions.

2. So far as can be gathered from various memorials and communications on the subject which have been received, the Pársís are almost unanimous in their desire to be exempted from the provisions of the Act, in the same manner and to the same extent as Hindús, Muhammadans and Buddhists.

3. Briefly stated, the chief grounds on which the Pársís base their claim to exemption appear to be, first, that there is no necessity for such an Act in their case; secondly, that in its operation the Act is oppressive and burdensome to them and repugnant to their social and religious customs.

4. With regard to the former ground, there is no doubt that the Act was originally designed to meet the case of Europeans and other foreigners similarly situated in this country, whereas Pársís are distinctly Asiatics with an Indian domicile. They have always relatives or friends willing to take charge of their property and to enforce its proper administration. It is thus clear that Pársís are in a totally different position from those for whose benefit the Act was intended; and it would accordingly seem that there is a great deal to be said in favour of the arguments of the Pársís on this ground.

5. As to the second ground, it could scarcely be contended that the provisions of the Administrator General's Act are in themselves either oppressive or burdensome; but, looking to the repugnance with which Pársís regard such an exposure of their family affairs and resources as would sometimes result if the Act were enforced in their case, it may be admitted that this second ground is not altogether without foundation.

6. The present Bill, by a slight alteration of the Administrator General's Act, 1874, puts Pársís in exactly the same position with regard to that Act as Hindús, Muhammadans and Buddhists.

(Signed) W. STOKES.

SIMLA;
The 19th June 1880. }

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

The following Report of a Select Committee on the Bill for the appointment of persons to the office of Kázi was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd July 1880:—

REPORT.

We, the undersigned Members of the Select Committee to which the Bill for the appointment of persons to the office of Kázi was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

2. We have in section 2 restricted the power of the Local Government to suspend or remove a Kázi by specifying the circumstances under which that power may be exercised.

3. We have, at the instance of some of the authorities consulted, added a section (3) empowering a Kázi to appoint a Násib and suspend or remove him at pleasure.

There is a precedent for this in Bombay Regulation XXVI of 1827, section 5.

4. It has been urged by some of the authorities consulted that the Act should define the duties of the Kázis to be appointed under it, and should give them an exclusive right to perform those duties. Any attempt to do this would, we consider, be altogether outside the scope of the Bill as introduced and referred to us, and would, moreover, give a weight, which they have not at present, to the objections that have been taken to the Bill on the ground that it would practically force upon many persons the services of Kázis whom they did not care to employ.

We may add that in many places, owing to the way in which the Muhamadan population is split into sects, not always well defined, it would be

almost impracticable to confer upon one or more persons a monopoly of the office.

5. We think it is clear that the Bill should be carefully confined to its original object, namely, that of providing a Kázi appointed by the Government for those who desire to avail themselves of the services of such a Kázi; and, as it has been suggested to us that a Kázi appointed under the Bill as originally framed might possibly be held to have an exclusive claim to perform the duties of a Kázi and to have a right to restrain others from performing those duties in the local area for which he was appointed, we have added a clause to section 4 to make it clear that he will not.

The result of the Bill as it now stands will be that there will be a Kázi appointed by the Government for those who choose to avail themselves of his services, but that those who prefer to employ any other so-called Kázi will be at liberty to do so.

6. The publication ordered by the Council has been made, except in Assam, Ajmer, the North-Western Provinces and Mysore; we do not consider that the changes now made are such as to render republication necessary; and we recommend that the Bill as amended be passed.

(Signed) SAYYAD AHMAD.
WHITLEY STOKES.

D. FITZPATRICK,

Secretary to the Govt. of India, Legislative Department.

The 2nd July 1880.

THE



Bombay Government Gazette.

1881.

PART IV.

ACTS

PASSED BY THE

GOVERNMENT OF INDIA

AND BY THE

GOVERNMENT OF BOMBAY.

Bombay

PRINTED AT THE GOVERNMENT CENTRAL PRESS.

MDCCLXXXII.

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Bombay Government Gazette.

Published by Authority.

THURSDAY, 13TH JANUARY 1881.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 1st January 1881, and was promulgated for general information in the *Gazette of India* on the 8th January 1881:—

Act. No. I. of 1881.

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

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

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

and whereas the Secretary of State for India in Council is desirous of making over to the persons entitled to receive the said pension the principal sum proportionate thereto as provided in the said

treaty, and it is expedient to empower the said Secretary of State in Council to capitalize the said pension pending the appointment of a person as aforesaid; It is hereby enacted as follows:—

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

Short title.
 Commencement.

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

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

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

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

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

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

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

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

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

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

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

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

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

and every certificate granted under section five, when the period of limitation fixed by section seven has expired without an appeal having been preferred against the order granting such certificate,

shall, while it remains in force, be conclusive evidence against the said Secretary of State in Council of the right of the person to whom it has

been granted to receive the payments specified therein, and shall, unless or until it is rescinded and the authority rescinding it has given to the said Secretary of State in Council notice of such rescission, empower such person to give to the said Secretary of State in Council a full discharge for any such payment.

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

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

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

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

No appeal shall lie from any order under this section.

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

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

15. The provisions of section thirteen of the said Code shall apply to all cases under section five of this Act in which the question of heirship

to the said Tāj Mahal, having been directly and substantially in issue in a suit in a Court of competent jurisdiction between the claimants, or between parties under whom they or any of them claim, litigating under the same title, has been heard and finally determined by such Court.

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

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

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

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

D. FITZPATRICK,
Secretary to the Government of India.

[Published with the "Bombay Government Gazette" on the 20th January 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 1st January 1881, and was promulgated for general information in the *Gazette of India* on the 8th January 1881:—

Act No. I. of 1881.

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

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

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

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

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

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

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

IV.—1 a

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

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

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

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

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

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

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

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

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

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

and every certificate granted under section five, when the period of limitation fixed by section seven has expired without an appeal having been preferred against the order granting such certificate,

shall, while it remains in force, be conclusive evidence against the said Secretary of State in Council of the right of the person to whom it has been granted to receive the payments specified therein, and shall, unless or until it is rescinded and the authority rescinding it has given to the said Secretary of State in Council notice of such rescission, empower such person to give to the said Secretary of State in Council a full discharge for any such payment.

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

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

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

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

No appeal shall lie from any order under this section.

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

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

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

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

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

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

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

Arrears of pension accruing before capitalization to be invested.

Indemnity as to payments already made.

D. FITZPATRICK,
Secretary to the Government of India.



Bombay Government Gazette.

Published by Authority.

THURSDAY, 27TH JANUARY 1881.

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

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th January 1881, and was promulgated for general information in the *Gazette of India* on the 22nd January 1881 :—

Act No. III. of 1881.

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

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

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

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

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

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

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

Short title.

Commencement.

"Government Securities."

IV.—2

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

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

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

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

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

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

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

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January 1881, and was promulgated for general information in the *Gazette of India* on the 22nd January 1881:—

Act No. V. of 1881.

THE PROBATE AND ADMINISTRATION ACT, 1881.

PREAMBLE.

CHAPTER I. PRELIMINARY.

SECTION.

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

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

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

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the Indian Succession Act, 1865, does not apply; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This act may be called "The Probate and Administration Act, 1881":
- Short title. It applies to the whole of British India; and it shall come into force on the first day of April 1881.
- Local extent. Commencement.
2. Chapters II to XIII, both inclusive, of this Act shall apply in the case of every Hindu, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865, dying before on or after the said first day of April 1881.
- Personal application. Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:
- Provided also that, except in cases to which the Hindú Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.
3. In this Act, unless there be something repugnant in the subject to context,—
- Interpretation-clause. "Province" includes any division of British India having a Court of the last resort:
- "minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person:
- "will" means the legal declaration of the intentions of the testator with respect to his property which he desires to be carried into effect after his death:

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

"codicil:"
 "specific legacy:"
 "demonstrative legacy:"

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

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

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

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

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

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

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

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

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

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

Illustrations.

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

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

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

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

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

Illustration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according

to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

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

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

CHAPTER III.

OF LIMITED GRANTS.

(a.)—Grants limited in Duration.

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

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

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

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

(b.)—Grants for the use and benefit of others having right.

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

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

30. When a person entitled to administration in case of intestacy is absent from the Province and no person equally entitled is willing to act, letters of administration

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

may be granted to the agent of the absent person, limited as before mentioned.

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

Administration during minority of sole executor or residuary legatee.

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

Administration during minority of several executors or residuary legatees.

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

Administration for use and benefit of lunatic.

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

Administration *pendente lite*.

(c.)—*For Special Purposes.*

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

Probate limited to purpose specified in will.

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

Administration with will annexed limited to particular purpose.

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

Administration limited to trust-property.

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

Administration limited to suit.

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

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

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

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

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

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

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

(d).—Grants with Exception.

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

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

(e).—Grants of the Rest.

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

(f).—Grants of Effects unadministered.

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

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

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

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

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

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

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

Revocation or annulment for just cause. *Explanation.*—Just cause is—

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

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

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

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

Illustrations.

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

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

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

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

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

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

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

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

CHAPTER V.

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

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

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

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of

administration and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d).—Grants with Exception.

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

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

(e).—Grants of the Rest.

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

(f).—Grants of Effects unadministered.

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

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

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

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

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

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

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

“Just cause.”

Explanation.—Just cause is—

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

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

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

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

Illustrations.

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

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

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

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

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

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

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

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

CHAPTER V.

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

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

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

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called “District Delegates.”

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of

administration and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

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

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

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

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

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

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

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

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

IV.—4

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

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

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

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

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

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

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

that the writing annexed is his last will and testament, or as the case may be, that it was duly executed ;

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

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

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

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

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

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

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

Verification of translation by person other than Court translator.

which case such translation shall be verified by that person in the following manner :—

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

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

the time and place of the deceased's death ;

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

the right in which the petitioner claims ;

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

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

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

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

65. Every person applying to any of the Courts mentioned in the proviso to section fifty-nine for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to

Additional statements in petition for probate, &c.

mentioned in the proviso to section fifty-nine for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to

the matters respectively required by sections sixty-two and sixty-four, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid ;

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

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

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

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

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

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

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

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

to examine the petitioner in person upon oath, and also

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

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in

Publication of citation.

the office of the Collector of the District, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

71. The caveat shall be to the following effect:—

“Let nothing be done in the matter of the estate of A. B., late of , deceased, who died on the day of at without notice to C. D. of .”

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By “contention” is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

75. In every case in which there is contention or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do, and in that case the same shall be sent by him to the District Judge.

76. Whenever it appears to the Judge or District Delegate that the grant of probate to be under seal of Court. probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

“I, Judge of the District of , [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)] hereby make known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 .”

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

“I, ; Judge of the District of , [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)] hereby make known that on the day of letters of administration (with or without the will annexed, as the case may be) of the property and credits of , late of , deceased, were granted to , the father (or as the case may be) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 .”

78. Every person to whom any grant of letters of administration is committed, and, if the Judge directs, any person to whom probate is granted shall give a bond to the Judge of the District Court to ensure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge, from time to time by any general or special order, directs.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him; and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

83. In any case before the District Judge in which there is contention the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

84. Where any probate is, or letters of administration are, revoked, all payments *bona fide* made

to any executor or administrator under a such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindu Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death as the deceased had when living.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

(a). A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having

instituted any suit. The cause of action does not survive.

90. An executor or administrator has power, with the consent of the Court by which the probate or letters of administration was or were granted, to dispose of the property of the deceased, either wholly or in part, in such manner as he thinks fit:

Provided that the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

Illustrations.

(a). The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it with the consent of the Court. The sale is valid.

(b). The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased with the consent of the Court. The mortgage is valid.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(a). One of several executors has power to release a debt due to the deceased.

(b). One has power to surrender a lease.

(c). One has power to sell the property of the deceased, moveable or immoveable.

(d). One has power to assent to a legacy.

(e). One has power to endorse a promissory note payable to the deceased.

(f). The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

95. An administrator during minority has all the powers of an ordinary administrator.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition if he has left property sufficient for the purpose.

98. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same has or have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that have come to his hands, and the manner in which they have been applied or disposed of.

99. In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration, shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India:

And the value of such property situate in each Province, shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts.

Wages for certain services to be next paid, and then other debts.

Save as aforesaid, all debts to be paid equally and rateably.

104. Save as aforesaid, no creditor is to have a right of priority over another.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

105. Debts of every description must be paid before any legacy.

Debts to be paid before legacies.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

Abatement of general legacies.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

112. The assent of the executor is necessary to complete a legatee's title.

Assent necessary to complete legatee's title.

Illustrations.

(a) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of assent.

Illustrations.

(a) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(a). A bequeaths to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b.) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person; and his assent may in like manner be express or implied.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government-securities bequeathed to him and applies it to his own use. This is assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(a). A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b). A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or

first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

120. Where there is a direction that the first payment of annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

and if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

The intermediate interest shall form part of the residue of the testator's estate.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government-annuity of the specified amount shall be purchased, or,

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at

the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit;

and, until such conversion and investment shall be completed, the interest payable until person who would be for investment. the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a). A bequeathes his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b). A bequeathes his Government-securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B and must, unless he is a minor, be paid to him as it is received.

(c). The testator bequeathes all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

Illustrations.

(a). The testator bequeathes the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b). The testator bequeathes the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1). Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2). Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3). Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

132. The rate of interest shall be six per cent. per annum.
- Rate of interest.
133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.
- No interest on arrears of annuity within first year after testator's death.
134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.
- Interest on sum to be invested to produce annuity.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

135. An executor who has paid a legacy under the order of a Judge, is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.
- Refund of legacy paid under Judge's orders.
136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.
- No refund if paid voluntarily.
137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.
- Refund when legacy becomes due on performance of condition within further time allowed.
- Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.
138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.
- When each legatee compellable to refund in proportion.
139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution;
- but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.
- Creditor may follow assets.
140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.
- Creditor may call upon legatee to refund.
141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.
- When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.
142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.
- When unsatisfied legatee must first proceed against executor, if solvent.
143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legatee ought to have been reduced if the estate had been properly administered.
- Limit to refunding of one legatee to another.
- Illustration.*
- A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.
- Refunding to be without interest.
144. The refunding shall in all cases be without interest.
145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.
- Residue after usual payments to be paid to residuary legatee.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.
- Liability of executor or administrator for devastation.

Illustrations.

(a.) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(b.) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(c.) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(a.) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b.) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Saving-clause.

149. Nothing herein contained shall—

(a) validate any testamentary disposition which would otherwise have been invalid ;

(b) invalidate any such disposition which would otherwise have been valid ;

(c) deprive any person of any right of maintenance to which he would otherwise have been entitled ; or

(d) affect the rights, duties and privileges of the Administrator General of Bengal, Madras or Bombay.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan, Buddhist or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

151. In Act No. XXVII of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), sections 15 and 16 and the proviso to section 13 shall be repealed.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII of 1860, or Bombay Regulation No. VIII of 1827 ; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding :

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. In the Court-fees Act, 1870, schedule I, Nos. 11 and 12, in the Amendment of Court-fees Act, third column, after the words "amount or value," the following shall be inserted, namely:—

"Provided that, when after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant."

154. The following amendments shall be made in the Hindú Wills Act, 1870 (namely):—

(a.) For the portion of section two commencing with the words "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted.

(b.) The third clause of section three and the last clause of section six shall be repealed.

(c.) In section six, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and three;" shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindú, Muhammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which, before this Act comes into force have been made in British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

156. In the second schedule to the Indian Limitation Act, 1877, No. 43, after the figures "321," the following shall be inserted, namely—"or under the Probate and Administration Act, 1881, section 139 or 140."

D. FITZPATRICK,
Secretary to the Government of India.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January 1881, and was promulgated for general information in the *Gazette of India* on the 22nd January 1881:—

Act No. VI. of 1881.

An Act to make further provision for the grant of Probate and Letters of Administration in non-contentious cases.

WHEREAS it is expedient to make further provision for the grant of probate and letters of administration in non-contentious cases; It is hereby enacted as follows:—

1. This Act may be called "The District Delegates Act, 1881."

Extent. It extends to the whole of British India;

and it shall come into force on the first day of April 1881.

2. After section 235 of the Indian Succession Act, 1865, the following section shall be added:—

"235A. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

"Persons so appointed shall be called 'District Delegates'."

3. After section 241 of the said Act, the following section shall be added:—

"241A. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate."

4. To sections 244 and 246 of the said Act, respectively, the following words shall be added:—
"and when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate."

Substitution of section for section 251 of same Act.

5. For section 251 of the said Act, the following section shall be substituted:—

"251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same."

6. In section 253 of the said Act, after the word "Judge" the words "or officer," and after the word "made" the words "or notice thereof has been given of its entry with some other Delegate," shall be inserted.

7. After section 253 of the said Act the following sections shall be added:—

"253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

"Explanation.—By 'contention' is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf to oppose the proceeding.

"253B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

"253C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any docu-

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

ments that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge."

8. In the said Act, sections 254 and 255, respectively, after the words "I, Judge of the District of _____," the words "(or Delegate appointed for granting probate or letters of admi-

nistration in (*here insert the limits of the Delegate's jurisdiction*))"; and in section 308, after the words "District Judge by whom" the words "or by whose District Delegate" shall be inserted.

9. In the said Act, sections 246, 250, 255 and 259, after the words "District Judge," and in section 250 and section 254 (when it first occurs) after the word "Judge," the words "or District Delegate" shall be inserted respectively.

D. FITZPATRICK,
Secretary to the Government of India.

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PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 1st January 1881, and was promulgated for general information in the *Gazette of India* on the 8th January 1881:—

Act No. I. of 1881.

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

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

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

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

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

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

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

IV.—6 a

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

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

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

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

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

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

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

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

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

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

and every certificate granted under section five, when the period of limitation fixed by section seven has expired without an appeal having been preferred against the order granting such certificate,

shall, while it remains in force, be conclusive evidence against the said Secretary of State in Council of the right of the person to whom it has been granted to receive the payments specified therein, and shall, unless or until it is rescinded and the authority rescinding it has given to the said Secretary of State in Council notice of such rescission, empower such person to give to the said Secretary of State in Council a full discharge for any such payment.

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

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

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

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

No appeal shall lie from any order under this section.

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

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

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

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

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

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

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

D. FITZPATRICK,
Secretary to the Government of India.

[Published with the "Bombay Government Gazette" on the 3rd February 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th January 1881, and was promulgated for general information in the *Gazette of India* on the 22nd January 1881 :—

Act No. III. of 1881.

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

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

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

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

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

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| Short title. | 1. This Act may be called "The Indian Securities Act, 1881"; and shall come into force at once. |
| Commencement. | |
| 2. In this Act, "Government securities" includes promissory notes, debentures, loan-certificates, coupons and all other securities issued by the Government of India, whether before or after the passing of this Act. | |

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

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

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

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

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

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

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

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January 1881, and was promulgated for general information in the *Gazette of India* on the 22nd January 1881:—

Act No. V. of 1881.

THE PROBATE AND ADMINISTRATION ACT, 1881.

PREAMBLE.

CHAPTER I.
PRELIMINARY.

SECTION.

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

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. Character and property of executor or administrator as such.
5. Administration with copy annexed of authenticated copy of will proved abroad.
6. Probate only to appointed executor.
7. Appointment express or implied.
8. Persons to whom probate cannot be granted.
9. Grant of probate to several executors simultaneously or at different times.
10. Separate probate of codicil discovered after grant of probate.
Procedure when different executors appointed by codicil.
11. Accrual of representation to surviving executor.
12. Effect of probate.
13. To whom administration may not be granted.
14. Effect of letters of administration.
15. Acts not validated by administration.
16. Grant of administration where executor has not renounced.
Exception.
17. Form and effect of renunciation of executorship.
18. Procedure where executor renounces or fails to accept within time limited.
19. Grant of administration to universal or residuary legatee.
20. Right to administration of representative of deceased residuary legatee.
21. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.
22. Citation before grant of administration to legatee other than universal or residuary.
23. To whom administration may be granted.

CHAPTER III.

OF LIMITED GRANTS.

(a).—*Grants limited in Duration.*

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

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SECTION.

(b).—*Grants for the use and Benefit of Others having Right.*

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

(c).—*For Special Purposes.*

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

(d).—*Grants with Exception.*

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

(e).—*Grants of the Rest.*

44. Probate or administration of rest.

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

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

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ALTERATION AND REVOCATION OF GRANTS.

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

CHAPTER V.

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

51. Jurisdiction of District Judge in granting and revoking probates, &c.
52. Power to appoint Delegate of District Judge to deal with non-contentious cases.
53. District Judge's powers as to grant of probate and administration.
54. District Judge may order person to produce testamentary papers.
55. Proceedings of District Judge's Court in relation to probate and administration.
56. When probate or administration may be granted by District Judge.

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57. Disposal of application made to Judge of district in which deceased had no fixed abode.
58. Probate and letters of administration may be granted by Delegate.
59. Conclusiveness of probate or letters of administration.
Effect of unlimited probates, &c., granted by certain Courts.
60. Transmission of certificate by Court granting unlimited probate, &c., to other Courts.
61. Conclusiveness of application for probate or administration, if properly made and verified.
62. Petition for probate.
63. In what cases translation of will to be annexed to petition.
Verification of translation by person other than Court translator.
64. Petition for letters of administration.
65. Additional statements in petition for probate, &c.
66. Petition for probate or administration to be signed and verified.
67. Verification of petition for probate by one witness to will.
68. Punishment for false averment in petition or declaration.
69. District Judge may examine petitioner in person, require further evidence, and issue citations to inspect proceedings.
Publication of citation.
70. Caveats against grant of probate or administration.
71. Form of caveat.
72. After entry of caveat, no proceeding taken on petition until after notice to caveator.
73. District Delegate when not to grant probate or administration.
74. Power to transmit statement to District Judge in doubtful cases where no contention.
75. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.
76. Grant of probate to be under seal of Court.
Form of such grant.
77. Grant of letters of administration to be under seal of Court.
Form of such grant.
78. Administration-bond.
79. Assignment of administration-bond.
80. Time before which probate or administration shall not be granted.
81. Filing of original wills of which probate or administration with will annexed granted.
82. Grantee of probate or administration alone to sue, &c., until same revoked.
83. Procedure in contentious cases.
84. Payment to executor or administrator before probate or administration revoked.
Right of such executor or administrator to recoup himself.
85. Power to refuse letters of administration.
86. Appeals from orders of District Judge.
87. Concurrent jurisdiction of High Court.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

88. In respect of causes of action surviving deceased, and debts due at death.
89. Demands and rights of suit of or against deceased survive to and against executor or administrator.
90. Power of executor or administrator to dispose of property.

SECTION.

91. Purchase by executor or administrator of deceased's property.
92. Powers of several executors or administrators exercisable by one.
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94. Powers of administrator of effects unadministered.
95. Powers of administrator during minority.
96. Powers of married executrix or administratrix.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. As to deceased's funeral ceremonies.
98. Inventory and account.
99. Inventory to include property in any part of British India.
100. As to property of, and debts owing to, deceased.
101. Expenses to be paid before all debts.
102. Expenses to be paid next after such expenses.
103. Wages for certain services to be next paid, and then other debts.
104. Save as aforesaid, all debts to be paid equally and rateably.
105. Debts to be paid before legacies.
106. Executor or administrator not bound to pay legacies without indemnity.
107. Abatement of general legacies.
Executor not to pay one legatee in preference to another.
108. Non-abatement of specific legacy when assets sufficient to pay debts.
109. Right under demonstrative legacy, when assets sufficient to pay debts and necessary expenses.
110. Rateable abatement of specific legacies.
111. Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

112. Assent necessary to complete legatee's title.
113. Effect of executor's assent to specific legacy.
Nature of assent.
114. Conditional assent.
115. Assent of executor to his own legacy.
Implied assent.
116. Effect of executor's assent.
117. Executor when to deliver legacies.

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118. Commencement of annuity when no time fixed by will.
119. When annuity, to be paid quarterly or monthly, first falls due.
120. Date of successive payments when first payment directed to be made within given time, or on day certain.
Apportionment where annuitant dies between times of payment.

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OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Investment of sum bequeathed where legacy not specific, given for life.
122. Investment of general legacy, to be paid, at future time.
Intermediate interest.

SECTION.

123. Procedure when no fund charged with, or appropriated to, annuity.
 124. Transfer to residuary legatee of contingent bequest.
 125. Investment of residue bequeathed for life, with direction to invest in specified securities.
 126. Time and manner of conversion and investment, Interest payable until investment.
 127. Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

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128. Legatee's title to produce of specific legacy.
 129. Residuary legatee's title to produce of residuary fund.
 130. Interest when no time fixed for payment of general legacy.
 131. Interest when time fixed.
 132. Rate of interest.
 133. No interest on arrears of annuity within first year after testator's death.
 134. Interest on sum to be invested to produce annuity.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

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

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVIATION.

146. Liability of executor or administrator for devastation.
 147. For neglect to get in any part of property.

CHAPTER XIV.

MISCELLANEOUS.

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

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SECTION.

155. Validation of grants of probate and administration made in British Burma.
 156. Amendment of Act XV of 1877.

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

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the Indian Succession Act, 1865, does not apply; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This act may be called "The Probate and Administration Act, 1881":
- Local extent. It applies to the whole of British India;
- Commencement. and it shall come into force on the first day of April 1881.
2. Chapters II to XIII, both inclusive, of this Act shall apply in the case of every Hindu, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865, dying before on or after the said first day of April 1881.
- Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:
- Provided also that, except in cases to which the Hindú Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.
3. In this Act, unless there be something repugnant in the subject to context,—
- Interpretation-clause.
- "Province" includes any division of British India having a Court of the last resort:
- "minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person:
- "will" means the legal declaration of the intentions of the testator with respect to his property which he desires to be carried into effect after his death:
- "will:"

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

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

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

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

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

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

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

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

Character and property of executor or administrator as such.

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

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

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

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

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

Probate only to appointed executor.

Appointment express or implied.

Illustrations.

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

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

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

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

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

Illustration.

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

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

Separate probate of codicil discovered after grant of probate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according

to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

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

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

CHAPTER III.

OF LIMITED GRANTS.

(a.)—Grants limited in Duration.

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

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

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

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

(b.)—Grants for the use and benefit of others having right.

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

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

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

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

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

Administration during minority of sole executor or residuary legatee.

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

Administration for use and benefit of lunatic.

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

Administration pendente lite.

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

(c.)—For Special Purposes.

Probate limited to purpose specified in will.

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

Administration with will annexed limited to particular purpose.

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

Administration limited to trust-property.

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

Administration limited to suit.

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

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

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

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

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

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

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

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

(d).—Grants with Exception.

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

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

(e).—Grants of the Rest.

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

(f).—Grants of Effects unadministered.

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

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

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

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

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

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

IV.—6 e

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

"Just cause."

Explanation.—Just cause is—

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

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

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

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

Illustrations.

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

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

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

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

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

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

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

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

CHAPTER V.

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

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

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

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of

administration and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the time of the testator's death ;

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

that it was duly executed ;

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

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

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

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

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

63. In cases wherein the will, copy or draft is written in any language other than English, or than that in ordinary use in proceedings before the

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

Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed ; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in

Verification of translation by person other than Court translator.

manner :—

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

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

the time and place of the deceased's death ;
the family or other relatives of the deceased, and their respective residences ;
the right in which the petitioner claims ;
the amount of assets which are likely to come to the petitioner's hands.

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

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

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

65. Every person applying to any of the Courts mentioned in the proviso to section fifty-nine for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to

Additional statements in petition for probate, &c.

the matters respectively required by sections sixty-two and sixty-four, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid ;

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

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

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

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

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

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

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

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

to examine the petitioner in person upon oath, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in

Publication of citation.

the office of the Collector of the District, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat. 71. The caveat shall be to the following effect:—

“Let nothing be done in the matter of the estate of A. B., late of , deceased, who died on the day of at without notice to C. D. of .”

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By “contention” is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

75. In every case in which there is contention or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do, and in that case the same shall be sent by him to the District Judge.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

“I, , Judge of the District of , [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate’s jurisdiction)] hereby make known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 .”

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

“I, , Judge of the District of , [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate’s jurisdiction)] hereby make known that on the day of letters of administration (with or without the will annexed, as the case may be) of the property and credits of , late of , deceased, were granted to , the father (or as the case may be) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 .”

78. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

The day of 18 .”

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him; and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

83. In any case before the District Judge in which there is contention the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

84. Where any probate is, or letters of administration are, revoked, all payments *bona fide* made

to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindú Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death as the deceased had when living.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

(a). A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having

instituted any suit. The cause of action does not survive.

90. An executor or administrator has power, with the consent of the Court by which the probate or letters of administration was or were granted, to dispose of the property of the deceased, either wholly or in part, in such manner as he thinks fit:

Provided that the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

Illustrations.

(a). The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it with the consent of the Court. The sale is valid.

(b). The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased with the consent of the Court. The mortgage is valid.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(a). One of several executors has power to release a debt due to the deceased.

(b). One has power to surrender a lease.

(c). One has power to sell the property of the deceased, moveable or immoveable.

(d). One has power to assent to a legacy.

(e). One has power to endorse a promissory note payable to the deceased.

(f). The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

95. An administrator during minority has all the powers of an ordinary administrator.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition if he has left property sufficient for the purpose.

98. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same has or have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that have come to his hands, and the manner in which they have been applied or disposed of.

99. In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration, shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India:

And the value of such property situate in each Province, shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased, according to their respective priorities (if any).

Wages for certain services to be next paid, and then other debts.

Save as aforesaid, all debts to be paid equally and rateably.

104. Save as aforesaid, no creditor is to have a right of priority over another.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Debts to be paid before legacies.

105. Debts of every description must be paid before any legacy.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

Abatement of general legacies.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

112. The assent of the executor is necessary to complete a legatee's title.

Assent necessary to complete legatee's title.

Illustrations.

(a). A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b). A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of assent.

Illustrations.

(a). A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b). The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c). A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d). Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e). A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(a). A bequeaths to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b.) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person; and his assent may in like manner be express or implied.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government-securities bequeathed to him and applies it to his own use. This is assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(a). A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b). A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or

first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

120. Where there is a direction that the first payment of annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive

Date of successive payments when first payment directed to be made within given time, or on day certain.

payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

and if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time.

The intermediate interest shall form part of the residue of the testator's estate.

Intermediate interest.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government-annuity of the specified amount shall be purchased, or,

Procedure when no fund charged with, or appropriated to, annuity.

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Transfer to residuary legatee or contingent bequest.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction to invest in specified securities, so much of the estate as is not at

Investment of residue bequeathed for life, with direction to invest in specified securities.

the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit;

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government-securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a). A bequeathes his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

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(b). A bequeathes his Government-securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B and must, unless he is a minor, be paid to him as it is received.

(c). The testator bequeathes all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

Illustrations.

(a). The testator bequeathes the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b). The testator bequeathes the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1). Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2). Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3). Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

- Rate of interest. 132. The rate of interest shall be six per cent. per annum.
133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.
134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

135. An executor who has paid a legacy under the order of a Judge, is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.
136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.
137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.
- Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.
138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.
139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any per-

son of whose claim he has not had notice at the time of such distribution;

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

144. The refunding shall in all cases be without interest.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(a.) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(b.) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(c.) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(a.) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b.) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Saving-clause.

149. Nothing herein contained shall—

(a) validate any testamentary disposition which would otherwise have been invalid;

(b) invalidate any such disposition which would otherwise have been valid;

(c) deprive any person of any right of maintenance to which he would otherwise have been entitled; or

(d) affect the rights, duties and privileges of the Administrator General of Bengal, Madras or Bombay.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan, Buddhist or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

151. In Act No. XXVII of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), sections 15 and 16 and the proviso to section 13 shall be repealed.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII of 1860, or Bombay Regulation No. VIII of 1827; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding:

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. In the Court-fees Act, 1870, schedule I, Nos. 11 and 12, in the third column, after the words "amount or value," the following shall be inserted, namely:—

"Provided that, when after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant."

154. The following amendments shall be made in the Hindú Wills Act, 1870 (namely):—

(a.) For the portion of section two commencing with the words "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted.

(b.) The third clause of section three and the last clause of section six shall be repealed.

