[To be introduced in the Legislative Assembly.]

Rare section (1)

A

BILL

Further to amend the Indian Tariff Act, 1894.

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THE SERVANTS OF INDIA SOCIETY. POONA.

WHEREAS it is expedient further to amend the Indian Tariff Act, 1894, in order to remove or VIII of 1894. reduce the customs duties on certain machinery and materials of industries; It is hereby enacted as follows :—

Short title and commencement.

1. (*1*) This Act may be called the Indian Tariff (Amendment) Act, 1927

(*2*) It shall come into force on the 1st day of October, 1927.

Amendment of the Second Schedule, Act VIII of 1894.

2. In the Second Schedule to the Indian Tariff Act, 1894, there shall be VIII of 1894. made the amendments specified in the Schedule to this Act.

THE SCHEDULE.

(*See section 2*)

1 In Item No. 1A, for the word and figures "No. 68" the words, letter and figures "Nos. 1B and 68" shall be substituted

2. After Item No. 1A, the following item shall be inserted, namely :—

"1B	Sago flour."

3 After Item No. 6, the following heading and item shall be inserted, namely :—

"TALLOW, STEARINE AND WAX.

6A	Tallow"

4. After Item No. 8, the following item shall be inserted under the heading "MISCELLANEOUS," namely :—

"8A	China Clay."

5. After Item No. 13, the following item shall be inserted, namely :—

"13A	Bleaching paste and bleaching powder"

6. After Item No. 14, the following item shall be inserted, namely :—

"14A	Magnesium chloride."

and Item No. 14A shall be re-numbered 14B.

7. After Item No. 14B, the following heading and item shall be inserted, namely :—

"DYES AND COLOURS.

14C	Dyes derived from coal-tar and coal-tar derivatives used in any dyeing process."

8. After Item No. 18, the following heading and items shall be inserted, namely :—

"MACHINERY.

18A | MACHINERY, namely, such of the following articles are not otherwise specified :—

(1) prime-movers, boilers, locomotive engines and tenders for the same, portable engines (including power-driven road rollers, fire engines and tractors), and other machines in which the prime-mover is not separable from the operative parts ;

(2) machines and sets of machines to be worked by electric, steam, water, fire or other power, not being manual or animal labour, or which before being brought into use require to be fixed with reference to other moving parts ;

(3) apparatus and appliances, not to be operated by manual or animal labour, which are designed for use in an industrial system as parts indispensable for its operation and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose ;

(4) control gear, self-acting or otherwise, and transmission-gear designed for use with any machinery above specified, including belting of all materials and driving chains, but excluding driving ropes not made of cotton ;

(5) bare hard-drawn electrolytic copper wires and cables and other electrical wires and cables, insulated or not ; and poles, troughs, conduits and insulators designed as parts of a transmission system, and the fittings thereof

Note.—The term 'industrial system' used in sub-clause (3) means an installation designed to be employed directly in the performance of any process or series of processes necessary for the manufacture, production or extraction of any commodity

18B | The following TEXTILE MACHINERY AND APPARATUS by whatever power operated, namely, healds, heald cords and heald knitting needles, reeds and shuttles ; warp and weft preparation machinery and looms, bobbins and pirns ; dobbies ; Jacquard machines ; Jacquard harness linen cards ; Jacquard cards, punching plates for Jacquard cards ; warping mills ; multiple box sleys ; solid border sleys ; tape sleys ; swivel sleys ; tape looms ; wool carding machines ; wool spinning machines ; hosiery machinery ; coir mat shearing machines ; coir fibre willowing machines, heald knitting machines ; dobby cards, lattices and lags for dobbies ; wooden winders ; silk looms, silk throwing and reeling machines ; cotton yarn reeling machines ; sizing machines ; doubling machines ; silk twisting machines ; cone winding machines ; piano card cutting machines ; harness building frames ; card lacing frames ; drawing and denting hooks ; sewing thread balls making machines ; *cumbli* finishing machinery ; hank boilers ; cotton carding and spinning machines ; mail eyes, lingoes, comber boards and comber board frames, take-up motions ; temples and pickers, picking bands ; picking sticks ; printing machines ; roller cloth ; clearer cloth ; sizing flannel ; and roller skins

18C | PRINTING AND LITHOGRAPHIC MATERIAL, namely : presses, type, aluminium lithographic plates, brass rules, composing sticks, chases, imposing tables, lithographic stones, stereo-blocks, wood blocks, half-tone blocks, electrotype blocks, roller moulds, roller frames and stocks, roller composition, standing screw and hot presses, perforating machines, gold blocking presses, galley presses, proof presses, arming presses, copper plate printing presses, rolling presses, ruling machines, ruling pen making machines, lead and rule cutters, type casting machines, type setting and casting machines,

R 9049 .

Rare section

	rule bending machines, rule mitreing machines, bronzing machines, leads, wooden and metal quoins, shooting sticks and galleys, stereotyping apparatus, metal furniture, paper folding machines, and paging machines, but excluding ink and paper.	
18D	COMPONENT PARTS OF MACHINERY, as defined in Nos. 18A, 18B and 18C, namely, such parts only as are essential for the working of the machine or apparatus and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose:	
	Provided that articles which do not satisfy this condition shall also be deemed to be component parts of the machine to which they belong if they are essential to its operation and are imported with it in such quantities as may appear to the Collector of Customs to be reasonable."	

9. After Item No. 24, the following items shall be inserted, namely :—

"24A	Ropes, cotton.	
24B	Starch and farina."	

10. After Item No. 43, under the heading "YARNS AND TEXTILE FABRICS ", the following item shall be inserted, namely :—

'43A	Artificial silk yarn and warps, and artificial silk thread.	*Ad valorem*	7½ per cent.'

11. In Part III of the Schedule, the heading "MACHINERY ", and Items Nos. 51, 51A, 51B and 54 shall be omitted.

12. For the second proviso to Item No. 63, the following shall be substituted, namely :—

"Provided also that articles of machinery as defined in No. 18A or No. 18D shall not be deemed to be included hereunder."

13. In the proviso to Item No. 64, for the figures and letter " 51 " and " 51A " the figures and letters " 18A " and " 18D " shall be substituted, respectively.

14 In Item No 68, after the word "FLOUR", the words, ", except sago flour " shall be inserted.

15. For Item No. 77, the following shall be substituted, namely :—

77	All sorts of stearine, wax, grease and animal fat not otherwise specified."

16. In Item No 92, after the word " sorts " where it occurs for the first time, the words " not otherwise specified " shall be inserted

17. In Item No. 96, the brackets, words and figures " (*see* Nos. 15, 16, 18 and 51B) " shall be omitted.

18. In Item No. 103, for the figures " 51 " the figures and letter " 18A " shall be substituted.

19. In Item No. 106, after the word " FIBRE " the words " not otherwise specified " shall be inserted.

20. In Item No. 111, for the figures " 51 " the figures and letter " 18A " shall be substituted.

21. Item No. 117 shall be omitted.

22. In Item No. 149A, the words, figures and letter " *see* Nos. 51 and 51A " shall be omitted.

23. In Item No 153, for the figures and letter " 51, 51A " the figures and letters " 18A, 18D " shall be substituted.

R 9049

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to give effect to the decision of the Government of India to remove the import duties on certain machinery and mill stores as announced in paragraph 12 of their Resolution No. 341-T. (27), dated the 7th June, 1927, on the Report of the Tariff Board (Cotton Textile Industry Enquiry).

2. It is considered undesirable to retain the 2½ per cent. *ad valorem* duty on printing machinery and material when the duty on other machinery is being removed. It is accordingly proposed to remove the duty on the articles included in Item 51 of the Import Tariff Schedule, as well as the duty on articles included in Items 51, 51-A and 51-B.

G. RAINY,

The 13th August, 1927.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

BILL

Further to amend the Indian Tariff Act, 1894; and Annexure.

The Governor General has been pleased to accord the sanction required by section 67 (2) of the Government of India Act.

W. T. M. WRIGHT,

Secretary of the Legislative Assembly.

The Honourable Sir George Rainy).

H235LD—650—16-8-27—GIPS

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

We, the undersigned, Members of the Select Committee to which the Bill further to amend the Indian Tariff Act, 1894, was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. We have no remarks on the body of the Bill, but we propose the following amendments in certain items of the Schedule :—

(*a*) In the proposed Item No. 18B, in the 7th line, the word "cards" where it occurs for the first time, should be "cords".

(*b*) In the proposed Item No. 18C we have deleted the word "type" as the removal of the duty on this article might prejudicially affect type foundries which are now working in India. This involves the retention of Item No. 54 of the present Schedule but in the reduced form containing only the entry "Printing Type," which will remain subject to 2½ per cent. duty.

(*c*) In the proposed new Item No. 43A we have deleted the words "warps and artificial" as we are given to understand that the words "artificial silk yarn" include artificial silk warp.