(c.) In section six, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and three," shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindú, Muhammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which, before this Act comes into force have been made in British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

156. In the second schedule to the Indian Limitation Act, 1877, No. 43, after the figures "321," the following shall be inserted, namely—"or under the Probate and Administration Act, 1881, section 139 or 140."

D. FITZPATRICK,
Secretary to the Government of India.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January 1881, and was promulgated for general information in the *Gazette of India* on the 22nd January 1881:—

Act No. VI. of 1881.

An Act to make further provision for the grant of Probate and Letters of Administration in non-contentious cases.

WHEREAS it is expedient to make further provision for the grant of probate and letters of administration in non-contentious cases; It is hereby enacted as follows:—

1. This Act may be called "The District Delegates Act, 1881."

Extent. It extends to the whole of British India;

and it shall come into force on the first day of April 1881.

2. After section 235 of the Indian Succession Act, 1865, the following section shall be added:—

"235A. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

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

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

"Persons so appointed shall be called 'District Delegates'."

3. After section 241 of the said Act, the following section shall be added:—

"241A. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate."

4. To sections 244 and 246 of the said Act, respectively, the following words shall be added:—

"and when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate."

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Substitution of section for section 251 of same Act.

5. For section 251 of the said Act, the following section shall be substituted:—

"251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same."

6. In section 253 of the said Act, after the word "Judge" the words "or officer," and after the word "made" the words "or notice has been given of its entry with some other Delegate," shall be inserted.

7. After section 253 of the said Act the following sections shall be added:—

"253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

"*Explanation.*—By 'contention' is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf to oppose the proceeding.

"253B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

"253C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any docu-

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

ments that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge."

8. In the said Act, sections 254 and 255, respectively, after the words "I, Judge of the District of _____," the words "(or Delegate appointed for granting probate or letters of admi-

nistration in (*here insert the limits of the Delegate's jurisdiction*))"; and in section 308, after the words "District Judge by whom" the words "or by whose District Delegate" shall be inserted.

9. In the said Act, sections 246, 250, 255 and 259, after the words "District Judge," and in section 250 and section 254 (when it first occurs) after the word "Judge," the words "or District Delegate" shall be inserted respectively.

D. FITZPATRICK,
Secretary to the Government of India.

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PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th January 1881, and was promulgated for general information in the *Gazette of India* on the 22nd January 1881 :—

Act No. III. of 1881.

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

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

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

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

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

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| Short title. | 1. This Act may be called "The Indian Securities Act, 1881"; and shall come into force at once. |
| Commencement. | |
| 2. In this Act, "Government securities" includes promissory notes, debentures, loan-certificates, coupons and all other securities issued by the Government of India, whether before or after the passing of this Act. | |

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

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

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

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

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

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

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

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January 1881, and was promulgated for general information in the *Gazette of India* on the 22nd January 1881 :—

Act No. V. of 1881.

THE PROBATE AND ADMINISTRATION ACT, 1881.

PREAMBLE.

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36. Administration with will annexed limited to particular purpose.
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41. Appointment, as administrator, of person other than one who, under ordinary circumstances, would be entitled to administration.

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

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the Indian Succession Act, 1865, does not apply; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This act may be called "The Probate and Administration Act, 1881":
- It applies to the whole of British India;
- and it shall come into force on the first day of April 1881.
2. Chapters II to XIII, both inclusive, of this Act shall apply in the case of every Hindú, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865, dying before, on or after the said first day of April 1881.
- Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:
- Provided also that, except in cases to which the Hindú Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.
3. In this Act, unless there be something repugnant in the subject or context,—
- "Province" includes any division of British India having a Court of the last resort:
- "minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person:
- "will" means the legal declaration of the intentions of the testator with respect to his property which he desires to be carried into effect after his death:
- Short title.
- Local extent.
- Commencement.
- Personal application.
- Interpretation-clause.

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

"codicil :"

"specific legacy :"

"demonstrative legacy :"

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

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

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

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

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

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

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

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

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

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

Illustrations.

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

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

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

Persons to whom probate cannot be granted.

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

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

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

Illustration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according

to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

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

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

CHAPTER III.

OF LIMITED GRANTS.

(a.)—Grants limited in Duration.

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

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

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

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

(b.)—Grants for the use and benefit of others having right.

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

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

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

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

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

Administration during minority of sole executor or residuary legatee.

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

Administration during minority of several executors or residuary legatees.

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

Administration for use and benefit of lunatic.

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

Administration pendente lite.

(c.)—For Special Purposes.

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

Probate limited to purpose specified in will.

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

Administration with will annexed limited to particular purpose.

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

Administration limited to trust-property.

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

Administration limited to suit.

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

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

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

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

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

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

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

(d).—Grants with Exception.

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

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

(e).—Grants of the Rest.

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

(f).—Grants of Effects unadministered.

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

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

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

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

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

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

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

"Just cause." *Explanation.*—Just cause is—

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

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

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

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

Illustrations.

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

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

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

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

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

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

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

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

CHAPTER V.

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

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

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

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of

administration and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

that it was duly executed,

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

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

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

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

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

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

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

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

Verification of translation by person other than Court translator.

ing manner:—

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

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

the time and place of the deceased's death,
the family or other relatives of the deceased, and their respective residences,
the right in which the petitioner claims,
the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars the petition shall further state,

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

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

65. Every person applying to any of the Courts mentioned in the proviso to section fifty-nine for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to

Additional statements in petition for probate, &c.

the matters, respectively required by sections sixty-two and sixty-four, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section fifty-nine may, if it think fit, reject the same.

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

“I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief.”

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following:—

“I (O. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (as the case may be) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence).”

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

69. In all cases it shall be lawful for the District Judge or District Delegate if he thinks fit,

to examine the petitioner in person upon oath, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in

Publication of citation.

the office of the Collector of the District, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

71. The caveat shall be to the following effect:—
Form of caveat.

"Let nothing be done in the matter of the estate of A. B., late of , deceased, who died on the day of at without notice to C. D. of ."

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

75. In every case in which there is contention or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do, and in that case the same shall be sent by him to the District Judge.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, , Judge of the District of , [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)] hereby make known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, , Judge of the District of , [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)] hereby make known that on the day of letters of administration (with or without the will annexed, as the case may be) of the property and credits of , late of , deceased, were granted to , the father (or as the case may be) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him: and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

83. In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

84. Where any probate is, or letters of administration are, revoked, all payments *bonâ fide* made

to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindu Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death as the deceased had when living.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

(a). A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having

instituted any suit. The cause of action does not survive.

90. An executor or administrator has power, with the consent of the Court by which the probate or letters of administration was or were granted, to dispose of the property of the deceased, either wholly or in part, in such manner as he thinks fit:

Provided that the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

Illustrations.

(a). The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it with the consent of the Court. The sale is valid.

(b). The executor, in the exercise of his discretion, mortgages a part of the immovable estate of the deceased with the consent of the Court. The mortgage is valid.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(a). One of several executors has power to release a debt due to the deceased.

(b). One has power to surrender a lease.

(c). One has power to sell the property of the deceased, moveable or immovable.

(d). One has power to assent to a legacy.

(e). One has power to endorse a promissory note payable to the deceased.

(f). The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

95. An administrator during minority has all the powers of an ordinary administrator.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition if he has left property sufficient for the purpose.

98. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same has or have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that have come to his hands, and the manner in which they have been applied or disposed of.

99. In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration, shall include in the inventory of the effects of the deceased all his moveable or immovable property situate in British India:

And the value of such property situate in each Province, shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased, according to their respective priorities (if any).

Wages for certain services to be next paid, and then other debts.

Save as aforesaid, all debts to be paid equally and rateably.

104. Save as aforesaid, no creditor is to have a right of priority over another.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Debts to be paid before legacies.

105. Debts of every description must be paid before any legacy.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

Abatement of general legacies.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Assent necessary to complete legatee's title.

Illustrations.

(a). A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b). A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Effect of executor's assent to specific legacy.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of assent.

Illustrations.

(a). A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b). The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c). A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d). Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e). A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(a.) A bequeaths to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b.) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person and his assent may in like manner be express or implied.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government-securities bequeathed to him, and applies it to his own use. This is assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(a.) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b.) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or

first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

and if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

The intermediate interest shall form part of the residue of the testator's estate.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government-annuity of the specified amount shall be purchased, or,

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at

the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit;

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government-securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a). A bequeathes his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b). A bequeathes his Government-securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B and must, unless he is a minor, be paid to him as it is received.

(c). The testator bequeathes all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

Illustrations.

(a). The testator bequeathes the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b). The testator bequeathes the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1). Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2). Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3). Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

132. The rate of interest shall be six per cent. per annum.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

135. An executor who has paid a legacy under the order of a Judge, is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any per-

son of whose claim he has not had notice at the time of such distribution;

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legatee ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

144. The refunding shall in all cases be without interest.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(a.) The executor pays out of the estate an unrounded claim. He is liable to make good the loss caused by the payment.

(b.) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(c.) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(a.) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b.) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Saving-clause.

149. Nothing herein contained shall—

(a) validate any testamentary disposition which would otherwise have been invalid;

(b) invalidate any such disposition which would otherwise have been valid;

(c) deprive any person of any right of maintenance to which he would otherwise have been entitled; or

(d) affect the rights, duties and privileges of the Administrator General of Bengal, Madras or Bombay.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan, Buddhist or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

151. In Act No. XXVII of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), sections 15 and 16 and the proviso to section 13 shall be repealed.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII of 1860, or Bombay Regulation No. VIII of 1827; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding:

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. In the Court-fees Act, 1870, schedule I, Nos. 11 and 12, in the third column, after the words "amount or value," the following shall be inserted, namely:—

"Provided that, when after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant."

154. The following amendments shall be made in the Hindú Wills Act, 1870 (namely):—

(a.) For the portion of section two commencing with the words "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted.

(b.) The third clause of section three and the last clause of section six shall be repealed.

(c.) In section six, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and three" shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindú, Muhammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which, before this Act comes into force have been made in British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

156. In the second schedule to the Indian Limitation Act, 1877, No. 43, after the figures "321," the following shall be inserted, namely—"or under the Probate and Administration Act, 1881, section 139 or 140."

D. FITZPATRICK,
Secretary to the Government of India.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January 1881, and was promulgated for general information in the *Gazette of India* on the 22nd January 1881:—

Act No. VI. of 1881.

An Act to make further provision for the grant of Probate and Letters of Administration in non-contentious cases.

WHEREAS it is expedient to make further provision for the grant of probate and letters of administration in non-contentious cases; It is hereby enacted as follows:—

1. This Act may be called "The District Delegates Act, 1881.":

Extent. It extends to the whole of British India;

and it shall come into force on the first day of April 1881.

2. After section 235 of the Indian Succession Act, 1865, the following section shall be added:—

"235A. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Power to appoint Delegate of District Judge to deal with non-contentious cases.

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

"Persons so appointed shall be called 'District Delegates'."

3. After section 241 of the said Act, the following section shall be added:—

"241A. Probate and letters of administration may be granted by Delegate.

may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate."

4. To sections 244 and 246 of the said Act, respectively, the following words shall be added:—

"and when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate."

Substitution of section for section 251 of same Act.

5. For section 251 of the said Act, the following section shall be substituted:—

"251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same."

6. In section 253 of the said Act, after the word "Judge" the words "or officer," and after the word "made" the words "or notice has been given of its entry with some other Delegate," shall be inserted.

7. After section 253 of the said Act the following sections shall be added:—

"253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By 'contention' is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf to oppose the proceeding.

"253B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

"253C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any docu-

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

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1. This Act may be called "The District Delegates Act, 1881.":

Extent. It extends to the whole of British India;

and it shall come into force on the first day of April 1881.

2. After section 235 of the Indian Succession Act, 1865, the following section shall be added :—

"235A. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe :

Power to appoint Delegate of District Judge to deal with non-contentious cases.

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

"Persons so appointed shall be called 'District Delegates'."

3. After section 241 of the said Act, the following section shall be added :—

"241A. Probate and letters of administration may be granted by Delegate. Probate and letters of administration may be granted by Delegate. that purpose to any District Delegate, be granted by him in any case in

which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate."

4. To sections 244 and 246 of the said Act, respectively, the following words shall be added :— "and when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate."

Substitution of section for section 251 of same Act.

5. For section 251 of the said Act, the following section shall be substituted :—

"251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same."

6. In section 253 of the said Act, after the word "Judge" the words "or officer," and after the word "made" the words "or notice has been given of its entry with some other Delegate," shall be inserted.

7. After section 253 of the said Act the following sections shall be added :—

"253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

"Explanation.—By 'contention' is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf to oppose the proceeding.

"253 B. In every case in which there is no contention, but it appears doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

"253C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

Procedure where there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents

ments that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge."

8. In the said Act, sections 254 and 255, respectively, after the words "I, Judge of the District of _____," the words "(or Delegate appointed for granting probate or letters of admi-

nistration in (*here insert the limits of the Delegate's jurisdiction*))"; and in section 308, after the words "District Judge by whom" the words "or by whose District Delegate" shall be inserted.

9. In the said Act, sections 246, 250, 255 and 259, after the words "District Judge," and in section 250 and section 254 (when it first occurs) after the word "Judge," the words "or District Delegate" shall be inserted respectively.

D. FITZPATRICK,
Secretary to the Government of India.

THE



Bombay Government Gazette.

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THURSDAY, 17TH FEBRUARY 1881.

Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 5th February 1881, and was promulgated for general information in the *Gazette of India* on the 12th February 1881:—

Act No. VIII. of 1881.

THE PETROLEUM ACT, 1881.

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THE SCHEDULE.

An Act to regulate the importation, possession and transport of Petroleum and other fluids of a like nature.

WHEREAS it is expedient to regulate the importation, possession and transport of petroleum and other fluids of a like nature; It is hereby enacted as follows:—

Preliminary.

1. This Act may be called "The Petroleum Act, 1881"; and it shall come into force on the first day of July, 1881.

Short title.

Commencement.

The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct.

Local extent.

2. The Indian Ports Act, 1875, section thirty-seven, and Bengal Act No. III. of 1865 (to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of Inflammable Oils in Ports and places within the Provinces under the control of the Lieutenant-Governor of Bengal) are hereby repealed.

Repeal of enactments.

3. In this Act, unless there is something repugnant in the subject or context,—

Interpretation-clause.

"Petroleum" includes also the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, kerosine, paraffine oil, mineral oil, petroline, gasoline, benzol, benzoline, benzine and any inflammable liquid that is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any products of petroleum,

but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer.

Explanation.—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus, and in the manner described in the Schedule hereto annexed.

"Dangerous petroleum" means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer:

"Import" means to bring into British India by sea or land:

and "importation" means the bringing into British India as aforesaid.

"Transport" means to remove from one place to another within British India:

Dangerous Petroleum.

4. No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported, or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

Dangerous petroleum in quantities exceeding 40 gallons.

Every application for such a license shall be in writing, and shall declare—

Application for license to import, transport or possess such petroleum.

(a) the quantity of such petroleum which it is desired to import, transport or possess, as the case may be;

(b) the purpose for which the applicant believes that such petroleum will be used; and

(c) that petroleum other than dangerous petroleum cannot be used for such purpose.

If the Local Government sees reason to believe that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit.

Power to grant license.

5. No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license:

Dangerous petroleum in quantities not exceeding 40 gallons.

Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware or metal vessels, each of which contains not more than a pint and is securely stopped.

6. All dangerous petroleum to be marked:

Vessels containing dangerous petroleum to be marked.

(a) which is kept at any place after seven days from the date on which it is imported, or

(b) which is transported, or

(c) which is sold or exposed for sale, shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof.

Petroleum generally.

7. The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum and in particular—

Power to make rules as to the importation of petroleum.

(a) for ascertaining the quantity and description of any petroleum on board a ship;

(b) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof;

(c) to determine the ports at which only petroleum may be imported; and

(d) to regulate the time and mode of, and the precautions to be taken on, landing or transhipping any petroleum.

In this section—

“Ship” includes anything made for the conveyance by water of human beings or property :

“Master” includes every person (except a Pilot or Harbour Master) having for the time being the charge or control of a ship.

8. No quantity of petroleum exceeding five hundred gallons, shall be kept by any one person or on the same premises or shall be transported except under and in accordance with the conditions of a license granted under this Act.

9. The Local Government may from time to time make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

Such rules may provide for the following among other matters, that is to say—

in the case of licenses to possess petroleum—

(a) the nature and situation of the premises for which they may be granted, and

(b) the inspection of such premises and the testing of petroleum found thereon ;

in the case of licenses to transport petroleum—

(c) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(d) the stoppage and inspection of it during transit ;

in the case of both such licenses—

(e) the authority by which the license may be granted ;

(f) the fee to be charged for it ;

(g) the quantity of petroleum it is to cover ;

(h) the conditions which may be inserted in it ;

(j) the time during which it is to continue in force ; and

(k) the renewal of the license.

10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples.

11. When any such officer has, in exercise of the powers conferred by section ten, or by purchase, obtained a sample of petroleum in the possession of a dealer, he may give a notice in writing

to such dealer informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his Agent may be present at such testing.

12. On any such testing if it appears to the officer or other person so testing that the petroleum from which such sample has been taken is or is not dangerous petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein ; and a certified copy of such certificate shall be given gratis to the dealer at his request.

Penalties.

13. Any person who, in contravention of this Act or of any rules made hereunder, imports, possesses or transports any petroleum ; and any person who otherwise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

14. Any person keeping, transporting, selling or exposing for sale petroleum in vessels not marked or labelled as prescribed by section six, shall be punished with fine which may extend to fifty rupees.

15. Any dealer in petroleum who refuses or neglects to show to any officer authorized under section ten any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

16. In any case in which an offence under section thirteen or section fourteen has been committed, the convicting Magistrate may direct that,—

(a) the petroleum in respect of which the offence has been committed, or

(b) where the offender is importing or transporting or is in possession of any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing, or transporting, or is in possession of,

shall, together with the tins or other vessels in which it is contained, be confiscated.

17. The criminal jurisdiction under this Act shall, in the towns of Calcutta, Madras, and Bombay, be exercised by a Presidency Magistrate, and elsewhere by a Magistrate of the first class or (where specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class.

Miscellaneous.

18. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law :

Provided that no such rule shall be so published without the previous sanction of the Governor-General in Council.

19. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by such notification fix, in substitution for the quantities of petroleum fixed by sections four, five and eight, the quantities of such fluid to which these sections shall apply.

The Governor General in Council may by a like notification cancel any notification issued under this section.

THE SCHEDULE.

Specification explanatory of the Test Apparatus.

The following is a description of the details of the apparatus :—

The oil-cup consists of a cylindrical vessel 2" diameter, $2\frac{2}{10}$ " height (internal), with outward projecting rim $\frac{5}{10}$ " wide, $\frac{3}{8}$ " from the top and $1\frac{7}{8}$ " from the bottom of the cup. It is made of gun metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}$ ". The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.) which carries the thermometer and test lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate: it is provided with a spout the mouth of which is $\frac{1}{16}$ " in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{2}$ " below the centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{5}{10}$ " by $\frac{4}{10}$ ", and two smaller ones, $\frac{3}{10}$ " by $\frac{2}{10}$ ", close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in

the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3" diameter and $2\frac{1}{2}$ " height, and an outer one of $5\frac{1}{2}$ " diameter and $5\frac{1}{2}$ " height; they are soldered to a circular copper plate (20 B. W. G.) perforated in the centre, which forms the top of the bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}$ ", that is, its diameter is about $\frac{6}{8}$ " greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil cup. The exact distance between the sides and bottom of the bath of the oil lamp is $1\frac{1}{2}$ ". A split socket similar to that on the cover of the oil cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}$ ". One of the three legs of the stand serves as support for the spirit lamp, attached to it by means of a small swing bracket. The distance of the wick holder from the bottom of the bath is 1".

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}$ " measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{4}$ ".

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

Directions for applying the Test.

1. The test apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water-bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape oil up to the lower edge of the opening of the spout or wick tube. The lamp is trimmed so that when lighted it gives a flame of about 0.15 of an inch diameter, and this size of flame which is represented by the projecting white bead on the cover of the oil cup is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil lamp, and for this purpose a test flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm

weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and if it exceeds 65°, the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test lamp is then placed in position upon the lid of the cup, the lead line or pendulum,* which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66°, the operation of testing is to be commenced, the test flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test apparatus to determine the flashing points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air chamber which surrounds the cup is filled with cold water, to a depth of 1½ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

* This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight.

D. FITZPATRICK,
Secretary to the Government of India.

[Published with the "Bombay Government Gazette" on the 24th February 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 5th February 1881, and was promulgated for general information in the *Gazette of India* on the 12th February 1881 :—

Act No. VIII. of 1881.

THE PETROLEUM ACT, 1881.

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THE SCHEDULE.

An Act to regulate the importation, possession and transport of Petroleum and other fluids of a like nature.

WHEREAS it is expedient to regulate the importation, possession and transport of petroleum and other fluids of a like nature; It is hereby enacted as follows :—

Preliminary.

- | | |
|---------------|---|
| Short title. | 1. This Act may be called "The Petroleum Act, 1881"; and it shall come into force on the first day of July, 1881. |
| Commencement. | |

The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct.

2. The Indian Ports Act, 1875, section thirty-seven, and Bengal Act No. III, of 1865 (to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of Inflammable Oils in Ports and places within the Provinces under the control of the Lieutenant-Governor of Bengal) are hereby repealed.

- | | |
|---|--|
| 3. In this Act, unless there is something repugnant in the subject or context,— | |
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"petroleum" includes also the liquids commonly known by the names of "petroleum," rock oil, Rangoon oil, Burma oil, kerosine, paraffine oil, mineral oil, petroline, gasoline, benzol, benzoline, benzine and any inflammable liquid that is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any products of petroleum,

but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer.

Explanation.—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus and in the manner described in the Schedule hereto annexed :

"dangerous petroleum" means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer :

"import." "import" means to bring into British India by sea or land :

and "importation" means the bringing into British India as aforesaid :

"transport" means to remove from one place to another within British India.

Dangerous Petroleum.

4. No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported, or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

Dangerous petroleum in quantities exceeding 40 gallons. Every application for such a license shall be in writing, and shall declare—

(a) the quantity of such petroleum which it is desired to import, transport or possess, as the case may be ;

(b) the purpose for which the applicant believes that such petroleum will be used ; and

(c) that petroleum other than dangerous petroleum cannot be used for such purpose.

If the Local Government sees reason to believe that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit.

5. No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license :

Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware or metal vessels, each of which contains not more than a pint and is securely stopped.

Vessels containing dangerous petroleum to be marked. 6. All dangerous petroleum :

(a) which is kept at any place after seven days from the date on which it is imported, or

(b) which is transported, or

(c) which is sold or exposed for sale,

shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof.

Petroleum generally.

7. The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum, and in particular—

(a) for ascertaining the quantity and description of any petroleum on board a ship ;

(b) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof ;

(c) to determine the ports at which only petroleum may be imported ; and

(d) to regulate the time and mode of, and the precautions to be taken on, landing or transhipping any petroleum.

In this section—

"Ship" includes anything made for the conveyance by water of human beings or property :

"Master" includes every person (except a Pilot or Harbour Master) having for the time being the charge or control of a ship.

8. No quantity of petroleum exceeding five hundred gallons, shall be kept by any one person or on the same premises or shall be transported except under and in accordance with the conditions of a license granted under this Act.

9. The Local Government may from time to time make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

Such rules may provide for the following among other matters, that is to say—

in the case of licenses to possess petroleum—

(a) the nature and situation of the premises for which they may be granted, and

(b) the inspection of such premises and the testing of petroleum found thereon ;

in the case of licenses to transport petroleum—

(c) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(d) the stoppage and inspection of it during transit ;

in the case of both such licenses—

(e) the authority by which the license may be granted ;

(f) the fee to be charged for it ;

(g) the quantity of petroleum it is to cover ;

(h) the conditions which may be inserted in it ;

(j) the time during which it is to continue in force ; and

(k) the renewal of the license.

10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples.

11. When any such officer has, in exercise of the powers conferred by section ten, or by purchase, obtained a sample of petroleum in the possession of a dealer, he may give a notice in writing to such dealer informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his Agent may be present at such testing.

12. On any such testing if it appears to the officer or other person so testing that the petroleum from which such sample has been taken is or is not dangerous petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein ; and a certified copy of such certificate shall be given gratis to the dealer at his request.

Penalties.

13. Any person who, in contravention of this Act or of any rules made hereunder, imports, possesses or transports any petroleum ; and any person who otherwise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a

term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

14. Any person keeping, transporting, selling or exposing for sale petroleum in vessels not marked or labelled as prescribed by section six, shall be punished with fine which may extend to fifty rupees.

15. Any dealer in petroleum who refuses or neglects to show to any officer authorized under section ten any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

16. In any case in which an offence under section thirteen or section fourteen has been committed, the convicting Magistrate may direct that,—

(a) the petroleum in respect of which the offence has been committed, or

(b) where the offender is importing or transporting or is in possession of any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing, or transporting, or is in possession of,

shall, together with the tins or other vessels in which it is contained, be confiscated.

17. The criminal jurisdiction under this Act shall, in the towns of Calcutta, Madras, and Bombay, be exercised by a Presidency Magistrate, and elsewhere by a Magistrate of the first class or (where specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class.

Miscellaneous.

18. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law :

Provided that no such rule shall be so published without the previous sanction of the Governor General in Council.

19. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by such notification fix, in substitution for the quantities of petroleum fixed by sections four, five and eight, the quantities of such fluid to which these sections shall apply.

The Governor General in Council may by a like notification cancel any notification issued under this section.

THE SCHEDULE.

Specification explanatory of the Test Apparatus.

The following is a description of the details of the apparatus:—

The oil-cup consists of a cylindrical vessel 2" diameter, $2\frac{2}{10}$ " height (internal), with outward projecting rim $\frac{5}{10}$ " wide, $\frac{3}{8}$ " from the top and $1\frac{1}{2}$ " from the bottom of the cup. It is made of gun metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}$ ". The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.) which carries the thermometer and test lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate: it is provided with a spout the mouth of which is $\frac{1}{8}$ " in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{2}$ " below the centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{5}{8}$ " by $\frac{4}{8}$ ", and two smaller ones, $\frac{3}{8}$ " by $\frac{2}{8}$ ", close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3" diameter and $2\frac{1}{2}$ " height, and an outer one of $5\frac{1}{2}$ " diameter and $5\frac{1}{2}$ " height; they are soldered to a circular copper plate (20 B. W. G.) perforated in the centre, which forms the top of the bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}$ ", that is, its diameter is about $\frac{6}{8}$ " greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil cup. The exact distance between the sides and bottom of the bath of the oil lamp is $1\frac{1}{2}$ ". A split socket similar

to that on the cover of the oil cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}$ ". One of the three legs of the stand serves as support for the spirit lamp, attached to it by means of a small swing bracket. The distance of the wick holder from the bottom of the bath is 1".

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}$ " measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{4}$ ".

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

Directions for applying the Test.

1. The test apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water-bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape oil up to the lower

edge of the opening of the spout or wick tube. The lamp is trimmed so that when lighted it gives a flame of about 0.15 of an inch diameter, and this size of flame which is represented by the projecting white bead on the cover of the oil cup is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil lamp, and for this purpose a test flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and if it exceeds 65°, the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test lamp is then placed in position upon the lid of the cup, the lead line or pendulum,* which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66°, the operation of testing is to be commenced, the test flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test apparatus to determine the flashing points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air chamber which surrounds the cup is filled with cold water, to a depth of 1½ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

* This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight.

D. FITZPATRICK,
Secretary to the Government of India.

[Published with the "Bombay Government Gazette" on the 3rd March 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 5th February 1881, and was promulgated for general information in the *Gazette of India* on the 12th February 1881:—

Act No. VIII. of 1881.

THE PETROLEUM ACT, 1881.

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17. Jurisdiction.

Miscellaneous.

18. Rules when to have force of law.
19. Power to apply this Act to other fluids.

THE SCHEDULE.

An Act to regulate the importation, possession and transport of Petroleum and other fluids of a like nature.

WHEREAS it is expedient to regulate the importation, possession and transport of petroleum and other fluids of a like nature; It is hereby enacted as follows:—

Preliminary.

- | | |
|---------------|---|
| Short title. | 1. This Act may be called "The Petroleum Act, 1881"; and it shall come into force on the first day of July, 1881. |
| Commencement. | |

The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct.

2. The Indian Ports Act, 1875, section thirty-seven, and Bengal Act No. III. of 1865 (to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of Inflammable Oils in Ports and places within the Provinces under the control of the Lieutenant-Governor of Bengal) are hereby repealed.

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|---|--|
| 3. In this Act, unless there is something repugnant in the subject or context,— | |
| Interpretation-clause. | |

"petroleum" includes also the liquids commonly known by the names of "petroleum." rock oil, Rangoon oil, Burma oil, kerosine, paraffine oil, mineral oil, petroline, gasoline, benzol, benzoline, benzine and any inflammable liquid that is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any products of petroleum,

but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer.

Explanation.—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus and in the manner described in the Schedule hereto annexed :

"dangerous petroleum" means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer :

"import." "import" means to bring into British India by sea or land :

and "importation" means the bringing into British India as aforesaid :

"transport" means to remove from one place to another within British India.

Dangerous Petroleum.

4. No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported, or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

Every application for such a license shall be in writing, and shall declare—

(a) the quantity of such petroleum which it is desired to import, transport or possess, as the case may be ;

(b) the purpose for which the applicant believes that such petroleum will be used ; and

(c) that petroleum other than dangerous petroleum cannot be used for such purpose.

If the Local Government sees reason to believe that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit.

5. No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license :

Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware or metal vessels, each of which contains not more than a pint and is securely stopped.

Vessels containing dangerous petroleum to be marked. 6. All dangerous petroleum:

(a) which is kept at any place after seven days from the date on which it is imported, or

(b) which is transported, or

(c) which is sold or exposed for sale,

shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof.

Petroleum generally.

7. The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum, and in particular—

(a) for ascertaining the quantity and description of any petroleum on board a ship ;

(b) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof ;

(c) to determine the ports at which only petroleum may be imported ; and

(d) to regulate the time and mode of, and the precautions to be taken on, landing or transhipping any petroleum.

In this section—

"Ship" includes anything made for the conveyance by water of human beings or property :

"Master" includes every person (except a Pilot or Harbour Master) having for the time being the charge or control of a ship.

8. No quantity of petroleum exceeding five hundred gallons, shall be kept by any one person or on the same premises or shall be transported except under and in accordance with the conditions of a license granted under this Act.

9. The Local Government may from time to time make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

Such rules may provide for the following among other matters, that is to say—

in the case of licenses to possess petroleum—

(a) the nature and situation of the premises for which they may be granted, and

(b) the inspection of such premises and the testing of petroleum found thereon ;
in the case of licenses to transport petroleum—

(c) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(d) the stoppage and inspection of it during transit ;

in the case of both such licenses—

(e) the authority by which the license may be granted ;

(f) the fee to be charged for it ;

(g) the quantity of petroleum it is to cover ;

(h) the conditions which may be inserted in it ;

(j) the time during which it is to continue in force ; and

(k) the renewal of the license.

10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples.

11. When any such officer has, in exercise of the powers conferred by section ten, or by purchase, obtained a sample of petroleum in the possession of a dealer, he may give a notice in writing to such dealer informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his Agent may be present at such testing.

12. On any such testing if it appears to the officer or other person so testing that the petroleum from which such sample has been taken is or is not dangerous petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein ; and a certified copy of such certificate shall be given gratis to the dealer at his request.

Penalties.

13. Any person who, in contravention of this Act or of any rules made hereunder, imports, possesses or transports any petroleum ; and any person who otherwise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a

term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

14. Any person keeping, transporting, selling or exposing for sale petroleum in vessels not marked or labelled as prescribed by section six, shall be punished with fine which may extend to fifty rupees.