3. The Bill was published in the Gazette of India, dated the 27th August, 1927.

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

G. RAINY.

MD. YAKUB.

M. R. JAYAKAR.

W. S. LAMB.

PURSHOTAMDAS THAKURDAS.

ISWAR SARAN.

D. CHAMAN LALL.

GHAZANFAR ALI.

R. K. SHANMUKHAM CHETTY.

H. N. KUNZRU.

VICTOR SASSOON.

N. M. JOSHI.

JAMNADAS M. MEHTA.*

SATYENDRA CHANDRA MITRA.*

C. DURAISWAMI AIYANGAR.*

The 30th August, 1927.

* Subject to minute of dissent.

MINUTES OF DISSENT.

While we have agreed to accept this Bill being sent back to the Assembly without any amendment, we wish to state that we have not done so wholeheartedly in some particulars.

Item 8 [18A(2 & 3)]. We are unable to understand why the machines, apparatus and appliances operated by manual or animal labour should not have at least the same advantage, if not more, as those which are operated by electric, steam, water, fire or other power. To laymen like us, it looks unpardonable to place purely manual industry at a great disadvantage compared with the one carried on by the cheaper aids of refinement which a few urban localities alone can afford.

Item 10 (43A).—The introduction of cheap artificial silk yarn and thread aimed at by this amendment may, we are afraid, tell greatly on the indigenous silk industry, as well as the extent of the cotton textile industry.

C. DURAISWAMI AIYANGAR.

SATYENDRA CHANDRA MITRA.

The 30th August, 1927.

The remissions of the customs duties on machinery and stores proposed in the Bill are intended, it is claimed, to give some relief to the mill industry; the loss of revenue involved is estimated to be Rs. 85 lakhs a year, only half of which will benefit the mill industry. We are of opinion that, unless a duty on foreign piece-goods is imposed, the indigenous textile industry cannot get any real protection, and as Government are tenaciously holding out against that recommendation of the Tariff Board in the interests of Lancashire, the proposed remission will really operate only as a relief of so much taxation. We do not think that the Indian Exchequer is overflowing with surplus money; and if it is, there are other claimants to relief, *e g.*, salt tax, postage, etc., which ought to have the priority against the proposed remissions which do not seem to press with equal severity on those who import machinery and stores. We are, therefore, decidedly against so much loss of revenue unless we are satisfied that the Indian industry secures effective protection in its present perilous position.

JAMNADAS M. MEHTA.

C. DURAISWAMI AIYANGAR.

[AS AMENDED BY THE SELECT COMMITTEE.]

[Words printed in italics indicate the amendments suggested by the Committee.]

A

BILL

Further to amend the Indian Tariff Act, 1894.

WHEREAS it is expedient further to amend the Indian Tariff Act, 1894, in order to remove or reduce the customs duties on certain machinery and materials of industries; It is hereby enacted as follows :— VIII of 1894.

Short title and commencement.

1. (*1*) This Act may be called the Indian Tariff (Amendment) Act, 1927.

(*2*) It shall come into force on the 1st day of October, 1927.

Amendment of the Second Schedule, Act VIII of 1894.

2. In the Second Schedule to the Indian Tariff Act, 1894, there shall be made the amendments specified in the Schedule to this Act. VIII of 1894.

THE SCHEDULE.

(*See section 2.*)

1. In Item No. 1A, for the word and figures "No. 68" the words, letter and figures "Nos. 1B and 68" shall be substituted.

2. After Item No. 1A, the following item shall be inserted, namely :—

"1B	Sago flour."

3. After Item No. 6, the following heading and item shall be inserted, namely :—

"TALLOW, STEARINE AND WAX.

6A	Tallow."

4. After Item No. 8, the following item shall be inserted under the heading "MISCELLANEOUS," namely :—

"8A	China Clay."

5. After Item No. 13, the following item shall be inserted, namely :—

"13A	Bleaching paste and bleaching powder."

6. After Item No. 14, the following item shall be inserted, namely :—

"14A	Magnesium chloride."

and Item No. 14A shall be re-numbered 14B.

7. After Item No. 14B, the following heading and item shall be inserted, namely :—

"DYES AND COLOURS.

14C	Dyes derived from coal-tar and coal-tar derivatives used in any dyeing process."

8. After Item No. 18, the following heading and items shall be inserted, namely :—

"MACHINERY.