15. Any dealer in petroleum who refuses or neglects to show to any officer authorized under section ten any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

16. In any case in which an offence under section thirteen or section fourteen has been committed, the convicting Magistrate may direct that,—

(a) the petroleum in respect of which the offence has been committed, or

(b) where the offender is importing, or transporting or is in possession of any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing, or transporting, or is in possession of,

shall, together with the tins or other vessels in which it is contained, be confiscated.

17. The criminal jurisdiction under this Act shall, in the towns of Calcutta, Madras, and Bombay, be exercised by a Presidency Magistrate, and elsewhere by a Magistrate of the first class or (where specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class.

Miscellaneous.

18. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law :

Provided that no such rule shall be so published without the previous sanction of the Governor General in Council.

19. The Governor General in Council may, from time to time, by notification in the Gazette of India, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by such notification fix, in substitution for the quantities of petroleum fixed by sections four, five and eight, the quantities of such fluid to which these sections shall apply.

The Governor General in Council may by a like notification cancel any notification issued under this section.

THE SCHEDULE.

Specification explanatory of the Test Apparatus.

The following is a description of the details of the apparatus:—

The oil-cup consists of a cylindrical vessel 2" diameter, $2\frac{2}{10}$ " height (internal), with outward projecting rim $\frac{5}{10}$ " wide, $\frac{3}{8}$ " from the top and $1\frac{1}{8}$ " from the bottom of the cup. It is made of gun metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}$ ". The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.) which carries the thermometer and test lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate: it is provided with a spout the mouth of which is $\frac{1}{16}$ " in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{2}$ " below the centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{5}{10}$ " by $\frac{4}{10}$ ", and two smaller ones, $\frac{3}{10}$ " by $\frac{2}{10}$ ", close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3" diameter and $2\frac{1}{2}$ " height, and an outer one of $5\frac{1}{2}$ " diameter and $5\frac{1}{2}$ " height; they are soldered to a circular copper plate (20 B. W. G.) perforated in the centre, which forms the top of the bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}$ ", that is, its diameter is about $\frac{3}{8}$ " greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil cup. The exact distance between the sides and bottom of the bath of the oil lamp is $1\frac{1}{2}$ ". A split socket similar

to that on the cover of the oil cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}$ ". One of the three legs of the stand serves as support for the spirit lamp, attached to it by means of a small swing bracket. The distance of the wick holder from the bottom of the bath is 1".

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}$ " measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{4}$ ".

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

Directions for applying the Test.

1. The test apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water-bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape oil up to the lower

edge of the opening of the spout or wick tube. The lamp is trimmed so that when lighted it gives a flame of about 0.15 of an inch diameter, and this size of flame which is represented by the projecting white bead on the cover of the oil cup is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil lamp, and for this purpose a test flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and if it exceeds 65°, the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test lamp is then placed in position upon the lid of the cup, the lead line or pendulum,* which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66°, the operation of testing is to be commenced, the test flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test apparatus to determine the flashing points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air chamber which surrounds the cup is filled with cold water, to a depth of 1½ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

* This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight.

D. FITZPATRICK,

Secretary to the Government of India.

THE



Bombay Government Gazette.

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Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 25th February 1881, and was promulgated for general information in the *Gazette of India* on the 26th February 1881:—

Act No. IX. of 1881.

An Act to amend the Administrator General's Act, 1874.

WHEREAS Hindús, Muhammadans and Buddhists are exempted from the operation of certain provisions of the Administrator General's Act, 1874, but are subject to the operation of certain other provisions of the said Act, and it is expedient that Pársís should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindús, Muhammadans and Buddhists; and whereas it is expedient to amend the said Act in other particulars hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called "The Administrator General's Act, 1881":
 Short title. and shall come into
 Commencement. * force at once.
2. In sections 16, 17, 18 and 64, respectively, of the said Act, between the word "Muhammadan" and the words "or Buddhist," wherever they occur, the word "Pársí" shall be inserted.

IV.—9

3. After section twenty-three of the same Act
 New section inserted the following section
 after section 23 of same. shall be inserted:—

"23A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such property to such Administrator General: Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

"Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same."

4. For section twenty-eight of the same Act, the following section shall be substituted:—
 New section substituted
 for section 28 of same.

"28. When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

* "Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively."

5. In section thirty-six of the same Act, the words "not being a Hindú, Muhammadan or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act" shall be repealed; and in section thirty-seven of the same Act, after the words "effects of the deceased," the following shall be inserted, namely:— "and such deceased was not a Hindú, Muhammadan, Pársí, or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act."

6. In section thirty-eight of the same Act, for the words "such certificate" the words "certificate" under section thirty-six or thirty-seven shall be substituted; and the

words "which oath or affirmation the Administrator General is hereby authorized to administer or take" shall be repealed.

7. After section fifty-five of the same Act, the following section shall be inserted:—

"55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate."

8. Before section sixty-one of the same Act, the following section shall be inserted:—

"60A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question."

9. Nothing herein contained shall affect any probate, letters of administration or certificate granted or vested under the said Act before the passing of this Act.

D. FITZPATRICK,

Secretary to the Government of India.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February 1881, and was promulgated for general information in the *Gazette of India*, on the 26th February 1881:—

Act No. X. of 1881.

An Act to amend the Coroners' Act, 1871, and for other purposes.

WHEREAS under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court;

and whereas it is expedient to empower the Local Government to alter the local limits of the said Coroner's jurisdiction;

and whereas it is also expedient to amend the said Act in other particulars hereinafter appearing;

and whereas it is also expedient to correct an error in section nine of Madras Act No. VIII. of 1867 (*an Act to incorporate the Police of the Town of Madras with the general Police of the Madras Presidency, and for other purposes*) as amended by the Code of Criminal Procedure; It is hereby enacted as follows:—

1. This Act may be called "The Coroners' Act, 1881," and shall come into force on the passing thereof.

2. The second clause of the first section of the Coroners' Act, 1871, is hereby repealed.

3. The Governor of Fort St. George in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras:

Provided that such limits shall not extend beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

4. When, in exercise of the power conferred by section three, any area within the local limits of the said ordinary original civil jurisdiction is excluded from the local limits of the Coroner's jurisdiction, sections one hundred and thirty-three to one hundred and thirty-five (both inclusive) of the Code of Criminal Procedure shall extend to such area while so excluded, and all functions assigned to a Magistrate by those sections shall be discharged by the Commissioner of Police.

5. In section eight of the Coroners' Act, 1871, for the words "is informed," the words "has reason to believe" shall be substituted.

6. For the first two clauses of section seventeen of the Coroners' Act, 1871, the following shall be substituted, that is to say:—

"It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses: the Coroner shall enquire of such circumstances and the causes of death, and, if before or during the enquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

"Any person disobeying such summons shall be deemed to have committed an offence under section one hundred and seventy-four, section one hundred and seventy-five or section one hundred and seventy-six of the Indian Penal Code, as the case may be."

7. To section twenty of the Coroners' Act, 1871, the following clause shall be added, that is to say:—

"For the purposes of section twenty-six of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate."

8. For section nine of the said Madras Act No. VIII. of 1867, the following section shall be substituted:—

"9. The Town Police shall be governed by all the provisions of the Criminal Procedure Code contained in sections 89, 91 to 103 (both inclusive), 108, 109, 110, 111, 112, 114, 116, 117 (first part), 118, 119, 120, 123, 124, 125, 127, 128, 129, 131, 136, 139, 140, 141, 142, 144, 147, chapter XII., sections 159, 161, 163 to 170 (both inclusive), 174 to 185 (both inclusive), chapter XXVII. (except section 385), sections 415 to 420 (both inclusive) and 480, so far as they are applicable;

"Provided always, that the officer in charge of a Police-station shall not be required to bind over the prosecutor and witnesses as directed in section 123 of the said Code, if their immediate attendance can be procured without recognizances."

9. The portion of schedule V of the Code of Criminal Procedure, under the heading "Acts of the Governor of Madras in Council," shall be read as if the letter and figure "s. 9" in the first column, and all the words and figures in the second and third columns, opposite the said letter and figure, were omitted.

D. FITZPATRICK,
Secretary to the Government of India.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February 1881, and was promulgated for general information in the *Gazette of India* on the 26th February 1881:—

Act No. XI. of 1881.

An Act to give power to prohibit the levy of Municipal taxes in certain cases.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows:—

1. This Act may be called "The Municipal Taxation Act, 1881."
- It extends to the whole of British India:
- and shall come into force at once.
2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.
3. Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—
- (a) payable by any person subject to the Army Discipline and Regulation Act, 1879; or the Indian Articles of War, who is compelled by the exigencies of military duty to reside within the limits of a municipality; or
- (b) payable by the Secretary of State for India in Council.

The Governor General in Council may, by a like order, rescind any such prohibition.

4. So long as any order made under section three, prohibiting the Secretary of State in Council to pay taxes referred to in section 3, clause (a), levy of a tax on any person mentioned in clause (a) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person:

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs, to keep.

5. So long as any order made under section three, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality, or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive.

D. FITZPATRICK,
Secretary to the Government of India.

[Published with the "Bombay Government Gazette" on the 10th March 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 25th February 1881, and was promulgated for general information in the *Gazette of India* on the 26th February 1881:—

Act No. IX. of 1881.

An Act to amend the Administrator General's Act, 1874.

WHEREAS Hindús, Muhammadans and Buddhists are exempted from the operation of certain provisions of the Administrator General's Act, 1874, but are subject to the operation of certain other provisions of the said Act, and it is expedient that Pársís should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindús, Muhammadans and Buddhists; and whereas it is expedient to amend the said Act in other particulars hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called "The Administrator General's Act, 1881":

and shall come into force at once.

2. In sections 16, 17, 18 and 64, respectively, of the said Act, between the word "Muhammadan" and the words "or Buddhist," wherever they occur, the word "Pársí" shall be inserted.

3. After section twenty-three of the same Act, the following section shall be inserted:—

"23A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such

property to such Administrator General: Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either, or both of the other Presidencies.

"Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same."

4. For section twenty-eight of the same Act, the following section shall be substituted:—

"28. When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

"Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively."

5. In section thirty-six of the same Act, the words "not being a Hindú, Muhammadan or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act" shall be repealed; and in section thirty-seven of the same Act, after the words "effects of the deceased," the following shall be inserted, namely:—"and such deceased was not a Hindú, Muhammadan, Pársí, or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act."

6. In section thirty-eight of the same Act, for the words "such certificate" the words "certificate under section thirty-six or thirty-seven" shall be substituted; and the words "which oath or affirmation the Administrator General is hereby authorized to administer or take" shall be repealed.

Amendment of section 38 of same.

7. After section fifty-five of the same Act, the following section shall be inserted:—

New section inserted after section 55 of same.

"55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to

Commission on assets collected beyond Presidency.

if such assets had been collected and distributed by him, and to no higher rate."

New section inserted before section 61 of same.

8. Before section sixty-one of the same Act, the following section shall be inserted:—

"60A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question."

9. Nothing herein contained shall affect any probate, letters of administration or certificate granted or vested under the said Act before the passing of this Act.

Saving of letters and certificates already granted

D. FITZPATRICK,

Secretary to the Government of India.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February 1881, and was promulgated for general information in the *Gazette of India*, on the 26th February 1881:—

Act No. X. of 1881.

An Act to amend the Coroners' Act, 1871, and for other purposes.

WHEREAS under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court;

and whereas it is expedient to empower the Local Government to alter the local limits of the said Coroner's jurisdiction;

and whereas it is also expedient to amend the said Act in other particulars hereinafter appearing;

and whereas it is also expedient to correct an error in section nine of Madras Act No. VIII. of 1867 (*an Act to incorporate the Police of the Town of Madras with the general Police of the Madras Presidency, and for other purposes*) as amended by the Code of Criminal Procedure; It is hereby enacted as follows:—

1. This Act may be called "The Coroners' Act, 1881," and shall come into force on the passing thereof.
Short title. Act, 1881, and shall come into force on the passing thereof.
Commencement. thereof.
2. The second clause of the first section of the Coroners' Act, 1871, is hereby repealed.
Partial repeal of Act the Coroners' Act, 1871, is hereby repealed.
IV of 1871, section 1.
3. The Governor of Fort St. George in Council may, from time to time, with the previous sanction of the Governor General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras:
Power to alter local Council may, from time to time, with the previous sanction of the Governor General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras:
limits of jurisdiction of to time, with the previous sanction of the Governor Coroner of Madras. General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras:

Provided that such limits shall not extend beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

4. When, in exercise of the power conferred by section three, any area within the local limits of the said ordinary original civil jurisdiction is excluded from the local limits of the Coroner's jurisdiction, sections one hundred and thirty-three to one hundred and thirty-five (both inclusive) of the Code of Criminal Procedure shall extend to such area while so excluded, and all functions assigned to a Magistrate by those sections shall be discharged by the Commissioner of Police.
5. In section eight of the Coroners' Act, 1871, for the words "is informed," the words "has reason to believe" shall be substituted.
Act IV. of 1871, section 8, amended. for the words "is informed," the words "has reason to believe" shall be substituted.

IV.—9 b

6. For the first two clauses of section seventeen of the Coroners' Act, 1871, the following shall be substituted, that is to say:—
Section 17 of same Act amended. of the Coroners' Act, 1871, the following shall be substituted, that is to say:—

"It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses: the Coroner shall enquire of such circumstances and the cause of death, and, if before or during the enquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

"Any person disobeying such summons shall be deemed to have committed an offence under section one hundred and seventy-four, section one hundred and seventy-five or section one hundred and seventy-six of the Indian Penal Code, as the case may be."

7. To section twenty of the Coroners' Act, 1871, the following clause shall be added, that is to say:—
Addition to section 20 shall be added, that is to say:—
of same Act.

"For the purposes of section twenty-six of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate."

8. For section nine of the said Madras Act No. VIII. of 1867, the following section shall be substituted:—
New section substituted the said Madras Act No. VIII. of 1867, the following section shall be substituted:—
for section 9 of Madras VIII. of 1867, the following section shall be substituted:—
Act VIII. of 1867.

"9. The Town Police shall be governed by all the provisions of the Criminal Procedure Code contained in sections 89, 91 to 103 (both inclusive), 108, 109, 110, 111, 112, 114, 116, 117 (first part), 118, 119, 120, 123, 124, 125, 127, 128, 129, 131, 136, 139, 140, 141, 142, 144, 147, chapter XII., sections 159, 161, 163 to 170 (both inclusive), 174 to 185 (both inclusive), chapter XXVII. (except section 385), sections 415 to 420 (both inclusive) and 480, so far as they are applicable:

"Provided always, that the officer in charge of a Police-station shall not be required to bind over the prosecutor and witnesses as directed in section 123 of the said Code, if their immediate attendance can be procured without recognizances."

9. The portion of schedule V of the Code of Criminal Procedure, under the heading "Acts of the Governor of Madras in Council," shall be read as if the letter and figure "s. 9" in the first column, and all the words and figures in the second and third columns, opposite the said letter and figure, were omitted.
The portion of schedule V of the Code of Criminal Procedure, under the heading "Acts of the Governor of Madras in Council," shall be read as if the letter and figure "s. 9" in the first column, and all the words and figures in the second and third columns, opposite the said letter and figure, were omitted.
Act X of 1872, schedule V, in part repealed. Criminal Procedure, under the heading "Acts of the Governor of Madras in Council," shall be read as if the letter and figure "s. 9" in the first column, and all the words and figures in the second and third columns, opposite the said letter and figure, were omitted.

D. FITZPATRICK,
Secretary to the Government of India.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February 1881, and was promulgated for general information in the *Gazette of India* on the 26th February 1881 :—

Act No. XI. of 1881.

An Act to give power to prohibit the levy of Municipal taxes in certain cases.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows :—

- | | |
|---------------|---|
| Short title. | 1. This Act may be called "The Municipal Taxation Act, 1881." |
| Local extent. | It extends to the whole of British India : |
| Commencement. | and shall come into force at once. |
2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.
3. Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—
- (a) payable by any person subject to the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, who is compelled by the exigencies of military duty to reside within the limits of a municipality; or
- (b) payable by the Secretary of State for India in Council.

The Governor General in Council may, by a like order, rescind any such prohibition.

4. So long as any order made under section three, prohibiting the levy of a tax on any person mentioned in clause (a) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person :

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs, to keep.

5. So long as any order made under section three, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of questions arising under this Act, decision of the Governor General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality, or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive.

D. FITZPATRICK,
Secretary to the Government of India.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February 1881, and was promulgated for general information in the *Gazette of India* on the 26th February 1881:—

Act No. X. of 1881.

An Act to amend the Coroners' Act, 1871, and for other purposes.

WHEREAS under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court;

and whereas it is expedient to empower the Local Government to alter the local limits of the said Coroner's jurisdiction;

and whereas it is also expedient to amend the said Act in other particulars hereinafter appearing;

and whereas it is also expedient to correct an error in section nine of Madras Act No. VIII. of 1867 (*an Act to incorporate the Police of the Town of Madras with the general Police of the Madras Presidency, and for other purposes*) as amended by the Code of Criminal Procedure; It is hereby enacted as follows:—

1. This Act may be called "The Coroners' Act, 1881," and shall come into force on the passing thereof.

Short title.

Commencement.

2. The second clause of the first section of the Coroners' Act, 1871, is hereby repealed.

3. The Governor of Fort St. George in Council may, from time to time, with the previous sanction of the Governor General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras:

Provided that such limits shall not extend beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

4. When, in exercise of the power conferred by section three, any area within the local limits of the said ordinary original civil jurisdiction is excluded from the local limits of the Coroner's jurisdiction, sections one hundred and thirty-three to one hundred and thirty-five (both inclusive) of the Code of Criminal Procedure shall extend to such area while so excluded, and all functions assigned to a Magistrate by those sections shall be discharged by the Commissioner of Police.

5. In section eight of the Coroners' Act, 1871, for the words "is informed," the words "has reason to believe" shall be substituted.

Act IV. of 1871, section 8, amended.

6. For the first two clauses of section seventeen of the Coroners' Act, 1871, the following shall be substituted, that is to say:—

Section 17 of same Act amended.

"It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses: the Coroner shall enquire of such circumstances and the cause of death, and, if before or during the enquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

"Any person disobeying such summons shall be deemed to have committed an offence under section one hundred and seventy-four, section one hundred and seventy-five or section one hundred and seventy-six of the Indian Penal Code, as the case may be."

7. To section twenty of the Coroners' Act, 1871, the following clause shall be added, that is to say:—

Addition to section 20 of same Act.

"For the purposes of section twenty-six of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate."

8. For section nine of the said Madras Act No. VIII. of 1867, the following section shall be substituted:—

New section substituted for section 9 of Madras Act VIII. of 1867.

"9. The Town Police shall be governed by all the provisions of the Criminal Procedure Code contained in sections 89, 91 to 103 (both inclusive), 108, 109, 110, 111, 112, 114, 116, 117 (first part), 118, 119, 120, 123, 124, 125, 127, 128, 129, 131, 136, 139, 140, 141, 142, 144, 147, chapter XII., sections 159, 161, 163 to 170 (both inclusive), 174 to 185 (both inclusive), chapter XXVII. (except section 385), sections 415 to 420 (both inclusive) and 480, so far as they are applicable:

"Provided always, that the officer in charge of a Police-station shall not be required to bind over the prosecutor and witnesses as directed in section 123 of the said Code, if their immediate attendance can be procured without recognizances."

9. The portion of schedule V of the Code of Criminal Procedure, under the heading "Acts of the Governor of Madras in Council," shall be read as if the letter and figure "s. 9" in the first column, and all the words and figures in the second and third columns, opposite the said letter and figure, were omitted.

Act X of 1872, schedule V, in part repealed.

D. FITZPATRICK,

Secretary to the Government of India.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February 1881, and was promulgated for general information in the *Gazette of India* on the 26th February 1881 :—

Act No. XI. of 1881.

An Act to give power to prohibit the levy of Municipal taxes in certain cases.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows :—

1. This Act may be called "The Municipal Taxation Act, 1881."
- It extends to the whole of British India :
- and shall come into force at once.
2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.
3. Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—
- (a) payable by any person subject to the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, who is compelled by the exigencies of military duty to reside within the limits of a municipality; or
- (b) payable by the Secretary of State for India in Council.

The Governor General in Council may, by a like order, rescind any such prohibition.

4. So long as any order made under section three, prohibiting the levy of a tax on any person mentioned in clause (a) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person :

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs, to keep.

5. So long as any order made under section three, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.
6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality, or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive.

D. FITZPATRICK,
Secretary to the Government of India.



Bombay Government Gazette.

Published by Authority.

THURSDAY, 24TH MARCH 1881.

Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th March 1881, and was promulgated for general information in the *Gazette of India* on the 19th March 1881:—

Act No. XV. of 1881.

THE FACTORIES ACT, 1881.

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19. Crown factories.

An Act to regulate labour in Factories.

WHEREAS it is expedient to regulate labour in factories; It is hereby enacted as follows:—

Preamble.

enacted as follows:—

Preliminary.

1. This Act may be called, "The Indian Factories Act, 1881."

Short title.

It applies to the whole of British India, and shall come into force on the first day of July, 1881.

Local extent.

Commencement.

2. In this Act, unless there is something repugnant in the subject or context,—

Interpretation-clause.
"factory" means any premises (other than indigo-factories or premises situated on, and

"factory;"

used solely for the purposes of, a tea or coffee plantation) wherein is carried on, for not less than four months in the whole in any one year, any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale, any article or part of an article; and

(a) wherein steam, water or other mechanical power is used in aid of any such process; and

(b) wherein not less than one hundred persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process; and

every part of a factory shall be deemed to be a factory, except any part used exclusively as a dwelling:

"child."

"child" means a person under the age of twelve years:

"mill-gearing" includes every shaft, whether upright, oblique or horizontal, and every wheel,

"mill-gearing." drum, pulley, rope, driving strap or band, by which the motion of the first moving power is communicated to any machine:

a child who works in a factory, whether for wages or not, either in a manufacturing process or

"employed." handicraft, or in cleaning any part of the factory used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall be deemed to be employed therein within the meaning of this Act.

Inspectors and certifying Surgeons.

3. The Local Government may in its discretion, by notification in the official Gazette, appoint such persons as it thinks fit to be Inspectors of factories within such local limits as it may assign to such Inspectors, and may suspend or dismiss any person so appointed.

In default of such appointment, the Magistrate of the district shall, in virtue of his office, be Inspector of all factories (if any) in the District.

Such Inspectors shall be deemed public servants within the meaning of the Indian Penal Code; and shall be officially subordinate to such authority as the Local Government may, from time to time, indicate in this behalf.

4. Any Inspector of factories may, within the local limits for which he is appointed,

(a) enter with such assistants (if any) as he thinks fit, any factory whenever he has reason to believe that any person is employed therein;

(b) make such examination of the premises and machinery, and of the registers hereinafter prescribed, and take on the spot or otherwise such evidence of any person as such Inspector may deem necessary for carrying out the provisions of this Act;

(c) order that any person shall not be employed in a factory when he has reason to believe that such employment would be in contravention of this Act—

until the age of such person has been certified, in the manner hereinafter provided, to be above seven years; or for more than the time allowed by this Act for the employment of children, until his age has been so certified to be above twelve years.

5. The Civil Surgeon or such other person practising medicine or surgery as the Local Government may, from time to time, appoint in this behalf for any local area (hereinafter called the certifying surgeon) shall at the request of any person employed or desirous of being employed in a factory situate in such local area, or of the parent or guardian of such person, examine such person and grant him a certificate, stating whether his age, as nearly as it can be ascertained from such examination, is above or below seven years, or twelve years, as the case may be.

Children.

6. No child shall be employed in any factory, if he is under the age of seven years.

7. No child shall be actually employed in any factory more than nine hours in any one day;

And no child be employed in any factory on any day without an interval, or intervals, amounting in the whole to at least an hour, being allowed to him for food and rest.

The times at which such intervals shall be allowed, and the length of each interval, shall be fixed by the Local Government for each factory, after ascertaining, as far as possible, the existing practice in such factory and the wishes of the occupier thereof.

The occupier shall set up and maintain, in some conspicuous place in the factory, a printed or written notice, in English and the languages of the District in which the factory is situate, showing the times at which such intervals shall be allowed and the length of each interval.

A child shall not be deemed to be employed within the meaning of the first clause of this section during any interval allowed for food or rest.

8. Every occupier of a factory in which children are employed shall, before the beginning of each month, fix not less than four days in such month on which no child shall be employed in such factory, and shall forthwith give notice of the days so fixed to such officer as the Local Government may, from time to time, appoint in this behalf.

An occupier of a factory may, with the previous sanction of the Inspector, substitute, for any day fixed under this section, another day in the same month.

No child shall be employed in such factory on a day fixed under this section, unless when another day has been substituted for such day as hereinbefore provided, in which event no child shall be employed in such factory on the day so substituted.

9. No occupier of a factory shall employ therein on any day any child who has to his knowledge already been employed on the same day in any other factory.

10. No occupier of a factory shall allow any child to clean any part of the mill-gearing or machinery of such factory while the same is in motion, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of the steam-engine, water-wheel or other mechanical power, as the case may be.

11. The Local Government may direct any occupier of a factory to keep, in such form and with such particulars as such Government may, from time to time, prescribe, registers of the children (if any) employed in such factory, and of their respective employments.

Fencing.

12. (a) Every fly-wheel directly connected with a steam-engine, or water-wheel or other mechanical power in any part of a factory, and every part of steam-engine or water-wheel,

(b) every hoist or teagle near which any person is liable to pass or be employed, and

(c) every other part of the machinery or mill-gearing of a factory which may, in the opinion of the local Inspector, be dangerous if left unfenced, and which he may have ordered to be fenced, shall, while the same is in motion, be kept by the occupier of such factory securely fenced.

Any order under clause (c) may be set aside, on appeal or otherwise, by the Local Government or such authority as it may appoint in this behalf.

Notices.

13. When any accident occurs in a factory causing death or bodily injury whereby the person injured is prevented from returning to his work in the factory during forty-eight hours after the occurrence of the accident, the occupier of such factory, or, in his absence, his principal agent in the management of such factory, shall send such notice of such accident to such authorities in such form and within such time as the Local Government may, from time to time, by rule, direct.

14. Every person shall, within one month after he begins to occupy a factory, send to the local Inspector a written notice containing the name of the factory, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work performed in such factory, the nature and amount of the moving power therein, and the name of the person (if any) under whom the business of the factory is to be carried on.

Penalties.

15. Any person who, in breach of this Act, or of any order or rule made hereunder—

(a) employs any child in any factory ;

(b) neglects to set up or maintain the notice required by section seven or to fix the days referred to in section eight ;

(c) allows any child to perform the work forbidden by, or to work in contravention of, section ten ;

(d) neglects to keep a register in manner prescribed under section eleven ;

(e) neglects to fence any machinery or mill-gearing in any factory ; or

(f) neglects to give any notice, shall be punished with fine which may extend to two hundred rupees :

Provided that—

1st, no prosecution under this section shall be instituted except by, or with the previous sanction of, the local Inspector ; and

2nd, no person shall be liable under this section to more than one penalty for any one description of offence committed on the same day, except where two or more children are employed contrary to the provisions of this Act, in which case one penalty may be imposed in respect of each child so employed.

16. Where an act or omission would, if a person were under seven or twelve years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age.

A declaration in writing by a certifying Surgeon that he has personally examined a person employed in a factory, and believes him to be under or over the age set forth in such declaration, shall, for the purposes of this Act, be admissible as evidence of the age of that person.

17. Every occupier of a factory shall be deemed primarily liable for any breach therein of the provisions of this Act ; but he may discharge himself from such liability by proof to the satisfaction of the local Inspector, before prosecution therefor, that such breach was committed by some other person without his knowledge or consent ; and the person committing such breach shall be liable therefor.

Miscellaneous.

18. The Local Government may, from time to time, make rules consistent with this Act to provide for—

(a) the fencing of machinery and mill-gearing in factories ;

(b) the inspection of factories ;

(c) the manner in which appeals under this Act shall be presented and heard ; and

(d) otherwise carrying out the provisions of this Act.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

19. This Act shall apply to factories belonging to the Crown ; provided that, in case of any public emergency, the Governor General in Council or the Local Government may, by an order in writing, exempt any such factory from this Act to such extent and during such period as the Governor General in Council or the Local Government, as the case may be, thinks fit.

D. FITZPATRICK,
Secretary to the Government of India.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15 March, 1881, and was promulgated for general information in the *Gazette of India* on the 19th March, 1881:—

ACT NO. XVI OF 1881.

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions; It is hereby enacted as follows:—

1. This Act may be called "The Obstructions in Fairways Act, 1881;" and it shall come into force at once.
- Short title.
Commencement.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty, or by the Secretary of State for India in Council.

2. Whenever in any fairway leading to any port in British India, any vessel is sunk, stranded or abandoned, or any fishing stake, timber or other thing is placed or left, the Local Government of the part of British India in which such port is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,
- Local Government empowered to remove or destroy obstruction in fairway.

(a) cause such thing or any part thereof to be removed; or,

(b) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, cause the same or any part thereof to be destroyed.

3. Whenever anything is removed under section two, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.
- Government entitled to expenses incurred in removing obstruction.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the Magistrate of the District or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

Dispute concerning such expenses.

4. The Local Government shall, whenever anything is removed under section two, publish in the local official Gazette a notification containing a description of such
- Notice of removal to be given by Local Government.

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
- Things removed may, in certain cases, be sold.

if the person claiming the same fails to pay the amount due for the said expenses and any customs duties or other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

6. On the realization of the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:
- Proceeds how applied.

Provided that he makes the claim within one year from the date of the sale.

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel, and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.
- "Vessel" to include tackle, cargo, &c.

8. The Governor General in Council may from time to time, by notification in the *Gazette of India*, make rules to regulate or prohibit in any fairway leading to a port in British India, the placing of fishing-stakes, the casting or throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause or be likely to cause obstruction or danger to navigation.
- Power to make rules to regulate and prohibit the placing of obstructions in fairways.

9. Whoever is guilty of any act or omission in contravention of the rules made under section eight, may be tried for such offence in any district or Presidency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.
- Penalty for breach of such rules.

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
- Compensation payable in certain cases for damage caused under this Act.

two, or its creation is regulated or prohibited under section eight, any person having a right to maintain or create such obstruction shall be entitled to receive from the Secretary of State for India in Council reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the Presidency-town or district in which the port to which such fairway leads is situate.

11. Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Governor General in Council or a Local Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

D. FITZPATRICK,
Secretary to the Government of India.

[Published with the "Bombay Government Gazette" on the 31st March 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th March 1881, and was promulgated for general information in the *Gazette of India* on the 19th March 1881 :—

Act No. XV. of 1881.

THE FACTORIES ACT, 1881.

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19. Crown factories.

IV.—11 a

An Act to regulate labour in Factories.

WHEREAS it is expedient to regulate labour in factories; It is hereby enacted as follows :—

Preamble.

Preliminary.

Short title.

1. This Act may be called "The Indian Factories Act, 1881."

It applies to the whole of British India, and

Local extent.

shall come into force on the first day of July, 1881.

Commencement.

2. In this Act, unless there is something repugnant in the subject or context,—

Interpretation-clause.

"factory" means any premises (other than

"factory :"

indigo-factories or premises situated on, and

used solely for the purposes of, a tea or coffee plantation) wherein is carried on, for not less than four months in the whole in any one year, any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale, any article or part of an article; and

(a) wherein steam, water or other mechanical power is used in aid of any such process; and

(b) wherein not less than one hundred persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process; and

every part of a factory shall be deemed to be a factory, except any part used exclusively as a dwelling :

"child."

"child" means a person under the age of twelve years :

"mill-gearing" includes every shaft, whether

"mill-gearing :"

upright, oblique or horizontal, and every wheel,

drum, pulley, rope, driving strap or band, by which the motion of the first moving power is communicated to any machine :

a child who works in a factory, whether for

"employed."

wages or not, either in a manufacturing process or

handicraft, or in cleaning any part of the factory used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein,

shall be deemed to be employed therein within the meaning of this Act.

Inspectors and certifying Surgeons.

3. The Local Government may in its discretion, by notification in the official Gazette, appoint such persons as it thinks fit to be Inspectors of factories within such local limits as it may assign to such Inspectors, and may suspend or dismiss any person so appointed.