18A	MACHINERY, namely, such of the following articles *as* are not otherwise specified :—	
	(1) prime-movers, boilers, locomotive engines and tenders for the same, portable engines (including power-driven road rollers, fire engines and tractors), and other machines in which the prime-mover is not separable from the operative parts ;	
	(2) machines and sets of machines to be worked by electric, steam, water, fire or other power, not being manual or animal labour, or which before being brought into use require to be fixed with reference to other moving parts ;	
	(3) apparatus and appliances, not to be operated by manual or animal labour, which are designed for use in an industrial system as parts indispensable for its operation and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose ;	
	(4) control gear, self-acting or otherwise, and transmission-gear designed for use with any machinery above specified, including belting of all materials and driving chains, but excluding driving ropes not made of cotton ;	
	(5) bare hard-drawn electrolytic copper wires and cables and other electrical wires and cables, insulated or not ; and poles, troughs, conduits and insulators designed as parts of a transmission system, and the fittings thereof.	

Note.—The term 'industrial system' used in sub-clause (3) means an installation designed to be employed directly in the performance of any process or series of processes necessary for the manufacture, production or extraction of any commodity.

18B	The following TEXTILE MACHINERY AND APPARATUS, by whatever power operated, namely, healds, heald cords and heald knitting needles ; reeds and shuttles ; warp and weft preparation machinery and looms ; bobbins and pirns ; dobbies ; Jacquard machines ; Jacquard harness linen *cords* ; Jacquard cards ; punching plates for Jacquard cards ; warping mills ; multiple box sleys ; solid border sleys ; tape sleys ; swivel sleys ; tape looms ; wool carding machines ; wool spinning machines ; hosiery machinery ; coir mat shearing machines ; coir fibre willowing machines ; heald knitting machines ; dobby cards ; lattices and lags for dobbies ; wooden winders ; silk looms ; silk throwing and reeling machines ; cotton yarn reeling machines ; sizing machines ; doubling machines ; silk twisting machines ; cone winding machines ; piano card cutting machines ; harness building frames ; card lacing frames ; drawing and denting hooks ; sewing thread balls making machines ; *cumbli* finishing machinery ; hank boilers ; cotton carding and spinning machines ; mail eyes, lingoes, comber boards and comber board frames ; take-up motions ; temples and pickers ; picking bands ; picking sticks ; printing machines ; roller cloth ; clearer cloth ; sizing flannel ; and roller skins.	
18C	PRINTING AND LITHOGRAPHIC MATERIAL, namely : presses, * aluminium lithographic plates, brass rules, composing sticks, chases, imposing tables, lithographic stones, stereo-blocks, wood blocks, half-tone blocks, electrotype blocks, roller moulds, roller frames and stocks, roller composition, standing screw and hot presses, perforating machines, gold blocking presses, galley presses, proof presses, arming presses, copper plate printing presses, rolling presses, ruling machines, ruling pen making machines, lead and rule cutters, type casting machines, type setting and casting machines,	

	rule bending machines, rule mitreing machines, bronzing machines, leads, wooden and metal quoins, shooting sticks and galleys, stereotyping apparatus, metal furniture, paper folding machines, and paging machines, but excluding ink and paper.
18D	COMPONENT PARTS OF MACHINERY, as defined in Nos. 18A, 18B and 18C, namely, such parts only as are essential for the working of the machine or apparatus and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose:
	Provided that articles which do not satisfy this condition shall also be deemed to be component parts of the machine to which they belong if they are essential to its operation and are imported with it in such quantities as may appear to the Collector of Customs to be reasonable."

9. After Item No. 24, the following items shall be inserted, namely :—

"24A	Ropes, cotton.	
24B	Starch and farina "	

10. After Item No. 43, under the heading "YARNS AND TEXTILE FABRICS ", the following item shall be inserted, namely :—

"43A	Artificial silk yarn and * * * silk thread.	*Ad valorem*	7½ per cent."

11. In Part III of the Schedule, the heading "MACHINERY ", and Items Nos. 51, 51A *and* 51B * * shall be omitted.

11A. For Item No. 54 the following shall be substituted, namely :—

54	*PRINTING TYPE.*

12. For the second proviso to Item No. 63, the following shall be substituted, namely :—

"Provided also that articles of machinery as defined in No. 18A or No. 18D shall not be deemed to be included hereunder."

13. In the proviso to Item No. 64, for the figures and letter "51 " and "51A " the figures and letters "18A " and "18D " shall be substituted, respectively.

14. In Item No. 68, after the word "FLOUR", the words, ", except sago flour " shall be inserted.

15. For Item No. 77, the following shall be substituted, namely :—

"77	All sorts of stearine, wax, grease and animal fat not otherwise specified."

16. In Item No. 92, after the word "sorts " where it occurs for the first time, the words "not otherwise specified " shall be inserted.

17. In Item No. 96, the brackets, words and figures "(*see* Nos. 15, 16, 18 and 51B) " shall be omitted.

18. In Item No. 103, for the figures "51 " the figures and letter "18A " shall be substituted.

19. In Item No. 106, after the word "FIBRE " the words "not otherwise specified " shall be inserted.

20. In Item No. 111, for the figures "51 " the figures and letter "18A " shall be substituted.

21. Item No. 117 shall be omitted.

22. In Item No. 149A, the words, figures and letter "*see* Nos. 51 and 51A " shall be omitted.

23. In Item No. 153, for the figures and letter "51, 51A " the figures and letters "18A, 18D " shall be substituted.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

Report of the Select Committee on the Bill further to amend the Indian Tariff Act, 1894; with the Bill as amended.

H284LD—750—31-8-27—GIPS

[AS PASSED BY THE LEGISLATIVE ASSEMBLY.]

A

BILL

Further to amend the Indian Tariff Act, 1894.

WHEREAS it is expedient further to amend the Indian Tariff Act, 1894, in order to remove or reduce the customs duties on certain machinery and materials of industries, It is hereby enacted as follows :— VIII of 1894.

Short title and commencement.

1. (*1*) This Act may be called the Indian Tariff (Amendment) Act, 1927.

(*2*) It shall come into force on the 1st day of October, 1927.

Amendment of the Second Schedule, Act VIII of 1894.

2. In the Second Schedule to the Indian Tariff Act, 1894, there shall be made the amendments specified in the Schedule to this Act. VIII of 1894.

THE SCHEDULE.

(*See section 2.*)

1. In Item No. 1A, for the word and figures "No. 68" the words, letter and figures "Nos. 1B and 68" shall be substituted.

2. After Item No. 1A, the following item shall be inserted, namely :—

1B	Sago flour."

3. After Item No. 6, the following heading and item shall be inserted, namely :—

"TALLOW, STEARINE AND WAX.

6A	Tallow."

4. After Item No. 8, the following item shall be inserted under the heading "MISCELLANEOUS," namely :—

8A	China Clay."

5. After Item No. 13, the following item shall be inserted, namely :—

13A	Bleaching paste and bleaching powder."

6. After Item No. 14, the following item shall be inserted, namely :—

14A	Magnesium chloride."

and Item No. 14A shall be re-numbered 14B.

7. After Item No. 14B, the following heading and item shall be inserted, namely :—

"DYES AND COLOURS.

14C	Dyes derived from coal-tar and coal-tar derivatives used in any dyeing process."

8. After Item No. 18, the following heading and items shall be inserted, namely :—

"MACHINERY.

18A | MACHINERY, namely, such of the following articles as are not otherwise specified :—

(1) prime-movers, boilers, locomotive engines and tenders for the same, portable engines (including power-driven road rollers, fire engines and tractors), and other machines in which the prime-mover is not separable from the operative parts ;

(2) machines and sets of machines to be worked by electric, steam, water, fire or other power, not being manual or animal labour, or which before being brought into use require to be fixed with reference to other moving parts ;

(3) apparatus and appliances, not to be operated by manual or animal labour, which are designed for use in an industrial system as parts indispensable for its operation and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose ;

(4) control gear, self-acting or otherwise, and transmission-gear designed for use with any machinery above specified, including belting of all materials and driving chains, but excluding driving ropes not made of cotton ;

(5) bare hard-drawn electrolytic copper wires and cables and other electrical wires and cables, insulated or not ; and poles, troughs, conduits and insulators designed as parts of a transmission system, and the fittings thereof.

Note.—The term 'industrial system' used in sub-clause (3) means an installation designed to be employed directly in the performance of any process or series of processes necessary for the manufacture, production or extraction of any commodity.