In default of such appointment, the Magistrate of the district shall, in virtue of his office, be Inspector of all factories (if any) in the District.

Such Inspectors shall be deemed public servants within the meaning of the Indian Penal Code; and shall be officially subordinate to such authority as the Local Government may, from time to time, indicate in this behalf.

4. Any Inspector of factories may, within the local limits for which he is appointed, Powers of Inspector.

(a) enter, with such assistants (if any) as he thinks fit, any factory whenever he has reason to believe that any person is employed therein;

(b) make such examination of the premises and machinery, and of the registers hereinafter prescribed, and take on the spot or otherwise such evidence of any person as such Inspector may deem necessary for carrying out the provisions of this Act;

(c) order that any person shall not be employed in a factory when he has reason to believe that such employment would be in contravention of this Act—

until the age of such person has been certified, in the manner hereinafter provided, to be above seven years; or, for more than the time allowed by this Act for the employment of children, until his age has been so certified to be above twelve years.

5. The Civil Surgeon or such other person practising medicine or surgery as the Local Government may, from time to time, appoint in this behalf for any local area (hereinafter called the certifying surgeon) shall, at the request of any person employed or desirous of being employed in a factory situate in such local area, or of the parent or guardian of such person, examine such person and grant him a certificate, stating whether his age, as nearly as it can be ascertained from such examination, is above or below seven years, or twelve years, as the case may be.

Children.

6. No child shall be employed in any factory, if he is under the age of seven years.

7. No child shall be actually employed in any factory more than nine hours in any one day.

And no child shall be employed in any factory on any day without an interval, or intervals, amounting in the whole to at least an hour, being allowed to him for food and rest.

The times at which such intervals shall be allowed, and the length of each interval, shall be

fixed by the Local Government for each factory, after ascertaining, as far as possible, the existing practice in such factory and the wishes of the occupier thereof.

The occupier shall set up and maintain, in some conspicuous place in the factory, a printed or written notice, in English and the languages of the District in which the factory is situate, showing the times at which such intervals shall be allowed and the length of each interval.

A child shall not be deemed to be employed within the meaning of the first clause of this section during any interval allowed for food or rest.

8. Every occupier of a factory in which children are employed shall, before the beginning of each month, fix not less than four days in such month on which no child shall be employed in such factory, and shall forthwith give notice of the days so fixed to such officer as the Local Government may, from time to time, appoint in this behalf.

An occupier of a factory may, with the previous sanction of the Inspector, substitute, for any day fixed under this section, another day in the same month.

No child shall be employed in such factory on a day fixed under this section, unless when another day has been substituted for such day as hereinbefore provided, in which event no child shall be employed in such factory on the day so substituted.

9. No occupier of a factory shall employ there- in on any day any child who has to his knowledge already been employed on the same day in any other factory.

10. No occupier of a factory shall allow any child to clean any part of the mill-gearing or machinery of such factory while the same is in motion, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of the steam-engine, water-wheel or other mechanical power, as the case may be.

11. The Local Government may direct any occupier of a factory to keep, in such form and with such particulars as such Government may, from time to time, prescribe, registers of the children (if any) employed in such factory, and of their respective employments.

Fencing.

12. (a) Every fly-wheel directly connected with a steam-engine, or water-wheel or other mechanical power in any part of a factory, and every part of a steam-engine or water-wheel,

(b) every hoist or teagle near which any person is liable to pass or be employed, and

(c) every other part of the machinery or mill-gearing of a factory which may, in the opinion of the local Inspector, be dangerous if left unfenced, and which he may have ordered to be fenced, shall, while the same is in motion, be kept by the occupier of such factory securely fenced.

Any order under clause (c) may be set aside, on appeal or otherwise, by the Local Government or such authority as it may appoint in this behalf.

Notices.

13. When any accident occurs in a factory causing death or bodily injury whereby the person injured is prevented from returning to his work in the factory during forty-eight hours after the occurrence of the accident, the occupier of such factory, or, in his absence, his principal agent in the management of such factory, shall send such notice of such accident to such authorities in such form and within such time as the Local Government may, from time to time, by rule, direct.

14. Every person shall, within one month after he begins to occupy a factory, send to the local Inspector a written notice containing the name of the factory, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work performed in such factory, the nature and amount of the moving power therein, and the name of the person (if any) under whom the business of the factory is to be carried on.

Penalties.

15. Any person who, in breach of this Act, or of any order or rule made hereunder—

(a) employs any child in any factory ;

(b) neglects to set up or maintain the notice required by section seven or to fix the days referred to in section eight ;

(c) allows any child to perform the work forbidden by, or to work in contravention of, section ten ;

(d) neglects to keep a register in manner prescribed under section eleven ;

(e) neglects to fence any machinery or mill-gearing in any factory ; or

(f) neglects to give any notice,

shall be punished with fine which may extend to two hundred rupees :

Provided that—

1st, no prosecution under this section shall be instituted except by, or with the previous sanction of, the local Inspector ; and

2nd, no person shall be liable under this section to more than one penalty for any one description of offence committed on the same day, except where two or more children are employed

contrary to the provisions of this Act, in which case one penalty may be imposed in respect of each child so employed.

16. Where an act or omission would, if a person were under seven or twelve years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age.

A declaration in writing by a certifying Surgeon that he has personally examined a person employed in a factory, and believes him to be under or over the age set forth in such declaration, shall, for the purposes of this Act, be admissible as evidence of the age of that person.

17. Every occupier of a factory shall be deemed primarily liable for any breach therein of the provisions of this Act ; but he may discharge himself from such liability by proof to the satisfaction of the local Inspector, before prosecution therefor, that such breach was committed by some other person without his knowledge or consent ; and the person committing such breach shall be liable therefor.

Miscellaneous.

18. The Local Government may, from time to time, make rules consistent with this Act to provide for—

- (a) the fencing of machinery and mill-gearing in factories ;
- (b) the inspection of factories ;
- (c) the manner in which appeals under this Act shall be presented and heard ; and
- (d) otherwise carrying out the provisions of this Act.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

19. This Act shall apply to factories belonging to the Crown ; provided that, in case of any public emergency, the Governor General in Council or the Local Government may, by an order in writing, exempt any such factory from this Act to such extent and during such period as the Governor General in Council or the Local Government, as the case may be, thinks fit.

D. FITZPATRICK,

Secretary to the Government of India.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th March, 1881, and was promulgated for general information in the *Gazette of India* on the 19th March, 1881:—

ACT No. XVI OF 1881.

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions; It is hereby enacted as follows:—

1. This Act may be called "The Obstructions in Fairways Act, 1881;" and it shall come into force at once.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty, or by the Secretary of State for India in Council.

2. Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded or abandoned, or any fishing stake, timber or other thing is placed or left, the Local Government of the part of British India in which such port is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,

(a) cause such thing or any part thereof to be removed; or,

(b) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, cause the same or any part thereof to be destroyed.

3. Whenever anything is removed under section two, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the Magistrate of the District or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

4. The Local Government shall, whenever anything is removed under section two, publish in the local official Gazette a notification containing a description of such

thing, and the time at which and the place from which the same was so removed.

5. If after publishing such notification, such thing is unclaimed, or

if the person claiming the same fails to pay the amount due for the said expenses and any customs duties or other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

6. On the realization of the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Provided that he makes the claim within one year from the date of the sale.

7. For the purposes of this Act, the term "vessel" shall be deemed to include every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel, and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

8. The Governor General in Council may from time to time, by notification in the *Gazette of India*, make rules to regulate or prohibit in any fairway leading to a port in British India, the placing of fishing-stakes, the casting or throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause, or be likely to cause, obstruction or danger to navigation.

9. Whoever is guilty of any act or omission in contravention of the rules made under section eight, may be tried for such offence in any district or Presidency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

10. Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section

two, or its creation is regulated or prohibited under section eight, any person having a right to maintain or create such obstruction shall be entitled to receive from the Secretary of State for India in Council reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the Presidency-town or district in which the port to which such fairway leads is situate.

11. Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed, or whenever the creation of any such obstruction has

Certain action of the Government previous to passing of this Act to be deemed to have been taken hereunder.

* been regulated or prohibited, by an order of the Governor General in Council or a Local Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

Saving of other powers possessed by Government

D. FITZPATRICK,

Secretary to the Government of India.

[Published with the "Bombay Government Gazette" on the 7th April 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th March 1881, and was promulgated for general information in the *Gazette of India* on the 19th March 1881 :—

Act No. XV. of 1881.

THE FACTORIES ACT, 1881.

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PREAMBLE.

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1. Short title.
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Inspectors and certifying Surgeons.

3. Inspectors.
4. Powers of Inspector.
5. Certifying Surgeons.

Children.

6. Age of employment.
7. Hours of employment for children.
8. Child to be allowed holidays.
9. Not to be employed in two factories on same day.
10. Not to be engaged in certain dangerous work.
11. Register of children in a factory.

Fencing.

12. Fencing.

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13. Notice to be given of accidents.
14. Person beginning to occupy factory to give notice.

Penalties.

15. Penalties.
Only one penalty for same kind of offence on one day.
16. Burden of proof as to age.
Certifying Surgeon's declaration in writing.
17. Occupier primarily liable for breaches of Act.

Miscellaneous.

18. Power to make rules.
19. Crown factories.

IV.—11 c

An Act to regulate labour in Factories.

WHEREAS it is expedient to regulate labour in factories; It is hereby enacted as follows :—

Preamble.

factories; It is hereby enacted as follows :—

Preliminary.

Short title. 1. This Act may be called "The Indian Factories Act, 1881."

Local extent. It applies to the whole of British India, and shall come into force on the first day of July, 1881.

Commencement. the first day of July, 1881.

2. In this Act, unless there is something repugnant in the subject or context,—

Interpretation-clause. "factory" means any premises (other than indigo-factories or premises situated on, and used solely for the purposes of, a tea or coffee plantation) wherein is carried on, for not less than four months in the whole in any one year, any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale, any article or part of an article; and

"factory:" indigo-factories or premises situated on, and used solely for the purposes of, a tea or coffee plantation) wherein is carried on, for not less than four months in the whole in any one year, any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale, any article or part of an article; and

(a) wherein steam, water or other mechanical power is used in aid of any such process; and

(b) wherein not less than one hundred persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process; and

every part of a factory shall be deemed to be a factory, except any part used exclusively as a dwelling:

"child." "child" means a person under the age of twelve years:

"mill-gearing" includes every shaft, whether upright, oblique or horizontal, and every wheel, drum, pulley, rope, driving strap or band, by which the motion of the first moving power is communicated to any machine:

a child who works in a factory, whether for wages or not, either in a manufacturing process or handicraft, or in cleaning any part of the factory used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein;

shall be deemed to be employed therein within the meaning of this Act.

Inspectors and certifying Surgeons.

3. The Local Government may in its discretion, by notification in the official Gazette, appoint Inspectors, such persons as it thinks fit to be Inspectors of factories within such local limits as it may assign to such Inspectors, and may suspend or dismiss any person so appointed.

In default of such appointment, the Magistrate of the district shall, in virtue of his office, be Inspector of all factories (if any) in the District.

Such Inspectors shall be deemed public servants within the meaning of the Indian Penal Code; and shall be officially subordinate to such authority as the Local Government may, from time to time, indicate in this behalf.

4. Any Inspector of factories may, within the local limits for which he is appointed, Powers of Inspector.

(a) enter, with such assistants (if any) as he thinks fit, any factory whenever he has reason to believe that any person is employed therein;

(b) make such examination of the premises and machinery, and of the registers hereinafter prescribed, and take on the spot or otherwise such evidence of any person as such Inspector may deem necessary for carrying out the provisions of this Act;

(c) order that any person shall not be employed in a factory when he has reason to believe that such employment would be in contravention of this Act—

until the age of such person has been certified, in the manner hereinafter provided, to be above seven years; or, for more than the time allowed by this Act for the employment of children, until his age has been so certified to be above twelve years.

5. The Civil Surgeon or such other person practising medicine or surgery as the Local Government may, from time to time, appoint in this behalf for any local area (hereinafter called the certifying surgeon) shall, at the request of any person employed or desirous of being employed in a factory situate in such local area, or of the parent or guardian of such person, examine such person and grant him a certificate, stating whether his age, as nearly as it can be ascertained from such examination, is above or below seven years, or twelve years, as the case may be.

Children.

6. No child shall be employed in any factory, if he is under the age of seven years.

7. No child shall be actually employed in any factory more than nine hours in any one day.

And no child shall be employed in any factory on any day without an interval, or intervals, amounting in the whole to at least an hour, being allowed to him for food and rest.

The times at which such intervals shall be allowed, and the length of each interval, shall be

fixed by the Local Government for each factory, after ascertaining, as far as possible, the existing practice in such factory and the wishes of the occupier thereof.

The occupier shall set up and maintain, in some conspicuous place in the factory, a printed or written notice, in English and the languages of the District in which the factory is situate, showing the times at which such intervals shall be allowed and the length of each interval.

A child shall not be deemed to be employed within the meaning of the first clause of this section during any interval allowed for food or rest.

8. Every occupier of a factory in which children are employed shall, before Child to be allowed the beginning of each holidays. month, fix not less than four days in such month on which no child shall be employed in such factory, and shall forthwith give notice of the days so fixed to such officer as the Local Government may, from time to time, appoint in this behalf.

An occupier of a factory may, with the previous sanction of the Inspector, substitute, for any day fixed under this section, another day in the same month.

No child shall be employed in such factory on a day fixed under this section, unless when another day has been substituted for such day as hereinbefore provided, in which event no child shall be employed in such factory on the day so substituted.

9. No occupier of a factory shall employ there- in on any day any child Not to be employed in who has to his knowledge two factories on same day. already been employed on the same day in any other factory.

10. No occupier of a factory shall allow any child to clean any part of the mill-gearing or machinery of such factory while the same is in motion, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of the steam-engine, water-wheel or other mechanical power, as the case may be.

11. The Local Government may direct any Register of children in occupier of a factory to a factory. keep, in such form and with such particulars as such Government may, from time to time, prescribe, registers of the children (if any) employed in such factory, and of their respective employments.

Fencing.

12. (a) Every fly-wheel directly connected with a steam-engine, or water-wheel or other mechanical Fencing. power in any part of a factory, and every part of a steam-engine or water-wheel,

(b) every hoist or teagle near which any person is liable to pass or be employed, and

(c) every other part of the machinery or mill-gearing of a factory which may, in the opinion of the local Inspector, be dangerous if left unfenced, and which he may have ordered to be fenced, shall, while the same is in motion, be kept by the occupier of such factory securely fenced.

Any order under clause (c) may be set aside, on appeal or otherwise, by the Local Government or such authority as it may appoint in this behalf.

Notices.

13. When any accident occurs in a factory causing death or bodily injury whereby the person injured is prevented from returning to his work in the factory during forty-eight hours after the occurrence of the accident, the occupier of such factory, or, in his absence, his principal agent in the management of such factory, shall send such notice of such accident to such authorities in such form and within such time as the Local Government may, from time to time, by rule, direct.

14. Every person shall, within one month after he begins to occupy a factory, send to the local Inspector a written notice containing the name of the factory, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work performed in such factory, the nature and amount of the moving power therein, and the name of the person (if any) under whom the business of the factory is to be carried on.

Penalties.

15. Any person who, in breach of this Act, or of any order or rule made hereunder—

(a) employs any child in any factory ;

(b) neglects to set up or maintain the notice required by section seven or to fix the days referred to in section eight ;

(c) allows any child to perform the work forbidden by, or to work in contravention of, section ten ;

(d) neglects to keep a register in manner prescribed under section eleven ;

(e) neglects to fence any machinery or mill-gearing in any factory ; or

(f) neglects to give any notice,

shall be punished with fine which may extend to two hundred rupees :

Provided that—

1st, no prosecution under this section shall be instituted except by, or with the previous sanction of, the local Inspector ; and

2nd, no person shall be liable under this section to more than one penalty for any one description of offence committed on the same day, except where two or more children are employed

contrary to the provisions of this Act, in which case one penalty may be imposed in respect of each child so employed.

16. Where an act or omission would, if a person were under seven or twelve years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age.

A declaration in writing by a certifying Surgeon that he has personally examined a person employed in a factory, and believes him to be under or over the age set forth in such declaration, shall, for the purposes of this Act, be admissible as evidence of the age of that person.

17. Every occupier of a factory shall be deemed primarily liable for any breach therein of the provisions of this Act ; but he may discharge himself from such liability by proof to the satisfaction of the local Inspector, before prosecution therefor, that such breach was committed by some other person without his knowledge or consent ; and the person committing such breach shall be liable therefor.

Miscellaneous.

18. The Local Government may, from time to time, make rules consistent with this Act to provide for—

- (a) the fencing of machinery and mill-gearing in factories ;
- (b) the inspection of factories ;
- (c) the manner in which appeals under this Act shall be presented and heard ; and
- (d) otherwise carrying out the provisions of this Act.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

19. This Act shall apply to factories belonging to the Crown ; provided that, in case of any public emergency, the Governor General in Council or the Local Government may, by an order in writing, exempt any such factory from this Act to such extent and during such period as the Governor General in Council or the Local Government, as the case may be, thinks fit.

D. FITZPATRICK,

Secretary to the Government of India.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th March, 1881, and was promulgated for general information in the *Gazette of India* on the 19th March, 1881:—

ACT No. XVI OF 1881.

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions; It is hereby enacted as follows:—

1. This Act may be called "The Obstructions in Fairways Act, 1881;" and it shall come into force at once.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty, or by the Secretary of State for India in Council.

2. Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded or abandoned, or any fishing stake, timber or other thing is placed or left, the Local Government of the part of British India in which such port is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,

(a) cause such thing or any part thereof to be removed; or,

(b) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, cause the same or any part thereof to be destroyed.

3. Whenever anything is removed under section two, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the Magistrate of the District or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

4. The Local Government shall, whenever anything is removed under section two, publish in the local official *Gazette* a notification containing a description of such

thing, and the time at which and the place from which the same was so removed.

Things removed may, in certain cases, be sold.

5. If after publishing such notification, such thing is unclaimed, or

if the person claiming the same fails to pay the amount due for the said expenses and any customs duties or other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

6. On the realization of the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Provided that he makes the claim within one year from the date of the sale.

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel, and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

8. The Governor General in Council may from time to time, by notification in the *Gazette of India*, make rules to regulate or prohibit in any fairway leading to a port in British India, the placing of fishing-stakes, the casting or throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause, or be likely to cause, obstruction or danger to navigation.

9. Whoever is guilty of any act or omission in contravention of the rules made under section eight, may be tried for such offence in any district or Presidency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

10. Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section

two, or its creation is regulated or prohibited under section eight, any person having a right to maintain or create such obstruction shall be entitled to receive from the Secretary of State for India in Council reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

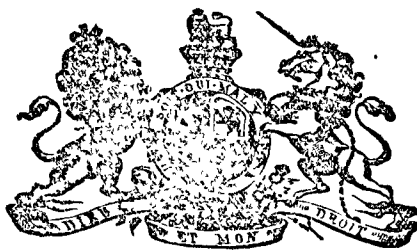
Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the Presidency-town or district in which the port to which such fairway leads is situate.

11. Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Governor General in Council or a Local Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

D. FITZPATRICK,
Secretary to the Government of India.

THE



Bombay Government Gazette.

Published by Authority.

SATURDAY, 9TH APRIL 1881.

Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 10th February 1881, and the assent of His Excellency the Viceroy and Governor General on the 7th April 1881, and is published for general information :—

Bombay Act No. I. of 1881.

An Act to amend the Bombay Port Trust Act, 1879.

WHEREAS it is expedient to amend the Bombay Port Trust Act, 1879, in manner hereinafter appearing; It is enacted as follows :—

1. After section thirty of the said Act the following section shall be inserted (namely) :—

“ 30 A. The Board may from time to time, with the previous consent of Government, provide for the issue of securities in new forms for those issued under Section 30. in lieu of those already issued or yet to be issued under section thirty in a form other than that of Schedule B., and for the payment of the interest due on the principal sums thereby secured by coupons annexed to the said securities, or in such other manner as they shall think fit.

“ The holder of any security in the form of Schedule B., or in any new form duly authorized under this section, may obtain in exchange therefor, upon such terms as the Board shall from time to time determine, a security in any other form so authorized.

“ Every new security issued under this section shall be transferable in such manner as shall be therein expressed.”

2. For section forty-two of the said Act the following section shall be substituted (namely) :—

“ 42. When money is raised by the Board on debentures, the debentures shall be in the form of Schedule D, or in such other form as the Board, with the previous

consent of Government, shall from time to time determine.

“The holder of any debenture in the form of Schedule D, or in any form duly authorized under this section, may obtain in exchange therefor, upon such terms as the Board shall from time to time determine, a debenture in any other form so authorized.

“Every debenture issued by the Board shall be transferable—

“(a) if it is in the form of Schedule D, by endorsement, and

“(b) if it is in any other form, in such manner as shall be therein expressed.

“The right to sue in respect of the monies secured by debentures issued under this section shall vest in the respective holders thereof for the time being, without any preference by reason of some of such debentures being prior in date to others.”

By order of His Excellency the Right Honourable the Governor in Council,

J. POLLEN,

Acting Under Secretary to Government.

Bombay Castle, 9th April 1881.

[Published with the "Bombay Government Gazette" on the 21st April 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 10th February 1881, and the assent of His Excellency the Viceroy and Governor General on the 7th April 1881, and is published for general information :—

Bombay Act No. I. of 1881.

An Act to amend the Bombay Port Trust Act, 1879.

WHEREAS it is expedient to amend the Bombay Port Trust Act, 1879, in manner hereinafter appearing; It is enacted as follows :—

1. After section thirty of the said Act the following section shall be inserted (namely) :—

New Section to be added after Section 30.

"30 A. The Board may from time to time, with the previous consent of Government, provide for the issue of securities in lieu of those already issued or yet to be issued under section thirty in a form other than that of Schedule B., and for the payment of the interest due on the principal sums thereby secured by coupons annexed to the said securities, or in such other manner as they shall think fit.

"The holder of any security in the form of Schedule B., or in any new form duly authorized under this section, may obtain in exchange therefor, upon such terms as the Board shall from time to time determine, a security in any other form so authorized.

"Every new security issued under this section shall be transferable in such manner as shall be therein expressed."

2. For section forty-two of the said Act the following section shall be substituted (namely) :—

"42. When money is raised by the Board on debentures, the debentures shall be in the form of Schedule D, or in such other form as the Board, with the previous consent of Government, shall from time to time determine.

"The holder of any debenture in the form of Schedule D, or in any form duly authorized under this section, may obtain in exchange therefor, upon such terms as the Board shall from time to time determine, a debenture in any other form so authorized.

"Every debenture issued by the Board shall be transferable—

"(a) if it is in the form of Schedule D, by endorsement, and

"(b) if it is in any other form, in such manner as shall be therein expressed.

"The right to sue in respect of the monies secured by debentures issued under this section shall vest in the respective holders thereof for the time being, without any preference by reason of some of such debentures being prior in date to others."

By order of His Excellency the Right Honourable the Governor in Council,

J. POLLEN,

Acting Under Secretary to Government.

Bombay Castle, 9th April 1881.

• IV.—12 b



Bombay Government Gazette.

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THURSDAY, 2ND JUNE 1881.

Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th May 1881, and was promulgated for general information in the *Gazette of India* on the 28th May 1881:—

Act No. XVII. of 1881.

An Act to give effect to the Convention between the Governors General of British India and Portuguese India regarding their respective systems of moneys, weights and measures.

WHEREAS by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it was provided that the High Contracting Parties should use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions:

And whereas by the same article it was further provided that the detailed measures to be adopted should form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed within two years from the date when the said Treaty came into force:

And whereas the said Treaty came into force on the fifteenth day of January, 1880:

And whereas, in pursuance of the said recited article, the Convention set forth in the schedule hereto annexed has been made:

It is hereby enacted as follows:—

1. This Act may be called "The Portuguese Convention Act, 1881."

Short title. It extends to the whole of British India.

Local extent. It shall come into force at once, and shall remain in force until the expiration of one year from the date of any notice which may be given under the fourteenth clause of the said Convention.

Commencement and continuance. It shall come into force at once, and shall remain in force until the expiration of one year from the date of any notice which may be given under the fourteenth clause of the said Convention.

2. The provisions of the said Convention, so far as they are binding upon the Government of British India, shall be deemed to have the force of law.

3. The provisions of the Indian Coinage Act, 1870, or any other law for the time being in force relating to coinage and bullion brought for coinage to the mint, under the said Convention, as if such coin and bullion were respectively made and brought for coinage to the mint under the said Act.

THE SCHEDULE.

Whereas, by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December 1878, and ratified on the sixth day of August 1879; between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it is provided that the High Contracting Parties shall use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions; and whereas by the same article it is further provided that the detailed measures to be adopted shall form the subject of a separate Convention between the Governor General of British India and Portuguese India, to be executed within two years from the date when the said Treaty comes into force; and whereas the said Treaty came into force on the fifteenth day of January 1880:

In pursuance of the said article, the following Convention has been made:—

1. The Governor General of Portuguese India shall adopt, in the Portuguese possessions in India, the monetary system of British India for the time being in force, provided that the coins shall have on one side the effigy of the King of Portugal, with the legend *Ludovicus I, Portugaliæ et Algarbiorum Rex*, around it, or such other effigy and legend as the said Governor General may from time to time desire, and on the other side the value of each coin, the year of the Christian era, and the words *India Portugueza*.

2. Subject to the provisions of clause 7, so long as this Convention remains in force, the following coins and no others shall be struck for Portuguese India:—

Silver.—Rupee, weighing 180 grains troy;
Half-rupee, weighing 90 grains troy;
Quarter-rupee, weighing 45 grains troy;
Eighth of a rupee, weighing 22½ grains troy.

The standard fineness of the said silver coins shall be eleven-twelfths of fine silver and one-twelfth of alloy, subject to a remedy not exceeding the following:—

	Remedy in weight.	Remedy in fineness.
Rupee ...	} Five thou- sandths.	{ Two thou- sandths.
Half-rupee ...		
Quarter-rupee ...		
Eighth of a rupee.	Seven thou- sandths.	{ Three thou- sandths.
	Ten thou- sandths.	

Copper.—Half *tanga*, weighing 200 grains troy and corresponding with the double pice or half-anna of British India;

Quarter *tanga*, weighing 100 grains troy, and corresponding with the pice of British India;

Eighth of a *tanga*, weighing 50 grains troy, and corresponding with the half-pice of British India;

Real, or twelfth of a *tanga*, corresponding with the pie of British India;

In the making of copper coins, a remedy shall be allowed not exceeding one-fortieth in weight.

The value in copper of one Portuguese rupee will be sixteen Portuguese *tangas*, sixty-four quarter *tangas*, or pices, or one hundred and ninety-two *reaes* or pies.

3. The Portuguese silver and copper coins established by this Convention shall be issued by the authority of the Government of Portuguese India, and shall be coined on behalf of the said Government by the Government of British India, and by no other agency whatever.

The Governor General of Portuguese India engages that, while this Convention continues in force, no coins other than those established by this Convention shall be coined in or imported into Portuguese India.

4. With the view of obtaining in the shortest possible time the desired uniformity of coinage throughout the respective Indian possessions of the High Contracting Parties, the Governor General of British India engages that the Government of British India shall—

(a) forego, for the period of three years from the date on which this Convention comes into force, all duty or other charge for melting, cutting, refining or recoinage any coin of the existing Portuguese Indian silver currency tendered for recoinage into Portuguese Indian coin;

(b) deliver, for the period of five years from the date of this Convention, copper coins of the Portuguese copper currency established by this Convention in exchange for copper coins of the existing Portuguese Indian copper currency which may be brought to the said Mint for the purpose of such exchange, at the value represented by such last-mentioned coins in the existing Portuguese currency. The relative representative value of the old and new coin to be thus exchanged on equal terms, and without charge for manufacture, shall, if the Governor General of Portuguese India so desires, be determined, once for all, by a mixed commission appointed in the manner provided in the sixteenth article of the above-cited Treaty;

(c) advance to the Governor General of Portuguese India, in the Portuguese currency established by this Convention, such sums in such denominations of coin, and in such instalments (if any), as the said Governor General of Portuguese India may require: provided—

1stly.—That the amount of such advances outstanding at any time shall not exceed in the whole ten lakhs of rupees.

2ndly.—That an interval of two months shall be allowed for compliance with any such requisition, and that no such advance shall be made after the expiration of eighteen months from the date on which this Convention comes into force.

3rdly.—That every such advance shall be, within two months, repaid in coin of the existing Portuguese Indian currency;

equivalent thereto in intrinsic value ascertained upon assay at Her Majesty's Mint, or in copper coin of the existing Portuguese Indian currency valued as prescribed in clause (b).

5. The Governor General of British India engages that the Government of British India shall,—

(a) on presentation by or on behalf of the Governor General of Portuguese India of any silver bullion or coin at the Mint at Bombay, or at such other Mint as the said Government from time to time appoints, deliver to the said Governor General or his agent, after such interval as in the judgment of the Mint Master is necessary for the process of coinage, the produce of such silver bullion or coin, in the silver coin established by this Convention, subject, always, to the same duty, charges, fees and regulations as are for the time being in force for the conversion into British Indian currency of bullion and coin, presented at the said Mint: provided that, save as provided in clause 4, the said Government shall not be bound thus to deliver more than four lakhs of rupees in any one year;

(b) coin for the Governor General of Portuguese India the copper coins established by this Convention, to such amounts and in such denominations as the said Governor General may require, upon payment of the value inscribed upon such coins in the silver coin established by this Convention or in British Indian rupees: provided that, saving as engaged in clause 4, the said Government shall not be bound thus to coin more than twenty thousand rupees' worth of such coin in any one year.

In lieu of any seignorage or profits which the Portuguese Government might otherwise claim on account of the coinage on their behalf provided by this clause, the Governor General of British India engages to pay the Governor General of Portuguese India an indemnity of four thousand rupees per annum, commencing from the first day of November, one thousand eight hundred and eighty-three, and continuing as long as this Convention remains in force.

6. All silver and copper Portuguese coins, coined under the provisions of this Convention, shall, while this Convention remains in force, be legal tender in payment or on account throughout British India to the same extent, and subject to the same exceptions in the case of coin which has been called in, or is under weight, or has been clipped, filed or defaced, as in the case of the corresponding silver and copper coins issued by the authority of the Government of British India for the time being in British India.

All silver and copper coin which has been issued by the authority of the Government of British India shall, to the said same extent and subject to the same exceptions, be a legal tender in payment or on account throughout Portuguese India.

7. The Governor General of Portuguese India agrees that, if at any time while this Convention continues in force the Government of British India should recall the whole body of British Indian coin corresponding to any description of Portuguese coin issued under this Convention, or change the monetary system of British India, he will, if requested by such Government so to do, recall all Portuguese coin of that description, or change in like manner, as the case may be, the monetary system of Portuguese India: provided that the expense incurred in recalling such coin or making such change shall be defrayed by the Government of British India.

8. When any silver coin, purporting to have been issued under the provisions of this Convention, is tendered to any officer of the Government of British India, authorized by that Government to act under this clause, and is deemed by such officer to be counterfeit, or to have been reduced in weight otherwise than by reasonable wearing, he may, by himself or another (subject to the rules which the said Government prescribes in this behalf), cut or break such coin and return the pieces to the person tendering the same, and the loss caused by such cutting and breaking shall be borne by such person.

9. When any such silver coin which has been called in is tendered to any officer of the Government of British India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola; but the expense thus incurred shall, except when such coin has been recalled under clause 7, be borne by the Portuguese Government.

10. In like manner when any British Indian coin which has been called in is tendered to any officer of the Government of Portuguese India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola, and the expense so incurred shall be borne by the Government of British India.

11. The Governor General of Portuguese India engages to appoint an officer who will receive, while this Convention continues in force, from any person tendering the coin next hereinafter mentioned, all silver coin issued under this Convention which may have lost, by reasonable wearing, more than two per cent., and shall pay for the same at the rate of one rupee per tola.

12. Nothing in this Convention shall be held to limit the powers of His Most Faithful Majesty the King of Portugal and the Algarves to establish at any time such system of paper currency as he may deem fit.

The Governor General of Portuguese India has the power for the present to issue the following paper money:—

Five-rupee notes,	payable in copper.
Ten-rupee notes,	payable in silver.
Twenty	ditto.
Fifty	ditto.
One hundred	ditto.
Five hundred	ditto.

The amount of paper money issued will never be above four per cent. of the value of the money

in circulation, the Portuguese Indian Government notes being guaranteed by the Portuguese Government and payable to the bearer.

13. The Governor General of Portuguese India engages that, whenever the Government of British India exercises in respect of British India generally, or of all the territories adjacent to Portuguese India, the powers conferred on it under a certain Act of the Governor General of British India in Council, called "The Indian Weights and Measures of Capacity Act, 1871," then he, the said Governor General of Portuguese India, will enforce throughout Portuguese India provisions similar to those of that Act.

14. This Convention shall come into force on the first day of November, one thousand eight hundred and eighty, and shall remain in force until the expiration of a year counting from the day on which one or other of the Contracting Parties shall have given notice to the other of its intention to put an end to it: provided that no such notice shall be given until four years after the date on which the Convention comes into force.

15. The Governor General of Portuguese India undertakes that, in the event of this Convention being put an end to under clause 14 or otherwise, no coins resembling any of the coins struck under this Convention shall be struck in or imported into Portuguese India, or shall be struck under the authority of, or with the sanction of, His Most Faithful Majesty in any other place.

Done at Pangim on the twelfth day of April, one thousand eight hundred and eighty.

(Sd.) CAETANO ALDRE D'ALMEIDA

ALBUQUERQUE,

Governor General of Portuguese India.

Done at Calcutta on the eighteenth day of March, one thousand eight hundred and eighty.

(Sd.) LYTON,

Viceroy and Governor General
of British India.

R. J. CROSTHWAITE,

Offg. Secy. to the Govt. of India.



Bombay Government Gazette.

Published by Authority.

TUESDAY, 7TH JUNE 1881.

Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 8th April 1881, and the assent of His Excellency the Viceroy and Governor General on the 17th May 1881, and is published for general information :—

Bombay Act No. II. of 1881.

An Act to confirm the jurisdiction of Presidency Magistrates in Municipal cases.

WHEREAS doubts are entertained whether a Presidency Magistrate who is a rate-payer is legally competent to take cognizance of Municipal offences, and it is expedient to remove such doubts; It is enacted as follows :—

1. No Presidency Magistrate shall be, or shall be deemed to have ever been incapable of taking cognizance of any act or omission made punishable by the Bombay Municipal Acts of 1872 and 1878, or by the Bombay Municipal Act of 1872, or by any bye-law

framed under either of the said Acts, by reason only of his being liable to pay any rate, tax, toll, duty, or other impost leviable under the said Acts or either of them, or of his being benefited by the Municipal fund to the credit of which any fine or penalty which may be or may have been levied in respect of such act or omission is or was payable.

2. In this Act the words "Presidency Magistrate" include a "Presidency Magistrate" defined. Police Magistrate and a member of a Court of Petty Sessions appointed before the Presidency Magistrates Act, 1877, came into force.

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
Under Secretary to Government.

Bombay, 2nd June 1881.

IV.—14

[Published with the "Bombay Government Gazette" on the 9th June 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th May 1881, and was promulgated for general information in the *Gazette of India* on the 28th May 1881:—

Act No. XVII. of 1881.

An Act to give effect to the Convention between the Governors General of British India and Portuguese India regarding their respective systems of moneys, weights and measures.

WHEREAS by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it was provided that the High Contracting Parties should use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions:

And whereas by the same article it was further provided that the detailed measures to be adopted should form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed within two years from the date when the said Treaty came into force:

And whereas the said Treaty came into force on the fifteenth day of January, 1880:

And whereas, in pursuance of the said recited article, the Convention set forth in the schedule hereto annexed has been made:

It is hereby enacted as follows:—

1. This Act may be called "The Portuguese Convention Act, 1881."

It extends to the whole of British India.

It shall come into force at once, and shall remain in force until the expiration of one year from the date of any notice which may be given under the fourteenth clause of the said Convention.

2. The provisions of the said Convention, so far as they are binding upon the Government of British India, shall be deemed to have the force of law.

3. The provisions of the Indian Coinage Act, Act XXIII. of 1870 to 1870, or any other law for apply to coin and bullion the time being in force made and brought for relating to coinage and coinage to mint under the mint, shall, so far as Convention, they are consistent with the said Convention, apply to all coin made, and bullion brought for coinage to the mint, under the said Convention, as if such coin and bullion were respectively made and brought for coinage to the mint under the said Act.

THE SCHEDULE.

Whereas, by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December 1878, and ratified on the sixth day of August 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it is provided that the High Contracting Parties shall use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions; and whereas by the same article it is further provided that the detailed measures to be adopted shall form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed within two years from the date when the said Treaty comes into force; and whereas the said Treaty came into force on the fifteenth day of January 1880:

In pursuance of the said article, the following Convention has been made:—

1. The Governor General of Portuguese India shall adopt, in the Portuguese possessions in India, the monetary system of British India for the time being in force, provided that the coins shall have on one side the effigy of the King of Portugal, with the legend *Ludovicus I, Portugaliae et Algarbiorum Rex*, around it, or such other effigy and legend as the said Governor General may from time to time desire, and on the other side the value of each coin, the year of the Christian era, and the words *India Portugueza*.

2. Subject to the provisions of clause 7, so long as this Convention remains in force, the following coins and no others shall be struck for Portuguese India:—

Silver.—Rupee, weighing 180 grains troy;
Half-rupee, weighing 90 grains troy;
Quarter-rupee, weighing 45 grains troy;
Eighth of a rupee, weighing 22½ grains troy.

The standard fineness of the said silver coins shall be eleven-twelfths of fine silver and one-

twelfth of alloy, subject to a remedy not exceeding the following :—

	Remedy in weight.	Remedy in fineness.
Rupee	Five thou- sandths.	Two thou- sandths.
Half-rupee ...		
Quarter-rupee...	Seven thou- sandths.	Three thou- sandths.
Eighth of a rupee.	Ten thou- sandths.	

Copper.—Half *tanga*, weighing 200 grains troy and corresponding with the double pice or half-anna of British India ;

Quarter *tanga*, weighing 100 grains troy, and corresponding with the pice of British India ;

Eighth of a *tanga*, weighing 50 grains troy, and corresponding with the half-pice of British India ;

Real, or twelfth of a *tanga*, corresponding with the pie of British India ;

In the making of copper coins, a remedy shall be allowed not exceeding one-fortieth in weight.

The value in copper of one Portuguese rupee will be sixteen Portuguese *tangas*, sixty-four quarter *tangas*, or pices, or one hundred and ninety-two *reaes* or pies.

3. The Portuguese silver and copper coins established by this Convention shall be issued by the authority of the Government of Portuguese India, and shall be coined on behalf of the said Government by the Government of British India, and by no other agency whatever.

The Governor General of Portuguese India engages that, while this Convention continues in force, no coins other than those established by this Convention shall be coined in or imported into Portuguese India.

4. With the view of obtaining in the shortest possible time the desired uniformity of coinage throughout the respective Indian possessions of the High Contracting Parties, the Governor General of British India engages that the Government of British India shall—

(a) forego, for the period of three years from the date on which this Convention comes into force, all duty or other charge for melting, cutting, refining or recoinage any coin of the existing Portuguese Indian silver currency tendered for recoinage into Portuguese Indian coin ;

(b) deliver, for the period of five years from the date of this Convention, copper coins of the Portuguese copper currency established by this Convention in exchange for copper coins of the existing Portuguese Indian copper currency which may be brought to the said Mint for the purpose of such exchange, at the value represented by such last-mentioned coins in the existing Portuguese currency. The relative representative value of the old and new coin to be thus exchanged on equal terms, and without charge for manufacture, shall, if the Governor General of Portuguese India so desires, be determined, once for all, by a mixed

commission appointed in the manner provided in the sixteenth article of the above-cited Treaty ;

(c) advance to the Governor General of Portuguese India, in the Portuguese currency established by this Convention, such sums in such denominations of coin, and in such instalments (if any), as the said Governor General of Portuguese India may require: provided—

1stly.—That the amount of such advances outstanding at any time shall not exceed in the whole ten lákhs of rupees.

2ndly.—That an interval of two months shall be allowed for compliance with any such requisition, and that no such advance shall be made after the expiration of eighteen months from the date on which this Convention comes into force.

3rdly.—That every such advance shall be, within two months, repaid in coin of the existing Portuguese Indian currency, equivalent thereto in intrinsic value ascertained upon assay at Her Majesty's Mint, or in copper coin of the existing Portuguese Indian currency valued as prescribed in clause (b).

5. The Governor General of British India engages that the Government of British India shall,—

(a) on presentation by or on behalf of the Governor General of Portuguese India of any silver bullion or coin at the Mint at Bombay, or at such other Mint as the said Government from time to time appoints, deliver to the said Governor General or his agent, after such interval as in the judgment of the Mint Master is necessary for the process of coinage, the produce of such silver bullion or coin, in the silver coin established by this Convention, subject, always, to the same duty, charges, fees and regulations as are for the time being in force for the conversion into British Indian currency of bullion and coin, presented at the said Mint; provided that, save as provided in clause 4, the said Government shall not be bound thus to deliver more than four lákhs of rupees in any one year ;

(b) coin for the Governor General of Portuguese India the copper coins established by this Convention, to such amounts and in such denominations as the said Governor General may require, upon payment of the value inscribed upon such coins in the silver coin established by this Convention or in British Indian rupees: provided that, saving as engaged in clause 4, the said Government shall not be bound thus to coin more than twenty thousand rupees' worth of such coin in any one year.

In lieu of any seignorage or profits which the Portuguese Government might otherwise claim on account of the coinage on their behalf provided by

this clause, the Governor General of British India engages to pay the Governor General of Portuguese India an indemnity of four thousand rupees per annum, commencing from the first day of November, one thousand eight hundred and eighty-three, and continuing as long as this Convention remains in force.

6. All silver and copper Portuguese coins, coined under the provisions of this Convention, shall, while this Convention remains in force, be legal tender in payment or on account throughout British India to the same extent, and subject to the same exceptions in the case of coin which has been called in, or is under weight, or has been clipped, filed or defaced, as in the case of the corresponding silver and copper coins issued by the authority of the Government of British India for the time being in British India.

All silver and copper coin which has been issued by the authority of the Government of British India shall, to the said same extent and subject to the same exceptions, be a legal tender in payment or on account throughout Portuguese India.

7. The Governor General of Portuguese India agrees that, if at any time while this Convention continues in force the Government of British India should recall the whole body of British Indian coin corresponding to any description of Portuguese coin issued under this Convention, or change the monetary system of British India, he will, if requested by such Government so to do, recall all Portuguese coin of that description, or change in like manner, as the case may be, the monetary system of Portuguese India: provided that the expense incurred in recalling such coin or making such change shall be defrayed by the Government of British India.

8. When any silver coin, purporting to have been issued under the provisions of this Convention, is tendered to any officer of the Government of British India, authorized by that Government to act under this clause, and is deemed by such officer to be counterfeit, or to have been reduced in weight otherwise than by reasonable wearing, he may, by himself or another (subject to the rules which the said Government prescribes in this behalf), cut or break such coin and return the pieces to the person tendering the same, and the loss caused by such cutting and breaking shall be borne by such person.

9. When any such silver coin which has been called in is tendered to any officer of the Government of British India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola; but the expense thus incurred shall, except when such coin has been recalled under clause 7, be borne by the Portuguese Government.

10. In like manner when any British Indian coin which has been called in is tendered to any officer of the Government of Portuguese India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola, and the expense so incurred shall be borne by the Government of British India.

11. The Governor General of Portuguese India engages to appoint an officer who will receive, while this Convention continues in force, from

any person tendering the coin next hereinafter mentioned, all silver coin issued under this Convention which may have lost, by reasonable wearing, more than two per cent., and shall pay for the same at the rate of one rupee per tola.

12. Nothing in this Convention shall be held to limit the powers of His Most Faithful Majesty the King of Portugal and the Algarves to establish at any time such system of paper currency as he may deem fit.

The Governor General of Portuguese India has the power for the present to issue the following paper money:—

Five-rupee notes, payable in copper.	
Ten-rupee notes, payable in silver.	
Twenty	ditto.
Fifty	ditto.
One hundred	ditto.
Five hundred	ditto.

The amount of paper money issued will never be above four per cent. of the value of the money in circulation, the Portuguese India Government notes being guaranteed by the Portuguese Government and payable to the bearer.

13. The Governor General of Portuguese India engages that, whenever the Government of British India exercises in respect of British India generally, or of all the territories adjacent to Portuguese India, the powers conferred on it under a certain Act of the Governor General of British India in Council, called "The Indian Weights and Measures of Capacity Act, 1871," then he, the said Governor General of Portuguese India, will enforce throughout Portuguese India provisions similar to those of that Act.

14. This Convention shall come into force on the first day of November, one thousand eight hundred and eighty, and shall remain in force until the expiration of a year counting from the day on which one or other of the Contracting Parties shall have given notice to the other of its intention to put an end to it: provided that no such notice shall be given until four years after the date on which the Convention comes into force.

15. The Governor General of Portuguese India undertakes that, in the event of this Convention being put an end to under clause 14 or otherwise, no coins resembling any of the coins struck under this Convention shall be struck in or imported into Portuguese India, or shall be struck under the authority of, or with the sanction of, His Most Faithful Majesty in any other place.

Done at Pangim on the twelfth day of April, one thousand eight hundred and eighty.

(Sd.) CAETANO ALDRE D'ALMEIDA
ALBUQUERQUE,

Governor General of Portuguese India.

Done at Calcutta on the eighteenth day of March, one thousand eight hundred and eighty.

(Sd.) LYTTON,

Viceroy and Governor General
of British India.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 8th April 1881, and the assent of His Excellency the Viceroy and Governor General on the 17th May 1881, and is published for general information :—

Bombay Act No. II. of 1881.

An Act to confirm the jurisdiction of Presidency Magistrates in Municipal cases.

WHEREAS doubts are entertained whether a Presidency Magistrate who is a rate-payer is legally competent to take cognizance of Municipal offences, and it is expedient to remove such doubts; It is enacted as follows :—

1. No Presidency Magistrate shall be, or shall be deemed to have ever been incapable of taking cognizance of any act or omission made punishable by the Bombay Municipal Acts of 1872 and 1878, or by the Bombay Municipal Act of 1872, or by any bye-law

Disability of a Presidency Magistrate to try offences under the Bombay Municipal Acts by reason only of his being liable for Municipal rates, &c., or of his being benefited by the Municipal fund, removed.

to have ever been incapable of taking cognizance of any act or omission made punishable by the Bombay Municipal Acts of 1872 and 1878, or by the Bombay

framed under either of the said Acts, by reason only of his being liable to pay any rate, tax, toll, duty, or other impost leviable under the said Acts or either of them, or of his being benefited by the Municipal fund to the credit of which any fine or penalty which may be or may have been levied in respect of such act or omission is or was payable.

2. In this Act the words "Presidency Magistrate" include a "Presidency Magistrate" defined. Police Magistrate and a member of a Court of Petty Sessions appointed before the Presidency Magistrates Act, 1877, came into force.

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
Under Secretary to Government.

Bombay, 2nd June 1881.

[Published with the "Bombay Government Gazette" on the 16th June 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th May 1881, and was promulgated for general information in the *Gazette of India* on the 28th May 1881:—

Act No. XVII. of 1881.

An Act to give effect to the Convention between the Governors General of British India and Portuguese India regarding their respective systems of moneys, weights and measures.

WHEREAS by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it was provided that the High Contracting Parties should use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions:

And whereas by the same article it was further provided that the detailed measures to be adopted should form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed within two years from the date when the said Treaty came into force:

And whereas the said Treaty came into force on the fifteenth day of January, 1880:

And whereas, in pursuance of the said recited article, the Convention set forth in the schedule hereto annexed has been made:

It is hereby enacted as follows:—

1. This Act may be called "The Portuguese Convention Act, 1881."

Short title. Convention Act, 1881.
Local extent. It extends to the whole of British India.

It shall come into force at once, and shall remain in force until the expiration of one year from the date of any notice which may be given under the fourteenth clause of the said Convention.

2. The provisions of the said Convention, so far as they are binding upon the Government of British India, shall be deemed to have the force of law.

3. The provisions of the Indian Coinage Act, Act XXIII. of 1870 to 1870, or any other law for apply to coin and bullion the time being in force made and brought for relating to coinage and coinage to mint under the mint, shall, so far as Convention. they are consistent with the said Convention, apply to all coin made, and bullion brought for coinage to the mint, under the said Convention, as if such coin and bullion were respectively made and brought for coinage to the mint under the said Act.

THE SCHEDULE.

Whereas, by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December 1878, and ratified on the sixth day of August 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it is provided that the High Contracting Parties shall use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions; and whereas by the same article it is further provided that the detailed measures to be adopted shall form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed within two years from the date when the said Treaty comes into force; and whereas the said Treaty came into force on the fifteenth day of January 1880:

In pursuance of the said article, the following Convention has been made:—

1. The Governor General of Portuguese India shall adopt, in the Portuguese possessions in India, the monetary system of British India for the time being in force, provided that the coins shall have on one side the effigy of the King of Portugal, with the legend *Ludovicus I, Portugaliae et Algarbiorum Rex*, around it, or such other effigy and legend as the said Governor General may from time to time desire, and on the other side the value of each coin, the year of the Christian era, and the words *India Portugueza*.

2. Subject to the provisions of clause 7, so long as this Convention remains in force, the following coins and no others shall be struck for Portuguese India:—

Silver.—Rupee, weighing 180 grains troy;
Half-rupee, weighing 90 grains troy;
Quarter-rupee, weighing 45 grains troy;
Eighth of a rupee, weighing 22½ grains troy.

The standard fineness of the said silver coins shall be eleven-twelfths of fine silver and one-

twelfth of alloy, subject to a remedy not exceeding the following:—

	Remedy in weight.	Remedy in fineness.
Rupee ...	Five thou- sandths.	Two thou- sandths.
Half-rupee ...		
Quarter-rupee ...	Seven thou- sandths.	Three thou- sandths.
Eighth of a rupee.	Ten thou- sandths.	

Copper.—Half *tanga*, weighing 200 grains troy and corresponding with the double pice or half-anna of British India ;

Quarter *tanga*, weighing 100 grains troy, and corresponding with the pice of British India ;

Eighth of a *tanga*, weighing 50 grains troy, and corresponding with the half-pice of British India ;

Real, or twelfth of a *tanga*, corresponding with the pie of British India ;

In the making of copper coins, a remedy shall be allowed not exceeding one-fortieth in weight.

The value in copper of one Portuguese rupee will be sixteen Portuguese *tangas*, sixty-four quarter *tangas*, or pices, or one hundred and ninety-two *reas* or pices.

3. The Portuguese silver and copper coins established by this Convention shall be issued by the authority of the Government of Portuguese India, and shall be coined on behalf of the said Government by the Government of British India, and by no other agency whatever.

The Governor General of Portuguese India engages that, while this Convention continues in force, no coins other than those established by this Convention shall be coined in or imported into Portuguese India.

4. With the view of obtaining in the shortest possible time the desired uniformity of coinage throughout the respective Indian possessions of the High Contracting Parties, the Governor General of British India engages that the Government of British India shall—

(a) forego, for the period of three years from the date on which this Convention comes into force, all duty or other charge for melting, cutting, refining or recoinage any coin of the existing Portuguese Indian silver currency tendered for recoinage into Portuguese Indian coin ;

(b) deliver, for the period of five years from the date of this Convention, copper coins of the Portuguese copper currency established by this Convention in exchange for copper coins of the existing Portuguese Indian copper currency which may be brought to the said Mint for the purpose of such exchange, at the value represented by such last-mentioned coins in the existing Portuguese currency. The relative representative value of the old and new coin to be thus exchanged on equal terms, and without charge for manufacture, shall, if the Governor General of Portuguese India so desires, be determined, once for all, by a mixed

commission appointed in the manner provided in the sixteenth article of the above-cited Treaty ;

(c) advance to the Governor General of Portuguese India, in the Portuguese currency established by this Convention, such sums in such denominations of coin, and in such instalments (if any), as the said Governor General of Portuguese India may require : provided—

1stly.—That the amount of such advances outstanding at any time shall not exceed in the whole ten lakhs of rupees.

2ndly.—That an interval of two months shall be allowed for compliance with any such requisition, and that no such advance shall be made after the expiration of eighteen months from the date on which this Convention comes into force.

3rdly.—That every such advance shall be, within two months, repaid in coin of the existing Portuguese Indian currency, equivalent thereto in intrinsic value ascertained upon assay at Her Majesty's Mint, or in copper coin of the existing Portuguese Indian currency valued as prescribed in clause (b).

5. The Governor General of British India engages that the Government of British India shall,—

(a) on presentation by or on behalf of the Governor General of Portuguese India of any silver bullion or coin at the Mint at Bombay, or at such other Mint as the said Government from time to time appoints, deliver to the said Governor General or his agent, after such interval as in the judgment of the Mint Master is necessary for the process of coinage, the produce of such silver bullion or coin, in the silver coin established by this Convention, subject, always, to the same duty, charges, fees and regulations as are for the time being in force for the conversion into British Indian currency of bullion and coin, presented at the said Mint : provided that, save as provided in clause 4, the said Government shall not be bound thus to deliver more than four lakhs of rupees in any one year ;

(b) coin for the Governor General of Portuguese India the copper coins established by this Convention, to such amounts and in such denominations as the said Governor General may require, upon payment of the value inscribed upon such coins in the silver coin established by this Convention or in British Indian rupees : provided that, saving as engaged in clause 4, the said Government shall not be bound thus to coin more than twenty thousand rupees' worth of such coin in any one year.

In lieu of any seignorage or profits which the Portuguese Government might otherwise claim on account of the coinage on their behalf provided by

this clause, the Governor General of British India engages to pay the Governor General of Portuguese India an indemnity of four thousand rupees per annum, commencing from the first day of November, one thousand eight hundred and eighty-three, and continuing as long as this Convention remains in force.

6. All silver and copper Portuguese coins, coined under the provisions of this Convention, shall, while this Convention remains in force, be legal tender in payment or on account throughout British India to the same extent, and subject to the same exceptions in the case of coin which has been called in, or is under weight, or has been clipped, filed or defaced, as in the case of the corresponding silver and copper coins issued by the authority of the Government of British India for the time being in British India.

All silver and copper coin which has been issued by the authority of the Government of British India shall, to the said same extent and subject to the same exceptions, be a legal tender in payment or on account throughout Portuguese India.

7. The Governor General of Portuguese India agrees that, if at any time while this Convention continues in force the Government of British India should recall the whole body of British Indian coin corresponding to any description of Portuguese coin issued under this Convention, or change the monetary system of British India, he will, if requested by such Government so to do, recall all Portuguese coin of that description, or change in like manner, as the case may be, the monetary system of Portuguese India: provided that the expense incurred in recalling such coin or making such change shall be defrayed by the Government of British India.

8. When any silver coin, purporting to have been issued under the provisions of this Convention, is tendered to any officer of the Government of British India, authorized by that Government to act under this clause, and is deemed by such officer to be counterfeit, or to have been reduced in weight otherwise than by reasonable wearing, he may, by himself or another (subject to the rules which the said Government prescribes in this behalf), cut or break such coin and return the pieces to the person tendering the same, and the loss caused by such cutting and breaking shall be borne by such person.

9. When any such silver coin which has been called in is tendered to any officer of the Government of British India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola; but the expense thus incurred shall, except when such coin has been recalled under clause 7, be borne by the Portuguese Government.

10. In like manner when any British Indian coin which has been called in is tendered to any officer of the Government of Portuguese India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola, and the expense so incurred shall be borne by the Government of British India.

11. The Governor General of Portuguese India engages to appoint an officer who will receive, while this Convention continues in force, from

any person tendering the coin next hereinafter mentioned, all silver coin issued under this Convention which may have lost, by reasonable wearing, more than two per cent., and shall pay for the same at the rate of one rupee per tola.

12. Nothing in this Convention shall be held to limit the powers of His Most Faithful Majesty the King of Portugal and the Algarves to establish at any time such system of paper currency as he may deem fit.

The Governor General of Portuguese India has the power for the present to issue the following paper money:—

Five-rupee notes, payable in copper.	
Ten-rupee notes, payable in silver.	
Twenty	ditto.
Fifty	ditto.
One hundred	ditto.
Five hundred	ditto.

The amount of paper money issued will never be above four per cent. of the value of the money in circulation, the Portuguese India Government notes being guaranteed by the Portuguese Government and payable to the bearer.

13. The Governor General of Portuguese India engages that, whenever the Government of British India exercises in respect of British India, generally, or of all the territories adjacent to Portuguese India, the powers conferred on it under a certain Act of the Governor General of British India in Council, called "The Indian Weights and Measures of Capacity Act, 1871," then he, the said Governor General of Portuguese India, will enforce throughout Portuguese India provisions similar to those of that Act.

14. This Convention shall come into force on the first day of November, one thousand eight hundred and eighty, and shall remain in force until the expiration of a year counting from the day on which one or other of the Contracting Parties shall have given notice to the other of its intention to put an end to it: provided that no such notice shall be given until four years after the date on which the Convention comes into force.

15. The Governor General of Portuguese India undertakes that, in the event of this Convention being put an end to under clause 14 or otherwise, no coins resembling any of the coins struck under this Convention shall be struck in or imported into Portuguese India, or shall be struck under the authority of, or with the sanction of, His Most Faithful Majesty in any other place.

Done at Pangim on the twelfth day of April, one thousand eight hundred and eighty.

(Sd.) CAETANO ALDRE D'ALMEIDA

ALBUQUERQUE,

Governor General of Portuguese India.

Done at Calcutta on the eighteenth day of March, one thousand eight hundred and eighty.

(Sd.) LYTTON,

Viceroy and Governor General
of British India.

R. J. CROSTHWAITE,

Offg. Secy. to the Govt. of India.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 8th April 1881, and the assent of His Excellency the Viceroy and Governor General on the 17th May 1881, and is published for general information :—

Bombay Act No. II. of 1881.

An Act to confirm the jurisdiction of Presidency Magistrates in Municipal cases.

WHEREAS doubts are entertained whether a Presidency Magistrate who is a rate-payer is legally competent to take cognizance of Municipal offences, and it is expedient to remove such doubts; It is enacted as follows :—

1. No Presidency Magistrate shall be, or shall be deemed to have ever been incapable of taking cognizance of any act or omission made punishable by the Bombay Municipal Acts of 1872 and 1878, or by the Bombay Municipal Act of 1872, or by any bye-

Disability of a Presidency Magistrate to try offences under the Bombay Municipal Acts by reason only of his being liable for Municipal rates, &c., or of his being benefited by the Municipal fund, removed.

to have ever been incapable of taking cognizance of any act or omission made punishable by the Bombay Municipal Acts of 1872 and 1878, or by the Bom-

law framed under either of the said Acts, by reason only of his being liable to pay any rate, tax, toll, duty, or other impost leviable under the said Acts or either of them, or of his being benefited by the Municipal fund to the credit of which any fine or penalty which may be or may have been levied in respect of such act or omission is or was payable.

2. In this Act the words "Presidency Magistrate" include a Police Magistrate and a member of a Court of Petty Sessions appointed before the Presidency Magistrates Act, 1877, came into force.

"Presidency Magistrate" defined.

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
Under Secretary to Government.

Bombay, 2nd June 1881.

[Published with the "Bombay Government Gazette" on the 25th August 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 20th July 1881, and the assent of His Excellency the Viceroy and Governor General on the 16th August 1881, and is published for general information :—

Bombay Act No. III. of 1881.

An Act to further amend the Bombay Port Trust Act, 1879.

WHEREAS it is expedient to amend the Bombay Port Trust Act, 1879, in the manner hereinafter appearing : It is enacted as follows :—

1. After Section 17 of Bombay Act VI. of 1879 the following Section shall be added :—
- Section inserted after Section 17

"17A. Notwithstanding anything contained in Section 17, the signature of the Chairman may be engraved, lithographed, or impressed by any mechanical process on the coupons attached to debentures issued under this Act, and such signature so engraved, lithographed, or impressed shall be as valid as if the same had been subscribed in the proper handwriting of the said Chairman."

2. After the words "therein expressed" in paragraph 3 of Section 30A of the said Act shall be added the following words and figures :—

"Anything in Section 30 to the contrary notwithstanding."

3. After the words "Section 30" in paragraph 5 of Section 34 of the said Act there shall be

inserted the following words and figures :—

"or Section 30A."

4. To paragraph 2 of Section 39 of the said Act the following words shall be added :—

"or for the purpose of repaying, either in whole or in part, any monies heretofore or hereafter borrowed, or owing, by the Board."

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
Under Secretary to Government.

Poona, 17th August 1881.

[Published with the "Bombay Government Gazette" on the 1st September 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 20th July 1881, and the assent of His Excellency the Viceroy and Governor General on the 16th August 1881, and is published for general information:—

Bombay Act No. III. of 1881.

An Act to further amend the Bombay Port Trust Act, 1879.

WHEREAS it is expedient to amend the Bombay Port Trust Act, 1879, in the manner hereinafter appearing: It is enacted as follows:—

1. After Section 17 of Bombay Act VI. of 1879 the following Section shall be added:—

"17A. Notwithstanding anything contained in Section 17, the signature of the Chairman may be engraved, lithographed, or impressed by any mechanical process on the coupons attached to debentures issued under this Act, and such signature so engraved, lithographed, or impressed shall be as valid as if the same had been subscribed in the proper handwriting of the said Chairman."

2. - After the words "therein expressed" in paragraph 3 of Section 30A of the said Act shall be

added the following words and figures:—
"Anything in Section 30 to the contrary notwithstanding."

3. After the words "Section 30" in paragraph 5 of Section 34 of the said Act there shall be

inserted the following words and figures:—
"or Section 30A."

4. To paragraph 2 of Section 39 of the said Act the following words shall be added:—

"or for the purpose of repaying, either in whole or in part, any monies heretofore or hereafter borrowed, or owing, by the Board."

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
Under Secretary to Government.

Poona, 17th August 1881.



Bombay Government Gazette.

Published by Authority.

THURSDAY, 15TH SEPTEMBER 1881.

Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 7th September, 1881, and is hereby promulgated for general information:—

Act No. XX of 1881.

THE SINDH INCUMBERED ESTATES ACT, 1881.

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2. Repeal of Act No. XIV of 1876.
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Bombay Government Gazette.

Published by Authority.

THURSDAY, 15TH SEPTEMBER 1881.

Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART IV.

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The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 7th September, 1881, and is hereby promulgated for general information:—

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An Act to amend the law providing for the relief of Jágirdárs and Zamíndárs in Sindh.

WHEREAS it is expedient to amend the law providing for the relief of Jágirdárs and Zamíndárs in Sindh; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Sindh Incumbered Estates Act, 1881"; and it shall come into force on the passing thereof.

2. Act No. XIV of 1876 (*to relieve from Incumbrances the estates of Jágirdárs and Zamíndárs in Sindh*) is repealed; but all applications, appointments and rules made, all notices published and all other things duly done under the said Act, shall be deemed to have been respectively made, published and done under this Act.

Interpretation-clause. 3. In this Act—

"Jágír land" includes also a share held hereditarily of the revenues of a Government village, but does not include *siri* or *mámul* or garden grants;

"Jágirdár" means a person who, or whose ancestor, was found in possession of jágír land in Sindh on the seventeenth day of February, 1843,

and to whom the said land, or a portion of the same, or other land in lieu thereof, has been continued by the British Government, and to whom, or to whose ancestor, a sanad has been, or hereafter may be, granted confirming such continuance:

"Zamíndár" means a person holding lands in Sindh on the aggregate of which he or his ancestor has been assessed by the Government, on account of land-revenue for any one of the five revenue years next before the fourteenth day of September, 1876, a sum not less than three hundred rupees:

"Commissioner" means the Commissioner in Sindh.

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

4. At any time within six months after the Application for the bene- passing of this Act, any fit of this Act. jágirdár or zamíndár,

or any person who would be sole heir or one of the heirs to such jágirdár or zamíndár if he then died intestate,

may apply, in writing, to the Commissioner, stating that such jágirdár or zamíndár is subject to debts or liabilities; other than debts due, or liabilities incurred, to Government, or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case.

When any jágirdár, zamíndár or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

5. When any such application is made by or Order to inquire. on behalf of a jágirdár, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities, and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the Governor of Bombay in Council in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

6. When an inquiry has been directed under section five, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of complaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the

debtor's property, whether moveable or immovable, to meet the same, as the Commissioner, or the said officer subject to his control, may require.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code.

7. The officer so appointed, after making inquiry, shall submit a report of the proceedings to the Commissioner.

On receipt of such report, the Commissioner may (a) direct a further inquiry; or (b) dismiss the application; or (c), by order published in the *Sindh Official Gazette*, appoint an officer (hereinafter called the manager) to manage the immovable property of the debtor, and to arrange for the liquidation of his debts in manner hereinafter provided.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

8. Such order (hereinafter called "the order of management") shall extend to all immovable property of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject, or which are charged on the whole or any part of his immovable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided.

The management shall be deemed to commence from the date on which the order is published.

9. On the publication of the order of management the following consequences shall ensue:—

First, all proceedings then pending in any civil Court in British India in respect to the debts and liabilities mentioned in section eight shall be stayed; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended;

Secondly, so long as the management continues, no fresh proceedings, processes, executions or attachments shall be instituted in or issued by any civil Court in British India in respect of such debts and liabilities;

Thirdly, so long as the management continues, the debtor shall be incompetent—

- (a) to enter into any contract involving him in pecuniary liability, or
- (b) to mortgage, charge, lease or alienate the property under management or any part thereof, or to encumber or alienate property under management,

(c) to grant valid receipts for the rents and profits arising or accruing therefrom:

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties;

Fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease or alienate such property or any part thereof.

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management,

and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by a *jágirdár* or *zamíndár*, as the case may be, all the powers possessed by a Collector under the law for the time being in force for the recovery of land-revenue due to Government:

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years, to take effect in possession.

11. From the sums received or recovered under section ten, the manager shall pay—

First, the costs of the management, including the costs of necessary repairs;

Secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management;

Thirdly, the rent (if any) due to the *jágirdár* or other superior holder in respect of the said property;

Fourthly, such periodical allowances as the Commissioner may from time to time fix for the maintenance of the debtor and his family;

Fifthly, the cost of such improvements of the said property as he thinks necessary, and are approved by the Commissioner.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section eight other than those so due or incurred to Government, and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. On the publication of the order of management, the manager shall publish in the *Sindh Official Gazette* a notice in English and Sindhi, calling upon all persons having claims against the debtor, or the property under management, to notify the same in writing to such manager within six months from the date of the publication.

He shall also cause copies of such notice to be exhibited at the mukhtiar-kars' kaohahris in the district in which the said property lies, and at such other places as he thinks fit.

13. Every such claimant shall, along with his claim, present full particulars thereof.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.

If the document be an entry in any book, the claimant shall produce the book to the manager, together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

14. Every such claim (other than claims of the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section nineteen, clause (d), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged ;

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section twelve, the manager may receive such claim within the further period of six months from the expiration of the original period of six months,

15. The manager shall inquire into the history and merits of every claim received under sections twelve and fourteen, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants,

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

17. When the total amount of the debts and liabilities (including those due and incurred to Government) has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) showing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section eleven, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act ; and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

18. The Commissioner may

(a) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(b) sanction any liquidation-scheme or any revised liquidation-scheme submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

19. At any time before he has sanctioned a liquidation-scheme under section eighteen, the Commissioner may, by an order published in the *Sindh Official Gazette*, direct that on a date fixed by such order the management shall be relinquished.

On the date so fixed—

(a) the management shall terminate ;
(b) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section ten ;

(c) any residue of the rents and profits of the said property retained under the last clause of section eleven shall be paid to him ; and

(d) the proceedings, processes, executions and attachments stayed and suspended under section nine, and the debts and liabilities barred by section fourteen, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION
OF THE LIQUIDATION-SCHEME.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the local Government may from time to time by rule direct; and thereupon—

1st, all proceedings, processes, executions and attachments stayed or suspended under section nine shall be for ever barred, and

2nd, every debt or liability due or owing to any person which was proveable before the manager shall be extinguished; and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue year.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV of this Act.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager, with the sanction of the Commissioner, may inquire into the sufficiency of the consideration for which the lease was given; and if such consideration appear to him insufficient, may by order, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and in default of such payment the lease shall be cancelled.

23. Subject to the rules made under section thirty-one, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise

any money which may be required for carrying out such scheme—

- (a) by demising by way of mortgage the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or
- (b) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or
- (c) by borrowing money from Government at such rate of interest as appears reasonable to the local Government.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (c) of section twenty-four, together with the interest (if any) due thereon, have been paid and discharged, the manager shall publish in the *Sindh Official Gazette* a notice fixing a date for the termination of the management.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section twenty-four, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections ten, twenty-three and twenty-four.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided—

1st, the management shall continue and proceed in all respects as if such debtor were still living;

2ndly, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (b) and (c) of section nine; and

3rdly, no civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

28. When a *jágírdár* or *zamíndár* has been restored under section twenty-six to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such *jágírdár* or *zamíndár* shall be valid as to any time beyond his natural life.

CHAPTER VI.

OF APPEAL AND REVISION.

29. An appeal against any decision or order under sections fourteen, fifteen, sixteen and twenty-two, and imposing a fine or imprisonment in exercise of the powers conferred by section thirty-five, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order.

There shall be no appeal against the decision of the Commissioner on such appeal.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

CHAPTER VII.

MISCELLANEOUS.

31. The Commissioner, with the previous sanction of the Governor of Bombay in Council, may, from time to time, make rules consistent with this Act—

- (a) to regulate the security to be required from subordinate officers under this Act ;
- (b) to regulate the procedure in all cases under this Act ;
- (c) for the guidance of officers enquiring into and determining on claims under Chapter IV of this Act ; and in particular as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government ;
- (d) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities ; and

(e) generally to carry out the provisions of this Act.

Such rules shall be published in the *Sindh Official Gazette*, and shall thereupon have the force of law.

32. Whenever the Commissioner thinks fit, he may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act ; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

33. Every manager appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

35. For the purposes of this Act, the manager may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible, in the same manner, as is provided in the case of a civil Court by the Code of Civil Procedure.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

37. Nothing in this Act precludes the Courts in Sindh having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits ; but to all such suits the manager of such property shall be made a party.

R. J. CROSTHWAITE,
Offg. Secy, to the Govt. of India.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 7th September, 1881, and is hereby promulgated for general information:—

Act No. XXI. of 1881.

**THE BROACH AND KAIRA
INCUMBERED ESTATES ACT, 1881.**

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An Act to amend the law providing for the relief of Thákurs in the Districts of Broach and Kaira.

WHEREAS it is expedient to amend the law providing for the relief of Thákurs in the Districts of Broach and Kaira; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Broach and Kaira Incumbered Estates Act, 1881", and it shall come into force on the passing thereof.
2. Act No. XIV of 1877 (to relieve from Incumbrances the estates of Thákurs in Broach and Kaira), except the last three sections, is repealed.

But all applications, appointments and rules made, all notices published and all other things duly done under the said Act or under Act No. XV of 1871 (to relieve from Incumbrances the estates of Thákurs in Broach) shall be deemed to have been respectively made, published and done under this Act.

In section 40 of the said Act No. XIV of 1877, for the words "the said Tálukdári Settlement Officer," the words "the Tálukdári Settlement Officer mentioned in the Broach and Kaira Incumbered Estates Act, 1881, section seven," shall be substituted.

Interpretation-clause.

3. In this Act—

"Thákur" means also tálukdár, jágirdár and kasbáti, and such other classes of holders of estates as the local Government may, with the previous sanction of the Governor General in Council, declare to be Thákurs for the purposes of this Act.

"Heir" means the person for the time being entitled as heir to a Thákur :

"Commissioner" means the Revenue Commissioner of the Northern Division of the Presidency of Bombay.

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

4. At any time within six months after the Application for benefit of passing of this Act, any Thákur,

or any person who would be sole heir or one of the heirs to such Thákur if he then died intestate, may apply, in writing, to the Commissioner stating that such Thákur is subject to debts or liabilities, other than debts due, or liabilities incurred, to Government, or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case.

When any Thákur or other person entitled to make an application under this section is a minor or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

5. When any such application is made by Order to inquire. or on behalf of a Thákur, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the Governor of Bombay in Council in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

6. When an inquiry has been directed under Verified statement to be section five, the applicant submitted. shall, within a period to be fixed by the Commissioner, submit to the officer

appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immoveable, to meet the same, as the Commissioner, or the said officer subject to his control, may require.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code. †

7. The officer so appointed, after making Report of inquiry and proceedings thereon. inquiry, shall submit a report of his proceedings to the Commissioner.

On receipt of such report, the Commissioner may—

(a) direct a further inquiry, or
(b) dismiss the application, or
(c) by order published in the *Bombay Government Gazette*, direct that the immoveable property of the debtor shall be managed, and that his debts shall be liquidated, in the manner hereinafter provided, by a manager.

The Tálukdári Settlement-officer for the time being shall, unless the local Government in any case otherwise directs, be such manager.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

8. Such order (hereinafter called "the order of management") shall extend to all immoveable property of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject, or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided.

The management shall be deemed to commence Commencement of management. from the date on which the order is published.

9. On the publication of the order of management the following consequences shall ensue:—

Effect of order of management. First, all proceedings then pending in any civil Court in British India in respect to the debts and liabilities mentioned in section eight shall be stayed; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended;

Stay of pending proceedings, &c. Secondly, so long as the management continues, no fresh proceedings, processes, executions or attachments shall be instituted in or issued by

any civil Court in British India in respect of such debts and liabilities;

Thirdly, so long as the management continues, the debtor shall be incompetent—

(a) to enter into any contract involving him in pecuniary liability, or

(b) to mortgage, charge, lease or alienate the property under management or any part thereof,

(c) to grant valid receipts for the rents and profits arising or accruing therefrom:

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties;

Fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease, or alienate such property or any part thereof.

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management,

and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by a Thakur, all the powers possessed by a Collector, under the law for the time being in force, for securing and recovering land-revenue due to Government:

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years, to take effect in possession.

11. From the sums received or recovered under section ten, the manager shall pay—

First, the costs of the management, including the costs of necessary repairs;

Secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management;

Thirdly, the rent (if any) due to any superior holder in respect of the said property;

Fourthly, such periodical allowance as the Commissioner may from time to time fix for the maintenance and other necessary expenses of the debtor and of such members of his family as the Commissioner directs;

Fifthly, the cost of such improvements of the said property as he thinks necessary, and as are approved by the Commissioner.

iv.—18

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section eight other than those so due or incurred to Government, and also for the repayment either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. On the publication of the order of management, the manager shall publish in the *Bombay Government Gazette* a notice in English and Gujarati calling upon all persons having claims against the debtor or the property under management to notify the same in writing to such manager within six months from the date of the publication.

He shall also cause copies of such notice to be exhibited at the *Māmlat-dārs' kachahris* in the district in which the said property lies, and at such other places as he thinks fit.

13. Every such claimant shall, along with his claim, present full particulars thereof.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.

If the document be an entry in any book, the claimant shall produce the book to the manager together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification, and after examining and comparing the copy with the original, shall return the book to the claimant.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

14. Every such claim (other than claims of the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section nineteen, clause (d), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged:

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section twelve, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

15. The manager shall inquire into the history and merits of every claim received under sections twelve and fourteen, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

17. When the total amount of the debts and liabilities (including those due and incurred to Government) has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) shewing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section eleven, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act, and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

18. The Commissioner may

(a) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(b) sanction any liquidation-scheme, or any revised liquidation-scheme, submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

19. At any time before he has sanctioned a liquidation-scheme under section eighteen, the Commissioner may, by an order published in the *Bombay Government Gazette*, direct that on a date fixed by such order the management shall be relinquished.

On the date so fixed—

- (a) the management shall terminate;
- (b) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section ten;
- (c) any residue of the rents and profits of the said property retained under the last clause of section eleven shall be paid to him; and

(d) the proceedings, processes, executions and attachments stayed and suspended under section nine; and the debts and liabilities barred by section fourteen, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section; the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-Scheme.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the local Government may from time to time by rule direct; and thereupon—

1st, all proceedings, processes, executions and attachments stayed or suspended under section nine shall be for ever barred, and

2nd, every debt or liability due or owing to any person which was proveable before the manager shall be extinguished, and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue year.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation scheme, the amount (if any) awarded to him under Chapter IV of this Act.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager may inquire into the sufficiency of the consideration for which the lease was given; and if such consideration appear to him insufficient, may by order, with the consent of the Commissioner, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and in default of such payment, the lease shall be cancelled.

23. Subject to the rules made under section thirty-one, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the pro-

perty under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

24. At any time after the liquidation-scheme has been sanctioned as mortgage or sale. aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme—

(a) by mortgaging the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(b) by charging the whole or any part of such property; or

(c) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(d) by borrowing money from Government at such rate of interest as appears reasonable to the local Government.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (d) of section twenty-four, together with the interest (if any) due thereon, have been paid and discharged as therein provided, or in such other manner as the Commissioner thinks fit, the manager shall publish in the *Bombay Government Gazette* a notice fixing a date for the termination of the management.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section twenty-four, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections ten, twenty-three and twenty-four.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided—

1st, the management shall continue and proceed in all respects as if such debtor were still living;

2ndly, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (b) and (c) of section nine; and

3rdly, no civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management, for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

28. When a Thákur has been restored under Mortgages, &c., made by section twenty-six to the restored Thákur valid only for his life. possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such Thákur, shall be valid as to any time beyond his natural life.

CHAPTER VI.

OF APPEAL AND REVISION.

29. An appeal against any decision or order under sections fourteen, fifteen, sixteen and twenty-two, or imposing a fine or imprisonment in exercise of the powers conferred by section thirty-five, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order.

There shall be no appeal against the decision of the Commissioner on such appeal.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

CHAPTER VII.

MISCELLANEOUS.

31. The local Government may, from time to time, make rules consistent with this Act—

(a) to regulate the security to be required from subordinate officers under this Act;

(b) to regulate the procedure in all cases under this Act;

(c) for the guidance of officers enquiring into and determining on claims under Chapter IV of this Act; and in particular as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

(d) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities; and

(e) generally to carry out the provisions of this Act.

Such rules shall be published in the *Bombay Government Gazette*, and when so published shall have the force of law.

32. The local Government may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

33. Every manager appointed under this Act and every agent of such manager shall be deemed a public servant within the meaning of the Indian Penal Code.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

35. For the purposes of this Act, the manager and any officer making an inquiry under section five may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible, in the same manner, as is provided in the case of a civil Court by the Code of Civil Procedure.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bona fide* pursuant to this Act.

37. Nothing in this Act precludes the Courts in Broach and Kaira having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

38. Nothing in section nine shall be deemed to render any of the following Thákurs, namely, the Thákur of Ahmod, the Thákur of Sarod, the Thákur of Kerwára, the Thákur of Dehej, and the Thákur of Janiádra incompetent to enter into contracts involving him in pecuniary liability, nor shall anything in section twenty-eight apply to any of the said Thákurs:

Provided that, if any such Thákur has, since the scheme for the settlement of his debts and liabilities was approved under section 11 of the said Act No. XV of 1871, entered into any contract involving him in pecuniary liability exceeding the average annual income derived during the previous five years from his immoveable property after deducting therefrom the land-tax and other dues of Government, the local Government may, by notification in the *Bombay Government Gazette*, declare that the exemption made by the former part of this section shall cease in his case, and thereupon such exemption shall cease accordingly.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

[Published with the "Bombay Government Gazette" on the 22nd September 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 7th September, 1881, and is hereby promulgated for general information:—

Act No. XX of 1881.

THE SINDH INCUMBERED ESTATES ACT, 1881.

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An Act to amend the law providing for the relief of Jágirdárs and Zamíndárs in Sindh.

WHEREAS it is expedient to amend the law providing for the relief of Jágirdárs and Zamíndárs in Sindh; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Sindh Incumbered Estates Act, 1881"; and it shall come into force on the passing thereof.
2. Act No. XIV of 1876 (*to relieve from Incumbrances the estates of Jágirdárs and Zamíndárs in Sindh*) is repealed; but all applications, appointments and rules made, all notices published and all other things duly done under the said Act, shall be deemed to have been respectively made, published and done under this Act.

Interpretation-clause. 3. In this Act—

"Jágir land" includes also a share held hereditarily of the revenues of a Government village, but does not include *siri* or *mámul* or garden grants:

"Jágirdár" means a person who, or whose ancestor, was found in possession of jágir land in Sindh on the seventeenth day of February, 1843, and to whom the said land, or a portion of the same, or other land in lieu thereof, has been continued by the British Government, and to whom, or to whose ancestor, a sanad has been, or hereafter may be, granted confirming such continuance:

"Zamíndár" means a person holding lands in Sindh on the aggregate of which he or his ancestor has been assessed by the Government, on account

of land-revenue for any one of the five revenue years next before the fourteenth day of September, 1876, a sum not less than three hundred rupees:

"Commissioner" means the Commissioner in Sindh.
"Commissioner."

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

4. At any time within six months after the passing of this Act, any Application for the benefit of this Act. jágirdár or zamíndár,

or any person who would be sole heir or one of the heirs to such jágirdár or zamíndár if he then died intestate,

may apply, in writing, to the Commissioner, stating that such jágirdár or zamíndár is subject to debts or liabilities, other than debts due, or liabilities incurred, to Government, or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case.

When any jágirdár, zamíndár or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

5. When any such application is made by or on behalf of a jágirdár, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities, and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the Governor of Bombay in Council in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

6. When an inquiry has been directed under section five, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immoveable, to meet the same, as the Commissioner, or the said officer subject to his control, may require.

If any such statement contains any averment which the person making the statement knows or believes to be false, or does not know or believe to be true, such person

shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code.

7. The officer so appointed, after making inquiry, shall submit a report of the proceedings to the Commissioner.

On receipt of such report, the Commissioner may (a) direct a further inquiry; or (b) dismiss the application; or (c), by order published in the *Sindh Official Gazette*, appoint an officer (hereinafter called the manager) to manage the immoveable property of the debtor, and to arrange for the liquidation of his debts in manner hereinafter provided.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

8. Such order (hereinafter called "the order of management") shall extend to all immoveable property of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject, or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided.

The management shall be deemed to commence from the date on which the order is published.

9. On the publication of the order of management the following consequences shall ensue:—

First, all proceedings then pending in any civil Court in British India in respect to the debts and liabilities mentioned in section eight shall be stayed; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended;

Secondly, so long as the management continues, no fresh proceedings, processes, executions or attachments shall be instituted in or issued by any civil Court in British India in respect of such debts and liabilities;

Thirdly, so long as the management continues, the debtor shall be incompetent—

- (a) to enter into any contract involving him to contract debts, in pecuniary liability, or
- (b) to mortgage, charge, lease or alienate the property under management or any part thereof, or
- (c) to grant valid receipts for the rents and profits arising or accruing therefrom:

to grant receipts for rent thereof.

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties;

Fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease or alienate such property or any part thereof.

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management,

and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by a *jágirdár* or *zamindár*, as the case may be, all the powers possessed by a Collector under the law for the time being in force for the recovery of land-revenue due to Government:

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years, to take effect in possession.

11. From the sums received or recovered under section ten, the manager shall pay—

First, the costs of the management, including the costs of necessary repairs;

Secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management;

Thirdly, the rent (if any) due to the *jágirdár* or other superior holder in respect of the said property;

Fourthly, such periodical allowances as the Commissioner may from time to time fix for the maintenance of the debtor and his family;

Fifthly, the cost of such improvements of the said property as he thinks necessary, and are approved by the Commissioner.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section eight other than those so due or incurred to Government, and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. On the publication of the order of management, the manager shall publish in the *Sindh Official Gazette* a notice in English and Sindhi, calling upon all persons having claims against the debtor, or the property under management, to notify the same in writing to such manager within six months from the date of the publication.

He shall also cause copies of such notice to be exhibited at the mukhtiar-kars' kachahris in the district in which the said property lies, and at such other places as he thinks fit.

13. Every such claimant shall, along with his claim, present full particulars thereof.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.

If the document be an entry in any book, the claimant shall produce the book to the manager, together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

14. Every such claim (other than claims of the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section nineteen, clause (d), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged :

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section twelve, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

15. The manager shall inquire into the history and merits of every claim received under sections twelve and fourteen, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

17. When the total amount of the debts and liabilities (including those due and incurred to Government) has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) showing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section eleven, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act; and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

18. The Commissioner may

(a) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(b) sanction any liquidation-scheme or any revised liquidation-scheme submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

19. At any time before he has sanctioned a liquidation-scheme under section eighteen, the Commissioner may, by an order published in the *Sindh Official Gazette*, direct that on a date fixed by such order the management shall be relinquished.

On the date so fixed—

(a) the management shall terminate;

(b) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section ten;

(c) any residue of the rents and profits of the said property retained under the last clause of section eleven shall be paid to him; and

(d) the proceedings, processes, executions and attachments stayed and suspended under section nine, and the debts and liabilities barred by section fourteen, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION
OF THE LIQUIDATION-SCHEME.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the local Government may from time to time by rule direct; and thereupon—

1st, all proceedings, processes, executions and attachments stayed or suspended under section nine shall be for ever barred, and

2nd, every debt or liability due or owing to any person which was proveable before the manager shall be extinguished; and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue year.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV of this Act.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager, with the sanction of the Commissioner, may inquire into the sufficiency of the consideration for which the lease was given; and if such consideration appear to him insufficient, may by order, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and in default of such payment the lease shall be cancelled.

23. Subject to the rules made under section thirty-one, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise

any money which may be required for carrying out such scheme—

- (a) by demising by way of mortgage the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or
- (b) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or
- (c) by borrowing money from Government at such rate of interest as appears reasonable to the local Government.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (c) of section twenty-four, together with the interest (if any) due thereon, have been paid and discharged, the manager shall publish in the *Sindh Official Gazette* a notice fixing a date for the termination of the management.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section twenty-four, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections ten, twenty-three and twenty-four.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided—

- 1st*, the management shall continue and proceed in all respects as if such debtor were still living;
- 2ndly*, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (b) and (c) of section nine; and
- 3rdly*, no civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

28. When a *jágírdár* or *zamíndár* has been restored under section twenty-six to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such *jágírdár* or *zamíndár* shall be valid as to any time beyond his natural life,

CHAPTER VI.

OF APPEAL AND REVISION.

29. An appeal against any decision or order under sections fourteen, fifteen, sixteen and twenty-two, and imposing a fine or imprisonment in exercise of the powers conferred by section thirty-five, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order.

There shall be no appeal against the decision of the Commissioner on such appeal.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

CHAPTER VII.

MISCELLANEOUS.

31. The Commissioner, with the previous sanction of the Governor of Bombay in Council, may, from time to time, make rules consistent with this Act—

- (a) to regulate the security to be required from subordinate officers under this Act;
- (b) to regulate the procedure in all cases under this Act;
- (c) for the guidance of officers enquiring into and determining on claims under Chapter IV of this Act; and in particular as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;
- (d) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities; and

(e) generally to carry out the provisions of this Act.

Such rules shall be published in the *Sindh Official Gazette*, and shall thereupon have the force of law.

32. Whenever the Commissioner thinks fit, he may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

33. Every manager appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

35. For the purposes of this Act, the manager may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible, in the same manner, as is provided in the case of a civil Court by the Code of Civil Procedure.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

37. Nothing in this Act precludes the Courts in Sindh having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 7th September, 1881, and is hereby promulgated for general information :—

Act No. XXI. of 1881.

**THE BROACH AND KAIRA
INCUMBERED ESTATES ACT, 1881.**

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An Act to amend the law providing for the relief of Thákurs in the Districts of Broach and Kaira.

WHEREAS it is expedient to amend the law providing for the relief of Thákurs in the Districts of Broach and Kaira; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Broach and Kaira Incumbered Estates Act, 1881";
Short title.
and it shall come into force on the passing thereof.
Commencement.
2. Act No. XIV of 1877 (to relieve from Incumbrances the estates of Thákurs in Broach and Kaira), except the last three sections, is repealed.
Partial repeal of Act No. XIV of 1877.

But all applications, appointments and rules made, all notices published and all other things duly done under the said Act or under Act No. XV of 1871 (to relieve from Incumbrances the estates of Thákurs in Broach) shall be deemed to have been respectively made, published and done under this Act.

In section 40 of the said Act No. XIV of 1877, for the words "the said Tálukdári Settlement Officer," the words "the Tálukdári Settlement Officer mentioned in the Broach and Kaira Incumbered Estates Act, 1881, section seven," shall be substituted.

Interpretation-clause.

3. In this Act—

"Thákur" means also tálukdár, jágirdár and kasbáti, and such other classes of holders of estates

as the local Government may, with the previous sanction of the Governor General in Council, declare to be Thákurs for the purposes of this Act.

"Heir" means the person for the time being entitled as heir to a Thákur :

"Commissioner" means the Revenue Commissioner of the Northern Division of the Presidency of Bombay.

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

4. At any time within six months after the passing of this Act, any Thákur,

or any person who would be sole heir or one of the heirs to such Thákur if he then died intestate, may apply, in writing, to the Commissioner stating that such Thákur is subject to debts or liabilities, other than debts due, or liabilities incurred, to Government, or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case.

When any Thákur or other person entitled to make an application under this section is a minor or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

5. When any such application is made by or on behalf of a Thákur, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the Governor of Bombay in Council in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

6. When an inquiry has been directed under section five, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer

appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immoveable, to meet the same, as the Commissioner, or the said officer subject to his control, may require.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code.

7. The officer so appointed, after making inquiry, shall submit a report of his proceedings to the Commissioner.

On receipt of such report, the Commissioner may—

(a) direct a further inquiry, or
(b) dismiss the application, or
(c) by order published in the *Bombay Government Gazette*, direct that the immoveable property of the debtor shall be managed, and that his debts shall be liquidated, in the manner herein-after provided, by a manager.

The Tálukdári Settlement-officer for the time being shall, unless the local Government in any case otherwise directs, be such manager.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

8. Such order (hereinafter called "the order of management") shall extend to all immoveable property of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject, or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided.

The management shall be deemed to commence from the date on which the order is published.

9. On the publication of the order of management the following consequences shall ensue :—

First, all proceedings then pending in any civil Court in British India in respect to debts and liabilities mentioned in section eight shall be stayed; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended ;

Secondly, so long as the management continues, no fresh proceedings, processes, executions or attachments shall be instituted in or issued by

any civil Court in British India in respect of such debts and liabilities;

Thirdly, so long as the management continues, the debtor incompetent— the debtor shall be incompetent—

(a) to enter into any contract involving him in to contract debts, pecuniary liability, or
(b) to mortgage, charge, lease or alienate the to incumber or alienate property under management or any part thereof, property, or

(c) to grant valid receipts for the rents and to grant receipts for rent. profits arising or accruing therefrom:

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties;

Fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease, or alienate such property or any part thereof.

10. The manager shall, during the management of the property, Manager to have powers of owner and to receive rents and profits; management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management,

and for the purpose of recovering such rents to have powers of Collection and profits shall have, in addition to any powers possessed by a Thákur, all the powers possessed by a Collector, under the law for the time being in force, for securing and recovering land-revenue due to Government:

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years, to take effect in possession.

11. From the sums received or recovered under Manager to pay therefrom— section ten, the manager shall pay—

First, the costs of the management, including costs of management and repairs. the costs of necessary repairs;

Secondly, the Government revenue and all debts Government revenue, &c., and liabilities for the time being due or incurred to Government in respect of the property under management;

Thirdly, the rent (if any) due to any superior rent due to superior holder in respect of the holder, said property;

Fourthly, such periodical allowance as the allowance for maintenance and expenses of debtor and family, Commissioner may from time to time fix for the maintenance and other necessary expenses of the debtor and of such members of his family as the Commissioner directs;

Fifthly, the cost of such improvements of the cost of improvements, &c. said property as he thinks necessary, and as are approved by the Commissioner.

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The residue shall be retained by the manager Residue how disposed of. for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section eight other than those so due or incurred to Government, and also for the repayment either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. On the publication of the order of management, the manager shall publish in the *Bombay Government Gazette* a notice in English and Gujaráti calling upon all persons having claims against the debtor or the property under management to notify the same in writing to such manager within six months from the date of the publication.

He shall also cause copies of such notice to be exhibited at the Mámlat-dárs' kachahris in the district in which the said property lies, and at such other places as he thinks fit.

13. Every such claimant shall, along with his Claim to contain full particulars. claim, present full particulars thereof.

Every document on which the claimant founds his claim, or on which he Documents to be given up. relies in support thereof, shall be delivered to the manager along with the claim.

If the document be an entry in any book, the Entries in books. claimant shall produce the book to the manager together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification, and after examining and comparing the copy with the original, shall return the book to the claimant.

If any document in the possession or under the Power to exclude documents not produced with claim. control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

14. Every such claim (other than claims of Claim not duly notified to be barred. the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section nineteen, clause (d), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged:

Provided that, when proof is made to the Admission of claims within further period of six months. manager that the claimant was unable to comply with the provisions of section twelve, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

15. The manager shall inquire into the history and merits of every claim received under sections twelve and fourteen, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

17. When the total amount of the debts and liabilities (including those due and incurred to Government) has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) shewing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section eleven, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act, and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

18. The Commissioner may—

- (a) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or
- (b) sanction any liquidation-scheme, or any revised liquidation-scheme, submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

19. At any time before he has sanctioned a liquidation-scheme under section eighteen, the Commissioner may, by an order published in the *Bombay Government Gazette*, direct that on a date fixed by such order the management shall be relinquished.

On the date so fixed—

- (a) the management shall terminate;
- (b) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section ten;
- (c) any residue of the rents and profits of the said property retained under the last clause of section eleven shall be paid to him; and

(d) the proceedings, processes, executions and attachments stayed and suspended under section nine; and the debts and liabilities barred by section fourteen, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section; the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the local Government may from time to time by rule direct; and thereupon—

- 1st, all proceedings, processes, executions and attachments stayed or suspended under section nine shall be for ever barred, and
- 2nd, every debt or liability due or owing to any person which was proveable before the manager shall be extinguished, and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue year.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV of this Act.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager may inquire into the sufficiency of the consideration for which the lease was given; and if such consideration appear to him insufficient, may by order, with the consent of the Commissioner, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and in default of such payment, the lease shall be cancelled.

23. Subject to the rules made under section thirty-one, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the pro-

erty under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme—

(a) by mortgaging the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(b) by charging the whole or any part of such property; or

(c) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(d) by borrowing money from Government at such rate of interest as appears reasonable to the local Government.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (d) of section twenty-four, together with the interest (if any) due thereon, have been paid and discharged as therein provided, or in such other manner as the Commissioner thinks fit, the manager shall publish in the *Bombay Government Gazette* a notice fixing a date for the termination of the management.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section twenty-four, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections ten, twenty-three and twenty-four.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided—

1st, the management shall continue and proceed in all respects as if such debtor were still living;

2ndly, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (b) and (c) of section nine; and

3rdly, no civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management, for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

28. When a Thákur has been restored under section twenty-six to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such Thákur, shall be valid as to any time beyond his natural life.

CHAPTER VI.

OF APPEAL AND REVISION.

29. An appeal against any decision or order under sections fourteen, fifteen, sixteen and twenty-two, or imposing a fine or imprisonment in exercise of the powers conferred by section thirty-five, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order.

There shall be no appeal against the decision of the Commissioner on such appeal.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

CHAPTER VII.

MISCELLANEOUS.

31. The local Government may, from time to time, make rules consistent with this Act—

(a) to regulate the security to be required from subordinate officers under this Act;

(b) to regulate the procedure in all cases under this Act;

(c) for the guidance of officers enquiring into and determining on claims under Chapter IV of this Act; and in particular as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

(d) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities; and

(e) generally to carry out the provisions of this Act.

Such rules shall be published in the *Bombay Government Gazette*, and when so published shall have the force of law.

32. The local Government may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

33. Every manager appointed under this Act and every agent of such agents to be public servants, shall be deemed a public servant within the meaning of the Indian Penal Code.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

35. For the purposes of this Act, the manager and any officer making an inquiry under section five may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible, in the same manner, as is provided in the case of a civil Court by the Code of Civil Procedure.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

37. Nothing in this Act precludes the Courts in Broach and Kaira having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

38. Nothing in section nine shall be deemed to render any of the following Thákurs, namely, the Thákur of A'hmud, the Thákur of Sarod, the Thákur of Kerwára, the Thákur of Dehej, and the Thákur of Janiádra incompetent to enter into contracts involving him in pecuniary liability, nor shall anything in section twenty-eight apply to any of the said Thákurs:

Provided that, if any such Thákur has, since the scheme for the settlement of his debts and liabilities was approved under section 11 of the said Act No. XV of 1871, entered into any contract involving him in pecuniary liability exceeding the average annual income derived during the previous five years from his immoveable property after deducting therefrom the land-tax and other dues of Government, the local Government may, by notification in the *Bombay Government Gazette*, declare that the exemption made by the former part of this section shall cease in his case, and thereupon such exemption shall cease accordingly.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

[Published with the "Bombay Government Gazette" on the 29th September 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 7th September, 1881, and is hereby promulgated for general information:—

Act No. XX of 1881.

THE SINDH INCUMBERED ESTATES ACT, 1881.

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An Act to amend the law providing for the relief of Jágírdárs and Zamíndárs in Sindh.

WHEREAS it is expedient to amend the law providing for the relief of Jágírdárs and Zamíndárs in Sindh; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Sindh Incumbered Estates Act, 1881"; and it shall come into force on the passing thereof.

2. Act No. XIV of 1876 (*to relieve from Incumbrances the estates of Jágírdárs and Zamíndárs in Sindh*) is repealed;

but all applications, appointments and rules made, all notices published and all other things duly done under the said Act, shall be deemed to have been respectively made, published and done under this Act.

Interpretation-clause. 3. In this Act—

"Jágír land" includes also a share held hereditarily of the revenues of a Government village, but does not include *siri* or *mámul* or garden grants:

"Jágírdár" means a person who, or whose ancestor; was found in possession of jágír land in Sindh on the seventeenth day of February, 1843, and to whom the said land, or a portion of the same, or other land in lieu thereof, has been continued by the British Government, and to whom, or to whose ancestor, a sanad has been, or hereafter may be, granted confirming such continuance:

"Zamíndár" means a person holding lands in Sindh on the aggregate of which he or his ancestor has been assessed by the Government, on account

of land-revenue for any one of the five revenue years next before the fourteenth day of September, 1876, a sum not less than three hundred rupees:

"Commissioner" means the Commissioner in Sindh.

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

4. At any time within six months after the passing of this Act, any jágírdár or zamíndár,

or any person who would be sole heir or one of the heirs to such jágírdár or zamíndár if he then died intestate,

may apply, in writing, to the Commissioner, stating that such jágírdár or zamíndár is subject to debts or liabilities, other than debts due, or liabilities incurred, to Government, or that his immovable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case.

When any jágírdár, zamíndár or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

5. When any such application is made by or on behalf of a jágírdár, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities, and the sufficiency of the debtor's property, whether moveable or immovable, to discharge the same.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the Governor of Bombay in Council in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

6. When an inquiry has been directed under section five, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immovable, to meet the same, as the Commissioner, or the said officer subject to his control, may require.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person

shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code.

7. The officer so appointed, after making inquiry, shall submit a report of the proceedings to the Commissioner.

On receipt of such report, the Commissioner may (a) direct a further inquiry; or (b) dismiss the application; or (c), by order published in the *Sindh Official Gazette*, appoint an officer (hereinafter called the manager) to manage the immoveable property of the debtor, and to arrange for the liquidation of his debts in manner hereinafter provided.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

8. Such order (hereinafter called "the order of management") shall extend to all immoveable property of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject, or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided.

The management shall be deemed to commence from the date on which the order is published.

9. On the publication of the order of management the following consequences shall ensue:—

First, all proceedings then pending in any civil Court in British India in respect to the debts and liabilities mentioned in section eight shall be stayed; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended;

Secondly, so long as the management continues, no fresh proceedings, processes, executions or attachments shall be instituted in or issued by any civil Court in British India in respect of such debts and liabilities;

Thirdly, so long as the management continues, the debtor shall be incompetent—

- (a) to enter into any contract involving him in pecuniary liability, or to contract debts,
- (b) to mortgage, charge, lease or alienate the property under management, or to encumber or alienate property under management,
- (c) to grant valid receipts for the rents and profits arising or accruing therefrom:

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties;

Fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease or alienate such property or any part thereof.

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management,

and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by a jágirdár or zamíndár, as the case may be, all the powers possessed by a Collector under the law for the time being in force for the recovery of land-revenue due to Government:

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years, to take effect in possession.

11. From the sums received or recovered under section ten, the manager shall pay—

First, the costs of the management, including the costs of necessary repairs;

Secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management;

Thirdly, the rent (if any) due to the jágirdár or other superior holder in respect of the said property;

Fourthly, such periodical allowances as the Commissioner may from time to time fix for the maintenance of the debtor and his family;

Fifthly, the cost of such improvements of the said property as he thinks necessary, and are approved by the Commissioner.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section eight other than those so due or incurred to Government, and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. On the publication of the order of management, the manager shall publish in the *Sindh Official Gazette* a notice in English and Sindhi, calling upon all persons having claims against the debtor, or the property under management, to notify the same in writing to such manager within six months from the date of the publication.

He shall also cause copies of such notice to be exhibited at the mukhtíárkár's kachahrís in the district in which the said property lies, and at such other places as he thinks fit.

13. Every such claimant shall, along with his claim, present full particulars thereof.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.

If the document be an entry in any book, the claimant shall produce the book to the manager, together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

14. Every such claim (other than claims of the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section nineteen, clause (d), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged :

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section twelve, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

15. The manager shall inquire into the history and merits of every claim received under sections twelve and fourteen, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

17. When the total amount of the debts and liabilities (including those due and incurred to Government) has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) showing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section eleven, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act; and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

18. The Commissioner may

(a) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(b) sanction any liquidation-scheme or any revised liquidation-scheme submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

19. At any time before he has sanctioned a liquidation-scheme under section eighteen, the Commissioner may, by an order published in the *Sindh Official Gazette*, direct that on a date fixed by such order the management shall be relinquished.

On the date so fixed—

(a) the management shall terminate;

(b) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section ten;

(c) any residue of the rents and profits of the said property retained under the last clause of section eleven shall be paid to him; and

(d) the proceedings, processes, executions and attachments stayed and suspended under section nine, and the debts and liabilities barred by section fourteen, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION
OF THE LIQUIDATION-SCHEME.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the local Government may from time to time by rule direct; and thereupon—

1st, all proceedings, processes, executions and attachments stayed or suspended under section nine shall be for ever barred, and

2nd, every debt or liability due or owing to any person which was proveable before the manager shall be extinguished; and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue year.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV of this Act.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager, with the sanction of the Commissioner, may inquire into the sufficiency of the consideration for which the lease was given; and if such consideration appear to him insufficient, may by order, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and in default of such payment the lease shall be cancelled.

23. Subject to the rules made under section thirty-one, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise

any money which may be required for carrying out such scheme—

(a) by demising by way of mortgage the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(b) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(c) by borrowing money from Government at such rate of interest as appears reasonable to the local Government.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (c) of section twenty-four, together with the interest (if any) due thereon, have been paid and discharged, the manager shall publish in the *Sindh Official Gazette* a notice fixing a date for the termination of the management.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section twenty-four, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections ten, twenty-three and twenty-four.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided—

1st, the management shall continue and proceed in all respects as if such debtor were still living;

2ndly, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (b) and (c) of section nine; and

3rdly, no civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

28. When a *jágírdár* or *zamíndár* has been restored under section twenty-six to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such *jágírdár* or *zamíndár* shall be valid as to any time beyond his natural life.

CHAPTER VI.

OF APPEAL AND REVISION.

29. An appeal against any decision or order under sections fourteen, fifteen, sixteen and twenty-two, and imposing a fine or imprisonment in exercise of the powers conferred by section thirty-five, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order.

There shall be no appeal against the decision of the Commissioner on such appeal.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings and pass order thereon, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

CHAPTER VII.

MISCELLANEOUS.

31. The Commissioner, with the previous sanction of the Governor of Bombay in Council, may, from time to time, make rules consistent with this Act—

- (a) to regulate the security to be required from subordinate officers under this Act ;
- (b) to regulate the procedure in all cases under this Act ;
- (c) for the guidance of officers enquiring into and determining on claims under Chapter IV of this Act ; and in particular as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government ;
- (d) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities ; and

(e) generally to carry out the provisions of this Act.

Such rules shall be published in the *Sindh Official Gazette*, and shall thereupon have the force of law.

32. Whenever the Commissioner thinks fit, he may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act ; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

33. Every manager appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

35. For the purposes of this Act, the manager may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible, in the same manner, as is provided in the case of a civil Court by the Code of Civil Procedure.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

37. Nothing in this Act precludes the Courts in Sindh having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits ; but to all such suits the manager of such property shall be made a party.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 7th September, 1881, and is hereby promulgated for general information :—

Act No. XXI of 1881.

THE BROACH AND KAIRA
INCUMBERED ESTATES ACT, 1881.

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*An Act to amend the law providing for the relief
of Thákurs in the Districts of Broach and
Kaira.*

WHEREAS it is expedient to amend the law
providing for the relief of
Preamble. Thákurs in the Districts
of Broach and Kaira; It is hereby enacted as
follows :—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Broach and
Short title. Kaira Incumbered Es-
tates Act, 1881";
and it shall come into
Commencement. force on the passing
thereof.
2. Act No. XIV of 1877 (to relieve from
Incumbrances the estates
of Thákurs in Broach
and Kaira), except the
last three sections, is repealed.

But all applications, appointments and rules made, all notices published and all other things duly done under the said Act or under Act No. XV of 1871 (to relieve from Incumbrances the estates of Thákurs in Broach) shall be deemed to have been respectively made, published and done under this Act.

In section 40 of the said Act No. XIV of 1877, for the words "the said Tálukdári Settlement Officer," the words "the Tálukdári Settlement Officer mentioned in the Broach and Kaira Incumbered Estates Act, 1881, section seven," shall be substituted.

Interpretation-clause.

3. In this Act—

"Thákur" means also tálukdár, jágirdár and kasbáti, and such other classes of holders of estates

as the local Government may, with the previous sanction of the Governor General in Council, declare to be Thákurs for the purposes of this Act:

"Heir" means the person for the time being entitled as heir to a Thákur:

"Commissioner" means the Revenue Commissioner of the Northern Division of the Presidency of Bombay.

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

4. At any time within six months after the passing of this Act, any Thákur,

or any person who would be sole heir or one of the heirs to such Thákur if he then died intestate, may apply, in writing, to the Commissioner stating that such Thákur is subject to debts or liabilities, other than debts due, or liabilities incurred, to Government, or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case,

When any Thákur or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

5. When any such application is made by or on behalf of a Thákur, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the Governor of Bombay in Council in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

6. When an inquiry has been directed under section five, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer

appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immoveable, to meet the same, as the Commissioner, or the said officer subject to his control, may require.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code.

7. The officer so appointed, after making inquiry, shall submit a report of his proceedings to the Commissioner.

On receipt of such report, the Commissioner may—

- direct a further inquiry, or
- dismiss the application, or
- by order published in the *Bombay Government Gazette*, direct that the immoveable property of the debtor shall be managed, and that his debts shall be liquidated, in the manner hereinafter provided, by a manager.

The Tálukdári Settlement-officer for the time being shall, unless the local Government in any case otherwise directs, be such manager.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

8. Such order (hereinafter called "the order of management;" extend to all immoveable property of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject, or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided.

The management shall be deemed to commence from the date on which the order is published.

9. On the publication of the order of management the following consequences shall ensue:—

First, all proceedings then pending in any civil Court in British India in respect to the debts and liabilities mentioned in section eight shall be stayed; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended;

Secondly, so long as the management continues, no fresh proceedings, processes, executions or attachments shall be instituted in or issued by

any civil Court in British India in respect of such debts and liabilities ;

Thirdly, so long as the management continues, the debtor shall be incompetent—

(a) to enter into any contract involving him in to contract debts, pecuniary liability, or

(b) to mortgage, charge, lease or alienate the to incumber or alienate property under management or any part thereof, property, or

(c) to grant valid receipts for the rents and to grant receipts for rent. profits arising or accruing therefrom :

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties ;

Fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease, or alienate such property or any part thereof.

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management,

and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by a Thákur, all the powers possessed by a Collector, under the law for the time being in force, for securing and recovering land-revenue due to Government :

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years, to take effect in possession.

11. From the sums received or recovered under section ten, the manager shall pay—

First, the costs of the management, including costs of management and repairs ;

Secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management ;

Thirdly, the rent (if any) due to any superior rent due to superior holder in respect of the holder, said property ;

Fourthly, such periodical allowance as the Commissioner may from time to time fix for the maintenance and other necessary expenses of the debtor and of such members of his family as the Commissioner directs ;

Fifthly, the cost of such improvements of the said property as he thinks necessary, and as are approved by the Commissioner.

IV.—18 f

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section eight other than those so due or incurred to Government, and also for the repayment either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. On the publication of the order of management, the manager shall publish in the *Bombay Government Gazette* a notice in English and Gujaráti calling upon all persons having claims against the debtor or the property under management to notify the same in writing to such manager within six months from the date of the publication.

He shall also cause copies of such notice to be exhibited at the Mámlat-dárs' kachahris in the district in which the said property lies, and at such other places as he thinks fit.

13. Every such claimant shall, along with his claim, present full particulars thereof.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.

If the document be an entry in any book, the claimant shall produce the book to the manager together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification, and after examining and comparing the copy with the original, shall return the book to the claimant.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

14. Every such claim (other than claims of the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section nineteen, clause (d), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged :

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section twelve, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

15. The manager shall inquire into the his-
Determination of debts and liabilities. tory and merits of every claim received under sections twelve and fourteen, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

16. If such amount cannot be paid at once,
Power to rank debts and to fix interest. the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

17. When the total amount of the debts and
Scheme for liquidation. liabilities (including those due and incurred to Government) has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) shewing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Every such scheme shall further provide for
Provisions of scheme. the continuance of the payments to be made by the manager under section eleven, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act, and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

Proceedings of Com- 18. The Commissioner
missioner on submission of scheme. may—

- (a) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or
- (b) sanction any liquidation-scheme, or any revised liquidation-scheme, submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

19. At any time before he has sanctioned a
Power to relinquish management. liquidation-scheme under section eighteen, the Commissioner may, by an order published in the *Bombay Government Gazette*, direct that on a date fixed by such order the management shall be relinquished.

On the date so fixed—

- (a) the management shall terminate;
- (b) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section ten;
- (c) any residue of the rents and profits of the said property retained under the last clause of section eleven shall be paid to him; and

(d) the proceedings, processes, executions and attachments stayed and suspended under section nine, and the debts and liabilities barred by section fourteen, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section; the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

20. When the Commissioner sanctions the
Effects of sanctioning liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the local Government may from time to time by rule direct; and thereupon—

- 1st, all proceedings, processes, executions and attachments stayed or suspended under section nine shall be for ever barred, and
- 2nd, every debt or liability due or owing to any person which was proveable before the manager shall be extinguished, and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability.

21. If the property under management or any
Power to remove mortgagee in possession. part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue year.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV of this Act.

22. If the property under management or any
Power to inquire into consideration given for leases. part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager may inquire into the sufficiency of the consideration for which the lease was given; and if such consideration appear to him insufficient, may by order, with the consent of the Commissioner, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and in default of such payment, the lease shall be cancelled.

23. Subject to the rules made under section
Power to lease. thirty-one, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the pro-

perty under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme—

(a) by mortgaging the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(b) by charging the whole or any part of such property; or

(c) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(d) by borrowing money from Government at such rate of interest as appears reasonable to the local Government.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (d) of section twenty-four, together with the interest (if any) due thereon, have been paid and discharged as therein provided, or in such other manner as the Commissioner thinks fit, the manager shall publish in the *Bombay Government Gazette* a notice fixing a date for the termination of the management.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section twenty-four, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections ten, twenty-three and twenty-four.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided—

1st, the management shall continue and proceed in all respects as if such debtor were still living;

2ndly, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (b) and (c) of section nine; and

3rdly, no civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management, for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

28. When a Thákur has been restored under section twenty-six to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such Thákur, shall be valid as to any time beyond his natural life.

CHAPTER VI.

OF APPEAL AND REVISION.

29. An appeal against any decision or order under sections fourteen, fifteen, sixteen and twenty-two, or imposing a fine or imprisonment in exercise of the powers conferred by section thirty-five, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order.

There shall be no appeal against the decision of the Commissioner on such appeal.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

CHAPTER VII.

MISCELLANEOUS.

31. The local Government may, from time to time, make rules consistent with this Act—

(a) to regulate the security to be required from subordinate officers under this Act;

(b) to regulate the procedure in all cases under this Act;

(c) for the guidance of officers enquiring into and determining on claims under Chapter IV of this Act; and in particular as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

(d) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities; and

(e) generally to carry out the provisions of this Act.

Such rules shall be published in the *Bombay Government Gazette*, and when so published shall have the force of law.

32. The local Government may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

33. Every manager appointed under this Act and every agent of such manager shall be deemed a public servant within the meaning of the Indian Penal Code.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

35. For the purposes of this Act, the manager and any officer making an inquiry under section five may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible, in the same manner, as is provided in the case of a civil Court by the Code of Civil Procedure.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bona fide* pursuant to this Act.

37. Nothing in this Act precludes the Courts in Broach and Kaira having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

38. Nothing in section nine shall be deemed to render any of the following Thákurs, namely, the Thákur of A'hmód, the Thákur of Sarod, the Thákur of Kerwára, the Thákur of Dehej, and the Thákur of Janiádra incompetent to enter into contracts involving him in pecuniary liability, nor shall anything in section twenty-eight apply to any of the said Thákurs:

Provided that, if any such Thákur has, since the scheme for the settlement of his debts and liabilities was approved under section 11 of the said Act No. XV of 1871, entered into any contract involving him in pecuniary liability exceeding the average annual income derived during the previous five years from his immoveable property after deducting therefrom the land-tax and other dues of Government, the local Government may, by notification in the *Bombay Government Gazette*, declare that the exemption made by the former part of this section shall cease in his case, and thereupon such exemption shall cease accordingly.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.



Bombay Government Gazette.

Published by Authority.

THURSDAY, 13TH OCTOBER 1881.

Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 20th July 1881, and the assent of His Excellency the Viceroy and Governor General on the 23rd September 1881, and is published for general information:—

Bombay Act No. IV. of 1881.

An Act to provide for the appointment and maintenance of Village Officers in Sind.

WHEREAS it is expedient to make provision for the appointment and maintenance of village officers in the Province of Sind; It is enacted as follows:—

1. This Act may be cited as "The Sind Village Officers Act, 1881."
 Short Title.
- It extends to the whole of the Province of Sind.
 Extent.
2. In this Act "Village Officer" means any person appointed under this Act whose duty it is to collect, or to supervise the collection of the revenue of a village, or to perform Police duties or both.
 "Village Officer" defined.
3. Subject to the general orders of Government, the Appointment of Village Officers. the Commissioner in Sind may from time to time—
 - (a) appoint any person to be a village officer, and
 - (b) cancel any such appointment.

Every person so appointed shall hold office under such designation and for such period, and shall exercise his functions within such local area, as shall be prescribed by the said Commissioner.

4. The said Commissioner may, with the previous sanction of Government, confer the office of village officer upon any person and his descendants hereditarily. When any office is so conferred, the succession thereto, and the right to officiate or to nominate an officiator, shall be determined under such rules as may from time to time be prescribed by Government in this behalf under section 8 of this Act.

5. Any village officer may, if the Commissioner in Sind so directs, be appointed by the Magistrate of the District to be Village Police Officer, and in such capacity shall exercise all the powers and

perform all the duties conferred and imposed by the Bombay Village Police Act, 1867, on a Police Patel, and when any such appointment is made, and so long as it continues, the provisions of the said Act and of the enactments by which it has been amended shall, with such exceptions, if any, as Government shall from time to time direct, be deemed to be in force in the local area to which such officer's jurisdiction extends :

Provided always that no village officer shall exercise any of the powers mentioned in sections 15 and 16 of the said Act, unless expressly empowered in this behalf by a commission duly issued to him under the said section 15.

6. For the purpose of defraying the

Levy of cess for the purpose of this Act.

salaries and other emoluments of village officers appointed under this Act, it shall be lawful for the Governor in Council, on the introduction or revision of a settlement, to levy a cess from all land in the Province of Sind at a rate not exceeding one anna for every rupee of the amount at which such land is assessed, or, in the case of alienated land, at which, if it had not been alienated, such land would be assessed to the ordinary land revenue.

The cess so leviable shall be included in, and levied as, one demand along with the land revenue from the sum total of which it shall thereafter be deducted and applied to the purposes of this Act :

Provided always that in the case of a village entirely alienated, the said cess shall be leviable only if a village officer be appointed under the provisions of this Act for such village.

Explanation.—In this section "alienated" has the same meaning as in the Bombay Land Revenue Code, 1879.

7. It shall not be competent to any Village Officer not to mortgage, charge, lease, or alienate salary or other remuneration granted under this Act. village officer appointed under this Act to mortgage, charge, lease, or alienate any salary or other remuneration to which he may be entitled as such officer; and the Collector shall refuse payment of the salary, or of any portion thereof, to any person claiming the same in virtue of any such mortgage, charge, lease, or alienation, and may withhold or resume any other remuneration assigned to the village officer which has been so mortgaged, charged, leased, or alienated.

8. The Commissioner in Sind may, with Rules. the previous sanction of Government, from time to time, make rules consistent with this Act—

(a) determining the duties of any village officer appointed under this Act;

(b) fixing the salaries and other remunerations of every such officer;

(c) regulating the punishment, suspension, and dismissal of village officers;

(d) prescribing, in the case of hereditary village officers, the order of succession, the authority by whom the right of succession shall from time to time be determined, the conditions under which the right of personal service will be admitted, and when and by whom a deputy may be appointed to officiate;

(e) determining the circumstances under which any hereditary office may be forfeited or resumed; and

(f) generally for carrying out the provisions of this Act.

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
Under Secretary to Government.

Bombay, October 1881.

[Published with the "Bombay Government Gazette" on the 20th October 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 20th July 1881, and the assent of His Excellency the Viceroy and Governor General on the 23rd September 1881, and is published for general information :—

Bombay Act No. IV. of 1881.

An Act to provide for the appointment and maintenance of Village Officers in Sind.

WHEREAS it is expedient to make provision for the appointment and maintenance of village officers in the Province of Sind; It is enacted as follows :—

1. This Act may be cited as "The Sind Village Officers Act, 1881."

Short Title.

Sind Village Officers Act, 1881.

Extent.

It extends to the whole of the Province of Sind.

2. In this Act "Village Officer" means any person appointed under this Act whose duty it is to collect, or to supervise the collection of the revenue of a village, or to perform Police duties or both.

3. Subject to the general orders of Government, the Commissioner in Sind may from time to time—

(a) appoint any person to be a village officer, and

(b) cancel any such appointment.

Every person so appointed shall hold office under such designation and for such period, and shall exercise his functions within such local area, as shall be prescribed by the said Commissioner.

4. The said Commissioner may, with the previous sanction of Government, confer the office of village officer upon any person and his descendants hereditarily. When any office is so conferred, the succession thereto, and the right to officiate or to nominate

an officiator, shall be determined under such rules as may from time to time be prescribed by Government in this behalf under section 8. of this Act.

5. Any village officer may, if the Commissioner in Sind so directs, be appointed by the Magistrate of the District to be Village Police Officer, and in such capacity shall exercise all the powers and perform all the duties conferred and imposed by the Bombay Village Police Act, 1867, on a Police Patel, and when any such appointment is made, and so long as it continues, the provisions of the said Act and of the enactments by which it has been amended shall, with such exceptions, if any, as Government shall from time to time direct, be deemed to be in force in the local area to which such officer's jurisdiction extends :

Provided always that no village officer shall exercise any of the powers mentioned in sections 15 and 16 of the said Act, unless expressly empowered in this behalf by a commission duly issued to him under the said section 15.

6. For the purpose of defraying the salaries and other emoluments of village officers appointed under this Act, it shall be lawful for the Governor in Council, on the introduction or revision of a settlement, to levy a cess from all land in the Province of Sind at a rate not exceeding one anna for every rupee of the amount at which such land is assessed, or, in the case of alienated land, at which, if it

had not been alienated, such land would be assessed to the ordinary land revenue.

The cess so leviable shall be included in, and levied as, one demand along with the land revenue from the sum total of which it shall thereafter be deducted and applied to the purposes of this Act :

Provided always that in the case of a village entirely alienated, the said cess shall be leviable only if a village officer be appointed under the provisions of this Act for such village.

Explanation.—In this section “alienated” has the same meaning as in the Bombay Land Revenue Code, 1879.

7. It shall not be competent to any Village Officer not to mortgage, charge, lease, or alienate salary or other remuneration granted under this Act. village officer appointed under this Act to mortgage, charge, lease, or alienate any salary or other remuneration to which he may be entitled as such officer; and the Collector shall refuse payment of the salary, or of any portion thereof, to any person claiming the same in virtue of any such mortgage, charge, lease, or alienation, and may withhold or resume any other remuneration

assigned to the village officer which has been so mortgaged, charged, leased, or alienated.

8. The Commissioner in Sind may, with Rules. the previous sanction of Government, from time to time, make rules consistent with this Act—

(a) determining the duties of any village officer appointed under this Act;

(b) fixing the salaries and other remunerations of every such officer;

(c) regulating the punishment, suspension, and dismissal of village officers;

(d) prescribing, in the case of hereditary village officers, the order of succession, the authority by whom the right of succession shall from time to time be determined, the conditions under which the right of personal service will be admitted, and when and by whom a deputy may be appointed to officiate;

(e) determining the circumstances under which any hereditary office may be forfeited or resumed; and

(f) generally for carrying out the provisions of this Act.

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
Under Secretary to Government.

Bombay, 11th October 1881.

[Published with the "Bombay Government Gazette" on the 27th October 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 20th July 1881, and the assent of His Excellency the Viceroy and Governor General on the 23rd September 1881, and is published for general information ;—

Bombay Act No. IV. of 1881.

An Act to provide for the appointment and maintenance of Village Officers in Sind.

WHEREAS it is expedient to make provision for the appointment and maintenance of village officers in the Province of Sind ; It is enacted as follows :—

1. This Act may be cited as "The Sind Village Officers Act, 1881."
 Short Title.
 It extends to the whole of the Province of Sind.
 Extent.

2. In this Act "Village Officer" means any person appointed under this Act whose duty it is to collect, or to supervise the collection of the revenue of a village, or to perform Police duties or both.
 "Village Officer" defined.

3. Subject to the general orders of Government, the Commissioner in Sind may from time to time—
 Appointment of Village Officers.

(a) appoint any person to be a village officer, and

(b) cancel any such appointment.

Every person so appointed shall hold office under such designation and for such period, and shall exercise his functions within such local area, as shall be prescribed by the said Commissioner.

4. The said Commissioner may, with the previous sanction of Government, confer the office of village officer upon any person and his descendants hereditarily. When any office is so conferred, the succession thereto, and the right to officiate or to nominate

an officiator, shall be determined under such rules as may from time to time be prescribed by Government in this behalf under section 8 of this Act.

5. Any village officer may, if the Commissioner in Sind so directs, be appointed by the Magistrate of the District to be Village Police Officer, and in such capacity shall exercise all the powers and perform all the duties conferred and imposed by the Bombay Village Police Act, 1867, on a Police Patel, and when any such appointment is made, and so long as it continues, the provisions of the said Act and of the enactments by which it has been amended shall, with such exceptions, if any, as Government shall from time to time direct, be deemed to be in force in the local area to which such officer's jurisdiction extends :

Provided always that no village officer shall exercise any of the powers mentioned in sections 15 and 16 of the said Act, unless expressly empowered in this behalf by a commission duly issued to him under the said section 15.

6. For the purpose of defraying the salaries and other emoluments of village officers appointed under this Act, it shall be lawful for the Governor in Council, on the introduction or revision of a settlement, to levy a cess from all land in the Province of Sind at a rate not exceeding one anna for every rupee of the amount at which such land is assessed, or, in the case of alienated land, at which, if it

had not been alienated, such land would be assessed to the ordinary land revenue.

The cess so leviable shall be included in, and levied as, one demand along with the land revenue from the sum total of which it shall thereafter be deducted and applied to the purposes of this Act :

Provided always that in the case of a village entirely alienated, the said cess shall be leviable only if a village officer be appointed under the provisions of this Act for such village.

Explanation.—In this section “alienated” has the same meaning as in the Bombay Land Revenue Code, 1879.

7. It shall not be competent to any Village Officer not to mortgage, charge, lease, or alienate salary or other remuneration granted under this Act. village officer appointed under this Act to mortgage, charge, lease, or alienate any salary or other remuneration to which he may be entitled as such officer; and the Collector shall refuse payment of the salary, or of any portion thereof, to any person claiming the same in virtue of any such mortgage, charge, lease, or alienation, and may withhold or resume any other remuneration

assigned to the village officer which has been so mortgaged, charged, leased, or alienated.

8. The Commissioner in Sind may, with Rules. the previous sanction of Government, from time to time, make rules consistent with this Act—

(a) determining the duties of any village officer appointed under this Act;

(b) fixing the salaries and other remunerations of every such officer;

(c) regulating the punishment, suspension, and dismissal of village officers;

(d) prescribing, in the case of hereditary village officers, the order of succession, the authority by whom the right of succession shall from time to time be determined, the conditions under which the right of personal service will be admitted, and when and by whom a deputy may be appointed to officiate;

(e) determining the circumstances under which any hereditary office may be forfeited or resumed; and

(f) generally for carrying out the provisions of this Act.

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
Under Secretary to Government.

Bombay, 11th October 1881.



Bombay Government Gazette.

Published by Authority:

THURSDAY, 3RD NOVEMBER 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th October, 1881, and was promulgated for general information in the *Gazette of India* on the 29th October 1881.

Act No. XXII. of 1881.

An Act to amend the Deccan Agriculturists' Relief Act, 1879.

Whereas it is expedient to amend, in manner hereinafter appearing, the Deccan Agriculturists' Relief Act, 1879; it is hereby enacted as follows:—

- Short title.** 1. This Act may be called "The Deccan Agriculturists' Relief Act, 1881"; and it shall come into force at once.
- Commencement.**
- 2.** In this Act "section" means a section of the Deccan Agriculturists' Relief Act, 1879.
- 3.** In section one, before the word "Sections," the words "This section and" shall be, and be deemed to have always been, inserted.
- Amendment of section 1.**
- Amendment of section 2, clause (2).** 4. For section two, clause (2), the following shall be substituted:—
- "Agriculturist" means a person who, when or after incurring any liability the subject of any proceeding under this Act, by himself, his servants or tenants earned or earns his livelihood, wholly or partially, by agriculture carried on within the limits of the said districts.

* A cultivator who has temporarily ceased to earn his livelihood in manner aforesaid, without any intention of changing his status as such, does not thereby cease to be an agriculturist within this definition.

"An assignee of Government assessment or a mortgagee is not, as such, an agriculturist within this definition.

"An agriculturist shall be deemed to 'reside' where he earns his livelihood in manner aforesaid."

5. In section three, clause (y), the words "not being merely a surety for the principal debtor," and in section twelve the words "not being merely a surety of the principal debtor," shall be omitted.

Amendment of sections 3 and 12.

6. In section nineteen, first clause, for the words "there is no other claim against him," the words "the other debts (if any) due by him do not, taken together with such sum, amount to fifty rupees" shall be substituted; and to the same clause the words "of such sum" shall be added.

Amendment of section 19.

7. To section 38, the following shall be added:—

"The expression 'officer of police' in this section shall not be deemed to include a police patel appointed under Bombay Act No. VIII of 1867 (for the Regulation of the Village Police in the Presidency of Bombay)."

Addition to section 38.

8. In section forty-four, for the word "place," the word "taluka" shall be substituted.

Amendment of section 44.

9. To section forty-seven the following shall be added, namely:—

Addition to section 47.

"*Explanation.*—The expression 'civil Court' in this section does not include a Mámlatdár's Court under Bombay Act No. III of 1876 (to consolidate and amend the law relating to the powers and procedure of Mámlatdár's Courts)."

10. For section forty-eight the following New section substituted for section 48. section shall be substituted:—

"48. In computing the period of limitation prescribed for any such suit or application the time intervening between the application made by the plaintiff under section thirty-nine and the grant of the certificate under section forty-six shall be excluded.

"Any such application which after the first day of November, 1879, has been rejected, and which, if such time had been excluded in computing the period of limitation prescribed for such application, would have been entertained, shall be entertained if made within two months from the twenty-sixth day of October, 1881.

New section substituted for section 51.

District Judge may withdraw case from Conciliator or Subordinate Judge,

11. For section fifty-one the following section shall be substituted:—

"51. The District Judge may—

"(a) transfer any application pending before a Conciliator to the file of any other Conciliator;

"(b) transfer to his own file any suit or other matter pending before the Court of any Subordinate Judge under Chapter II or Chapter IV of this Act, and may dispose of the same as if he were a Subordinate Judge; or

"(c) stay the proceedings in any such suit or matter, and sit together with such Judge as a Bench to dispose of such suit or matter in accordance with the provisions of this Act.

"If the members of any Bench sitting under this section differ in opinion, the opinion of the District Judge shall prevail."

12. To section fifty-six the following shall be added, namely:—

"or apply to any instrument which is executed by an agriculturist merely as a surety."

13. For section fifty-seven the following section shall be substituted:—

"57. When any person intend to execute any instrument to which section fifty-six applies, all such persons shall appear before the Village Registrar appointed for the area in which the agriculturist, or when there are several agriculturists intending to execute the instrument, any one of such agriculturists, resides, and such Registrar, after satisfying himself in such manner as he deems fit as to the identity of the intending executants and receiving the fee (if any) prescribed by the local Government in this behalf, and the stamp (if any) which may be required by law, shall write the instrument, or cause the same to be written under his superintendence; and after reading the same aloud, or causing it to be so read, in the hearing of the intending executants, shall require them to execute it in his presence.

"Every instrument so written and executed shall at the time of execution be attested by the Village Registrar; and also, if any of the executants thereof is unable to read such instrument, by two respectable witnesses.

"For the purpose of this section every executant of any such instrument shall appear in person before the Village Registrar; but every other party thereto may appear either in person or by any agent, being his relative, servant or dependent, whom he has duly furnished with a power-of-attorney, authorizing him to appear and act on his behalf."

14. In section fifty-eight, for the words "parties to any instrument have executed it," the words "intending executants have executed any instrument" shall be substituted.

15. For section sixty-eight the following section shall be substituted:—

"68. No pleader, vakíf or mukhtár, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any case before a Conciliator or a Village-Munsif the subject-matter whereof does not exceed in amount or value one hundred rupees:

"Provided that any party to any such case may be permitted, on reasonable cause being shown to the satisfaction of the Conciliator or Village-Munsif, to employ any relative, servant or dependent who is not, and has not previously been, a pleader, vakil or mukhtár, or an advocate or attorney of a High Court, to appear either conjointly with, or in lieu of, such party.

"When a relative, servant or dependent appears in lieu of a party, he shall be furnished by him, with a power-of-attorney defining the extent to which he is empowered to act."

16. Section seventy-one is hereby repealed.

17. For section seventy-two the following section shall be substituted:—

"72. In any suit under this Act for the recovery of money from a person, not being merely a surety for the principal debtor, who at the time when the cause of action arose was an agriculturist, the following periods of limitation shall be deemed to be substituted for those prescribed in the second column of the second schedule annexed to the Indian Limitation Act, 1877 (that is to say):—

"(a) When such suit is founded on a written instrument registered under this Act or any law in force at the date of the execution of such instrument,—twelve years;

"(b) in any other case,—six years;

"Provided that nothing herein contained shall revive the right to bring any suit which would have been barred by limitation if it had been instituted immediately before this Act comes into force."

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

THE



Bombay Government Gazette.

Published by Authority.

MONDAY, 14TH NOVEMBER 1881.

Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 20th July 1881, and the assent of His Excellency the Viceroy and Governor General on the 5th October 1881, and is published for general information :—

Bombay Act No. V. of 1881.

An Act to amend the law relating to Tolls on Roads and Bridges in the Presidency of Bombay.

WHEREAS it is expedient to amend the law relating to tolls on roads and bridges in the Presidency of Bombay; It is enacted as follows:—

1. This Act may be cited as "The Tolls on Roads and Bridges Act Amendment Act, 1881."

2. The following Sections shall be inserted after Section 9 of Bombay Act III. of 1875 as Sections 10 and 11; and Section 10 shall be read as Section 12 :—

" 10. It shall be lawful for the Government to lease the levy of tolls at such rates not exceeding the rates mentioned in the schedule annexed to this Act, upon any public road or bridge by public auction or private contract from year to year or for a longer period not exceeding seven years on such terms and conditions as the Government may deem desirable, provided that the lessee shall give security for the due fulfilment of such conditions, and that all sums payable under the terms and conditions of the lease shall be recoverable as a demand for

the Land Revenue under the law for the time being in force so far as applicable.

"11. When the tolls on any public road have been Acts of Lessee or duly leased, the his Agent. lessee and every person employed by the lessee as his agent for collecting the tolls shall be deemed to be persons appointed to collect tolls under this Act, and shall

exercise all the powers and be subject to all the responsibilities attaching to persons appointed to collect tolls under this Act."

3. In Section 12 for the words "levied" after the words "tolls" in both places, read "and leases of tolls."

Amendment of Section 10 of Act III. of 1875.

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
Under Secretary to Government.

Bombay Castle, 12th November 1881.

[Published with the "Bombay Government Gazette" on the 17th November 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 20th July 1881, and the assent of His Excellency the Viceroy and Governor General on the 5th October 1881, and is published for general information :—

Bombay Act No. V. of 1881.

An Act to amend the law relating to Tolls on Roads and Bridges in the Presidency of Bombay.

WHEREAS it is expedient to amend the law relating to tolls on roads and bridges in the Presidency of Bombay; It is enacted as follows :—

1. This Act may be cited as "The Tolls on Roads and Bridges Act Amendment Act, 1881."
2. The following Sections shall be inserted after Section 9 of Bombay Act III. of 1875 as Sections 10 and 11, and Section 10 shall be read as Section 12 :—

"10. It shall be lawful for the Government to lease the levy of tolls at such rates not exceeding the rates mentioned in the schedule annexed to this Act, upon any public road or bridge by public auction or private contract from year to year or for a longer period not exceeding seven years on such terms and conditions as the Gov-

ernment may deem desirable, provided that the lessee shall give security for the due fulfilment of such conditions, and that all sums payable under the terms and conditions of the lease shall be recoverable as a demand for the Land Revenue under the law for the time being in force so far as applicable.

"11. When the tolls on any public road have been duly leased, the Lessee or his Agent, lessee and every person employed by the lessee as his agent for collecting the tolls shall be deemed to be persons appointed to collect tolls under this Act, and shall exercise all the powers and be subject to all the responsibilities attaching to persons appointed to collect tolls under this Act."

3. In Section 12 for the words "levied" after the words "tolls" in both places, read "and leases of tolls."

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
Under Secretary to Government,

Bombay Castle, 12th November 1881.

[Published with the "Bombay Government Gazette" on the 17th November 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th October, 1881, and was promulgated for general information in the *Gazette of India* on the 29th October 1881.

Act No. XXIII of 1881.

An Act to amend the Deccan Agriculturists' Relief Act, 1879.

Whereas it is expedient to amend, in manner hereinafter appearing, the Deccan Agriculturists' Relief Act, 1879; it is hereby enacted as follows:—

- Short title. 1. This Act may be called "The Deccan Agriculturists' Relief Act, 1881"; and it shall come into force at once.
- Commencement.
2. In this Act "section" means a section of the Deccan Agriculturists' Relief Act, 1879.
- "Section."
3. In section one, before the word "Sections," the words "This section and" shall be, and be deemed to have always been, inserted.
- Amendment of section 1.
4. For section two, clause (2), the following shall be substituted:—
- Amendment of section 2, clause (2).
- " 'Agriculturist' means a person who, when or after incurring any liability the subject of any proceeding under this Act, by himself, his servants or tenants earned or earns his livelihood, wholly or partially, by agriculture carried on within the limits of the said districts.
- " A cultivator who has temporarily ceased to earn his livelihood in manner aforesaid, without any intention of changing his status as such, does not thereby cease to be an agriculturist within this definition.
- " An assignee of Government assessment or a mortgagee is not, as such, an agriculturist within this definition.
- " An agriculturist shall be deemed to 'reside' where he earns his livelihood in manner aforesaid."
5. In section three, clause (y), the words "not being merely a surety for the principal debtor," and in section twelve the words "not being merely a surety of the principal debtor," shall be omitted.
- Amendment of sections 3 and 12.

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6. In section nineteen, first clause, for the words "there is no other claim against him," the words "the other debts (if any) due by him do not, taken together with such sum, amount to fifty rupees" shall be substituted; and to the same clause the words "of such sum" shall be added.

Amendment of section 19.

7. To section 38, the following shall be added:—

Addition to section 38.

"The expression 'officer of police' in this section shall not be deemed to include a police patel appointed under Bombay Act No. VIII of 1867 (*for the Regulation of the Village Police in the Presidency of Bombay*)."

8. In section forty-four, for the word "place," the word "taluqa" shall be substituted.

Amendment of section 44.

9. To section forty-seven the following shall be added, namely:—

Addition to section 47.

"*Explanation.*—The expression 'civil Court' in this section does not include a Mámlatdár's Court under Bombay Act No. III of 1876 (*to consolidate and amend the law relating to the powers and procedure of Mámlatdárs' Courts*)."

10. For section forty-eight the following section shall be substituted:—

New section substituted for section 48.

"48. In computing the period of limitation prescribed for any such suit or application the time intervening between the application made by the plaintiff under section thirty-nine and the grant of the certificate under section forty-six shall be excluded.

Allowance to be made in period of limitation.

" Any such application which after the first day of November, 1879, has been rejected, and which, if such time had been excluded in computing the period of limitation prescribed for such application, would have been entertained, shall be entertained if made within two months from the twenty-sixth day of October, 1881.

Limitation in certain cases.

11. For section fifty-one the following section shall be substituted:—

New section substituted for section 51.

"51. The District Judge may—

District Judge may withdraw case from Conciliator or Subordinate Judge,

"(a) transfer any application pending before a Conciliator to the file of any other Conciliator ;

"(b) transfer to his own file any suit or other matter pending before the Court of any Subordinate Judge under Chapter II or Chapter IV of this Act, and may dispose of the same as if he were a Subordinate Judge; or

"(c) stay the proceedings in any such suit or sit with Subordinate Judge as a Bench for trial of any case. matter, and sit together with such Judge as a Bench to dispose of such suit or matter in accordance with the provisions of this Act.

"If the members of any Bench sitting under this section differ in opinion, the opinion of the District Judge shall prevail."

Addition to section 56. 12. To section fifty-six the following shall be added, namely:—

"or apply to any instrument which is executed by an agriculturist merely as a surety."

New section substituted for section 57.

13. For section fifty-seven the following section shall be substituted:—

"57. When any persons intend to execute any instrument to which section fifty-six applies, all such persons shall appear before the Village Registrar appointed for the area in which the agriculturist, or when there are several agriculturists intending to execute the instrument, any one of such agriculturists, resides, and such Registrar, after satisfying himself in such manner as he deems fit as to the identity of the intending executants and receiving the fee (if any) prescribed by the local Government in this behalf, and the stamp (if any) which may be required by law, shall write the instrument, or cause the same to be written under his superintendence; and after reading the same aloud, or causing it to be so read, in the hearing of the intending executants, shall require them to execute it in his presence.

Such instruments to be written by, or under the superintendence of, a Village Registrar and executed in his presence.

"Every instrument so written and executed shall at the time of execution be attested by the Village Registrar; and also, if any of the executants thereof is unable to read such instrument, by two respectable witnesses.

"For the purposes of this section every executant of any such instrument shall appear in person before the Village Registrar; but every other party thereto may appear either in person or by any agent, being his relative, servant or dependent, whom he has duly furnished with a power-of-attorney, authorizing him to appear and act on his behalf."

14. In section fifty-eight, for the words "parties to any instrument have executed it," the words "intending executants have executed any instrument" shall be substituted.

New section substituted for section 68. 15. For section sixty-eight the following section shall be substituted:—

"68. No pleader, vakil or mukhtár, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any case before a Conciliator or a Village-Munsif the subject-matter whereof does not exceed in amount or value one hundred rupees:

"Provided that any party to any such case may be permitted, on reasonable cause being shown to the satisfaction of the Conciliator or Village-Munsif, to employ any relative, servant or dependent who is not, and has not previously been, a pleader, vakil or mukhtár, or an advocate or attorney of a High Court, to appear either conjointly with, or in lieu of, such party.

"When a relative, servant or dependent appears in lieu of a party, he shall be furnished by him with a power-of-attorney defining the extent to which he is empowered to act."

Repeal of section 71. 16. Section seventy-one is hereby repealed.

New section substituted for section 72.

17. For section seventy-two the following section shall be substituted:—

"72. In any suit under this Act for the recovery of money from a person, not being merely a surety for the principal debtor, who at the time when the cause of action arose was an agriculturist, the following periods of limitation shall be deemed to be substituted for those prescribed in the second column of the second schedule annexed to the Indian Limitation Act, 1877 (that is to say):—

"(a) When such suit is founded on a written instrument registered under this Act or any law in force at the date of the execution of such instrument,—twelve years;

"(b) in any other case,—six years:

"Provided that nothing herein contained shall revive the right to bring any suit which would have been barred by limitation if it had been instituted immediately before this Act comes into force."

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

[Published with the "Bombay Government Gazette" on the 24th November 1881.]

PART IV.

ACTS PASSED BY THE GOVERNMENT OF BOMBAY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 20th July 1881, and the assent of His Excellency the Viceroy and Governor General on the 5th October 1881, and is published for general information :—

Bombay Act No. V. of 1881.

An Act to amend the law relating to Tolls on Roads and Bridges in the Presidency of Bombay.

WHEREAS it is expedient to amend the law relating to tolls on roads and bridges in the Presidency of Bombay; It is enacted as follows :—

1. This Act may be cited as "The Tolls on Roads and Bridges Act Amendment Act, 1881."

2. The following Sections shall be inserted after Section 9 of Bombay Act III. of 1875 as Sections 10 and 11, and Section 10 shall be read as Section 12 :—

"10. It shall be lawful for the Government to lease the levy of tolls at such rates not exceeding the rates mentioned

in the schedule annexed to this Act, upon any public road or bridge by public auction or private contract from year to year or for a longer period not exceeding seven years on such terms and conditions as the Gov-

ernment may deem desirable, provided that the lessee shall give security for the due fulfilment of such conditions, and that all sums payable under the terms and conditions of the lease shall be recoverable as a demand for the Land Revenue under the law for the time being in force so far as applicable.

"11. When the tolls on any public road have been duly leased, the lessee and every person employed by the lessee as his agent for collecting the tolls shall be deemed to be persons appointed to collect tolls under this Act, and shall exercise all the powers and be subject to all the responsibilities attaching to persons appointed to collect tolls under this Act."

3. In Section 12 for the words "levied" after the words "tolls" in both places, read "and leases of tolls."

By order of His Excellency the Right Honourable the Governor in Council,

C. G. W. MACPHERSON,
Under Secretary to Government.

Bombay Castle, 12th November 1881.

THE



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THURSDAY, 15TH DECEMBER 1881.

Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 9th December, 1881, and was promulgated for general information in the *Gazette of India* dated 10th December 1881:—

Act No. XXVI of 1881.

THE NEGOTIABLE INSTRUMENTS ACT, 1881.

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SCHEDULE.

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Negotiable Instruments Act, 1881."
 It extends to the whole of British India ; but nothing herein contained affects the Indian Paper Currency Act, 1871, section twenty-one, or affects any local usage relating to any instrument in an oriental language : Provided that such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act ;
- Commencement. and it shall come into force on the first day of March, 1882.
2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof.
- Repeal of enactments.
3. In this Act—
- Interpretation-clause. "Banker" includes also persons or a corporation or company acting as bankers ; and "Notary Public" includes also any person appointed by the Governor General in Council to perform the functions of a Notary Public under this Act.
- "Notary Public."

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

4. A "promissory note" is an instrument in writing (not being a banknote or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations.

- A signs instruments in the following terms :—
- (a). "I promise to pay B or order Rs. 500."
 (b). "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received."
 (c). "Mr. B, I O U Rs. 1,000."
 (d). "I promise to pay B Rs. 500 and all other sums which shall be due to him."
 (e). "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."
 (f). "I promise to pay B Rs. 500 seven days after my marriage with C."
 (g). "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."
 (h). "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."
- The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional," within the meaning of this section and section four, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain" within the meaning of this section and section four, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person," within the meaning of this section and section four, although he is misnamed or designated by description only.

6. A "cheque" is a bill of exchange drawn on a specified banker and not otherwise than on demand, expressed to be payable

7. The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf he is called the "acceptor."

When acceptance is refused and the bill is protested for non-acceptance and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course" means any person who for consideration became the possessor of

a promissory note, bill of exchange or cheque if payable to bearer,

or the payee or indorsee thereof, if payable to, or to the order of, a payee,

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India shall be deemed to be an inland instrument.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

13. A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer thereof.

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

16. If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument.

17. Where an instrument may be construed either as a promissory note or bill of exchange the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

18. If the amount undertaken or ordered to be paid is stated differently in figures and words, the amount stated in words shall be the amount undertaken or ordered to be paid.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

Maturity.

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

Days of grace.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations

- (a). A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.
- (b). A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.
- (c). A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after

date. The instrument is at maturity on the 3rd December, 1878.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Explanation.—The expression "public holiday" includes Sundays: New-Year's day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

CHAPTER III

PARTIES TO NOTES, BILLS AND CHEQUES.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill or exchange or cheque.

A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

27. Every person capable of binding himself or of being bound, as mentioned in section twenty-six, may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

28. An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or

cheque is liable personally thereon, unless he expressly limits his liability to the extent of the assets received by him as such.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duty satisfied.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the

contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank:—

First indorsement, "B."
Second indorsement, "Peter Williams."
Third indorsement, "Wright & Co."
Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or

without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

CHAPTER IV.

OF NEGOTIATION.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

47. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

(a).—A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b).—A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

48. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

49. The holder of a negotiable instrument indorsed in blank may convert it into indorsement in full without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

(a) "Pay the contents to C only."

(b) "Pay C for my use."

(c) "Pay C or order for the account of B."

(d) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(e) "Pay C."

(f) "Pay C value in account with the Oriental Bank."

(g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section fifty, indorse and negotiate the same.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(a). The indorser of a negotiable instrument signs his name, adding the words—
"Without recourse."

Upon this indorsement he incurs no liability.

(b). A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

55. If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to

be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

58. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

59. The holder of a negotiable instrument who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours

on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment no party thereto is liable thereon to the person making such default.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

66. A promissory note or bill of exchange, made payable at a specified period after date or sight, must be presented for payment at maturity.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere, must, in order to charge any party thereto, be presented for payment at that place.

69. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

70. A promissory note or bill of exchange, not made payable as mentioned in sections sixty-eight and sixty-nine, must be presented for payment at the place of

business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

72. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

74. Subject to the provisions of section thirty-one, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:—

(a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or

if the instrument not being payable at any specified place, he cannot after due search be found;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and

Liability of banker for negligently dealing with bill presented for payment.

dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

CHAPTER VI.

OF PAYMENT AND INTEREST.

78. Subject to the provisions of section eighty-two, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

(a) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder:

(b) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

84. When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation.—An acceptance is qualified—

(a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(b) where it undertakes the payment of part only of the sum ordered to be paid;

(c) where, no place of payment being specified on the order, it undertakes the payment at a specified place and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(d) where it undertakes the payment at a time other than that at which under the order it would be legally due.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections twenty, forty-nine, eighty-six and one hundred and twenty-five.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

Payment of instrument on which alteration is not apparent.

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed,

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

Extinguishment of rights of action on bill in acceptor's hands.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given,

Mode in which notice may be given.

either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section ninety-three.

Party receiving must transmit notice of dishonour.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

98. No notice of dishonour is unnecessary when notice of dishonour is unnecessary.

(a) when it is dispensed with by the party entitled thereto;

(b) in order to charge the drawer, when he has countermanded payment;

(c) when the party charged could not suffer damage for want of notice;

(d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(e) to charge the drawers, when the acceptor is also a drawer;

(f) in the case of a promissory note which is not negotiable;

(g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not

Noting.

been expressly dishonoured, the reason why the holder treats it as dishonoured and the notary's charges.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

101. A protest under section one hundred must contain—

(a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(b) the name of the person for whom and against whom the instrument has been protested;

(c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;

(d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;

(e) the subscription of the notary public making the protest;

(f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

104. Foreign bills of exchange must be protested for dishonour when tested for dishonour when such protest is required by the law of the place where they are drawn.

CHAPTER X.

OF REASONABLE TIME.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Unless the person who intends to accept *supra protest* first declares, in the presence of a notary, that he does it for honour, and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity.

109. A person desiring to accept for honour must, in the presence of a notary public, subscribe the bill with his own hand, and declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour; and such declaration must be recorded by the notary in his register.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and

such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII. OF COMPENSATION.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532) be determined by the following rules:—

(a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

(b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

(c) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum

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from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;

(d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

(e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

118. Until the contrary is proved, the following presumptions shall be made:—

(a) that every negotiable instrument was made or drawn for consideration; and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) that every negotiable instrument bearing a date was made or drawn on such date;

(c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) that every transfer of a negotiable instrument was made before its maturity.

(e) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

121. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

CHAPTER XIV.

OF CROSSED CHEQUES.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such a cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

130. A person taking a cheque crossed generally or specially, bearing "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

CHAPTER XV.

OF BILLS IN SETS.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

133. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

CHAPTER XVI.

OF INTERNATIONAL LAW.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of

the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be

Instrument made, &c., out of British India, but in accordance with its law.

Presumption as to foreign law.

the same as that of British India, unless and until the contrary is proved.

SCHEDULE.

(a)—STATUTES.

Year and chapter.	Title.	Extent of repeal.
9 Wm. III. c. 17.	An Act for the better payment of Inland Bills of Exchange.	The whole.
3 & 4 Anne, c. 8.	An Act for giving like remedy upon promissory notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.	The whole.

(b)—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

No. and year.	Title.	Extent of repeal.
VI of 1840 ...	An Act for the amendment of the law concerning the negotiation of Bills of Exchange.	The whole.
V of 1866 ...	An Act to amend in certain respects the Commercial Law of British India.	Sections 11, 12 and 13.
XV of 1874 ...	The Laws Local Extent Act, 1874.	The first schedule, so far as relates to Act VI of 1840 and Act V of 1866, sections 11, 12 and 13.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

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PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 9th December, 1881, and was promulgated for general information in the *Gazette of India* dated 10th December 1881:—

Act No. XXVI of 1881.

THE NEGOTIABLE INSTRUMENTS ACT, 1881.

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SCHEDULE.

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Negotiable Instruments Act, 1881."

It extends to the whole of British India; but nothing herein contained affects the Indian Paper

Local extent. Currency Act, 1871, section twenty-one, or affects any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act;

Commencement. and it shall come into force on the first day of March, 1882.

2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof.

3. In this Act—
"Banker" includes also persons or a corporation or company acting as bankers; and
"Notary Public" includes also any person appointed by the Governor General in Council to perform the functions of a Notary Public under this Act.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

4. A "promissory note" is an instrument in writing (not being a banknote or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations.

A signs instruments in the following terms:—

- (a). "I promise to pay B or order Rs. 500."
 - (b). "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received."
 - (c). "Mr. B, I O U Rs. 1,000."
 - (d). "I promise to pay B Rs. 500 and all other sums which shall be due to him."
 - (e). "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."
 - (f). "I promise to pay B Rs. 500 seven days after my marriage with C."
 - (g). "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."
 - (h). "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."
- The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional," within the meaning of this section and section four, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain" within the meaning of this section and section four, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person," within the meaning of this section and section four, although he is misnamed or designated by description only.

6. A "cheque" is a bill of exchange drawn on a specified banker and not otherwise than on demand.

"Cheque." expressed to be payable

7. The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee."

"Drawer." is called the "drawer;"
"Drawee." the person thereby directed to pay is called

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

"Drawee in case of need." the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf he is called the "acceptor."

"Acceptor." upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf he is called the "acceptor."

When acceptance is refused and the bill is protested for non-acceptance and any person accepts *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

"Acceptor for honour." tested for non-acceptance and any person accepts *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

"Payee." or to whose order the money is by the instrument directed to be paid, is called the "payee."

8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

"Holder." exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if

"Holder in due course." who for consideration became the possessor of a promissory note, bill of exchange or cheque if

or the payee or indorsee thereof, if payable to, or to the order of, a payee,

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

"Payment in due course." means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

11. A promissory note, bill of exchange or cheque drawn or made in British India, and drawn upon any person resident in, British India shall be deemed to be an inland instrument.

Inland instrument. drawn or made in British India, and drawn upon any person resident in, British India shall be deemed to be an inland instrument.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

Foreign instrument. or made payable shall be deemed to be a foreign instrument.

13. A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer thereof.

"Negotiable instrument." means a promissory note, bill of exchange or cheque expressed to be payable to a specified person or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer thereof.

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Negotiation. or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

Indorsement. instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

16. If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument.

Indorsement "in blank" and "in full." indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument.

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Ambiguous instruments. either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

18. If the amount undertaken or ordered to be paid is stated differently in figures and words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Where amount is stated differently in figures and words, the amount stated in words shall be the amount undertaken or ordered to be paid.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

21. In a promissory note or bill of exchange the expressions "at sight," "on presentment," "after sight," "sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations.

(a). A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(b). A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(c). A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after

date. The instrument is at maturity on the 3rd December, 1878.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Explanation.—The expression "public holiday" includes Sundays: New-Year's day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

27. Every person capable of binding himself or of being bound, as mentioned in section twenty-six, may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

28. An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or

cheque is liable personally thereon, unless he expressly limits his liability to the extent of the assets received by him as such.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the

contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank:—

- First indorsement, "B."
- Second indorsement, "Peter Williams."
- Third indorsement, "Wright & Co."
- Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or

without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

CHAPTER IV.
OF NEGOTIATION.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

47. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

(a).—A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b).—A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

48. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

49. The holder of a negotiable instrument indorsed in blank may convert the indorsement into an indorsement in full, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

- (a) "Pay the contents to C only."
 - (b) "Pay C for my use."
 - (c) "Pay C or order for the account of B."
 - (d) "The within must be credited to C."
- These indorsements exclude the right of further negotiation by C.
- (e) "Pay C."
 - (f) "Pay C value in account with the Oriental Bank."
 - (g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section fifty, indorse and negotiate the same.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(a). The indorser of a negotiable instrument signs his name, adding the words—
"Without recourse."

Upon this indorsement he incurs no liability.

(b). A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

55. If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to

be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

58. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

59. The holder of a negotiable instrument who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours

on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment no party thereto is liable thereon to the person making such default.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder:

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

66. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere, must, in order to charge any party thereto, be presented for payment at that place.

69. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

70. A promissory note or bill of exchange, not made payable as mentioned in sections sixty-eight and sixty-nine, must be presented for payment at the place of

business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

72. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

74. Subject to the provisions of section thirty-one, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:—

(a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or

if the instrument not being payable at any specified place, he cannot after due search be found;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and

Liability of banker for negligently dealing with bill presented for payment.

dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

CHAPTER VI.

OF PAYMENT AND INTEREST.

78. Subject to the provisions of section eighty-two, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

(a) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

(b) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

84. When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

86. If the holder of a bill of exchange accepts, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation.—An acceptance is qualified—

(a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(b) where it undertakes the payment of part only of the sum ordered to be paid;

(c) where, no place of payment being specified on the order, it undertakes the payment at a specified place and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(d) where it undertakes the payment at a time other than that at which under the order it would be legally due.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections twenty, forty-nine, eighty-six and one hundred and twenty-five.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

Payment of instrument on which alteration is not apparent.

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed,

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

Extinguishment of rights of action on bill in acceptor's hands.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given,

either in express terms or by reasonable intention, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section ninety-three.

Party receiving must transmit notice of dishonour.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When party to whom notice given is dead.

98. No notice of dishonour is necessary—

(a) when it is dispensed with by the party entitled thereto;

(b) in order to charge the drawer, when he has countermanded payment;

(c) when the party charged could not suffer damage for want of notice;

(d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(e) to charge the drawers, when the acceptor is also a drawer;

(f) in the case of a promissory note which is not negotiable;

(g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Noting.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not

been expressly dishonoured, the reason why the holder treats it as dishonoured and the notary's charges.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

101. A protest under section one hundred must contain—

(a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(b) the name of the person for whom and against whom the instrument has been protested;

(c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;

(d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;

(e) the subscription of the notary public making the protest;

(f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

CHAPTER X.

OF REASONABLE TIME.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Unless the person who intends to accept *supra protest* first declares, in the presence of a notary, that he does it for honour, and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity.

109. A person desiring to accept for honour must, in the presence of a notary public, subscribe the bill with his own hand, and declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour; and such declaration must be recorded by the notary in his register.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and

such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

116. A drawee in case of need may accept and pay the bill of exchange without protest.

CHAPTER XII. OF COMPENSATION.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532) be determined by the following rules :—

(a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

(b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

(c) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum

IV.—25 h

from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;

(d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

(e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

118. Until the contrary is proved, the following presumptions shall be made :—

(a) that every negotiable instrument was made or drawn for consideration; and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) that every negotiable instrument bearing a date was made or drawn on such date;

(c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) that every transfer of a negotiable instrument was made before its maturity.

(e) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

121. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

CHAPTER XIV.

OF CROSSED CHEQUES.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

130. A person taking a cheque crossed generally or specially, bearing "not negotiable" in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

CHAPTER XV.

OF BILLS IN SETS.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

133. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

CHAPTER XVI.

OF INTERNATIONAL LAW.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of

the place where he made the instrument, and the liabilities of the acceptor and indorser of the place where the instrument is made payable.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be

Presumption as to foreign law.

the same as that of British India, unless and until the contrary is proved.

SCHEDULE.
(a)—STATUTES.

Year and chapter.	Title.	Extent of repeal.
9 Wm. III. c. 17.	An Act for the better payment of Inland Bills of Exchange	The whole.
3 & 4 Anne, c. 8.	An Act for giving like remedy upon promissory notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.	The whole.

(b)—ACTS OF THE GOVERNOR GENERAL
IN COUNCIL.

No. and year.	Title.	Extent of repeal.
VI of 1840 ...	An Act for the amendment of the law concerning the negotiation of Bills of Exchange.	The whole.
V of 1866 ..	An Act to amend in certain respects the Commercial Law of British India.	Sections 11, 12 and 13.
XV of 1874 ...	The Laws Local Extent Act, 1874.	The first schedule, so far as relates to Act VI of 1840 and Act V of 1866, sections 11, 12 and 13,

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.