18B | The following TEXTILE MACHINERY AND APPARATUS, by whatever power operated, namely, healds, heald cords and heald knitting needles, reeds and shuttles ; warp and weft preparation machinery and looms ; bobbins and pirns ; dobbies ; Jacquard machines ; Jacquard harness linen cords ; Jacquard cards ; punching plates for Jacquard cards ; warping mills ; multiple box sleys ; solid border sleys ; tape sleys ; swivel sleys ; tape looms ; wool carding machines ; wool spinning machines ; hosiery machinery ; coir mat shearing machines ; coir fibre willowing machines ; heald knitting machines ; dobby cards ; lattices and lags for dobbies ; wooden winders ; silk looms ; silk throwing and reeling machines ; cotton yarn reeling machines ; sizing machines ; doubling machines ; silk twisting machines ; cone winding machines ; piano card cutting machines ; harness building frames ; card lacing frames ; drawing and denting hooks ; sewing thread balls making machines ; cumbli finishing machinery ; hank boilers ; cotton carding and spinning machines ; mail eyes, lingoes, comber boards and comber board frames ; take-up motions ; temples and pickers ; picking bands ; picking sticks ; printing machines ; roller cloth ; clearer cloth ; sizing flannel ; and roller skins.

18C | PRINTING AND LITHOGRAPHIC MATERIAL, namely : presses, aluminium lithographic plates, composing sticks, chases, imposing tables, lithographic stones, stereo-blocks, wood blocks, half-tone blocks, electrotype blocks, roller moulds, roller frames and stocks, roller composition, standing screw and hot presses, perforating machines, gold blocking presses, galley presses, proof presses, arming presses, copper plate printing presses, rolling presses, ruling machines, ruling pen making machines, lead and rule cutters, type casting machines, type setting and casting machines,

	rule bending machines, rule mitreing machines, bronzing machines, stereotyping apparatus, paper folding machines, and paging machines, but excluding ink and paper.
18D	COMPONENT PARTS OF MACHINERY, as defined in Nos. 18A, 18B and 18C, namely, such parts only as are essential for the working of the machine or apparatus and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose: Provided that articles which do not satisfy this condition shall also be deemed to be component parts of the machine to which they belong if they are essential to its operation and are imported with it in such quantities as may appear to the Collector of Customs to be reasonable."

9. After Item No. 24, the following items shall be inserted, namely :—

"24A	Ropes, cotton.
24B	Starch and farir

10. After Item No. 43, under the heading "YARNS AND TEXTILE FABRICS", the following item shall be inserted, namely :—

"43A	Artificial silk yarn and thread.	*Ad valorem*	7½ per cent."

11. In Part III of the Schedule, the heading "MACHINERY", and Items Nos. 51, 51A and 51B shall be omitted.

11A. For Item No. 54 the following shall be substituted, namely :—

54	The following printing material, namely, type, leads, brass rules, wooden and metal quoins, shooting sticks and galleys and metal furniture.

12. For the second proviso to Item No. 63, the following shall be substituted, namely :—

"Provided also that articles of machinery as defined in No. 18A or No. 18D shall not be deemed to be included hereunder."

13. In the proviso to Item No. 64, for the figures and letter "51" and "51A" the figures and letters "18A" and "18D" shall be substituted, respectively.

14. In Item No. 68, after the word "FLOUR", the words, ", except sago flour", shall be inserted.

15. For Item No. 77, the following shall be substituted, namely :—

"77	All sorts of stearine, wax, grease and animal fat not otherwise specified."

16. In Item No. 92, after the word "sorts" where it occurs for the first time, the words "not otherwise specified" shall be inserted.

17. In Item No. 96, the brackets, words and figures "(*see* Nos. 15, 16, 18 and 51B)" shall be omitted.

18. In Item No. 103, for the figures "51" the figures and letter "18A" shall be substituted.

19. In Item No. 106, after the word "FIBRE" the words "not otherwise specified" shall be inserted.

20. In Item No. 111, for the figures "51" the figures and letter "18A" shall be substituted.

21. Item No. 117 shall be omitted.

22. In Item No. 149A, the words, figures and letters "*See* Nos. 51 and 51A" shall be omitted.

23. In Item No. 153, for the figures and letter "51, 51A", the figures and letters "18A, 18D" shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to give effect to the decision of the Government of India to remove the import duties on certain machinery and mill stores as announced in paragraph 12 of their Resolution No. 341-T. (27), dated the 7th June, 1927, on the Report of the Tariff Board (Cotton Textile Industry Enquiry).

2. It is considered undesirable to retain the 2½ per cent. *ad valorem* duty on printing machinery and material when the duty on other machinery is being removed. It is accordingly proposed to remove the duty on the articles included in Item 54 of the Import Tariff Schedule, as well as the duty on articles included in Items 51, 51A and 51B.

G. RAINY.

The 13th August, 1927.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

BILL

Further to amend the Indian Tariff Act, 1924; and Annexure.

[*As passed by the Legislative Assembly.*]

H310LD—9-9-27—400—GIPS

[To be introduced in the Legislative Assembly.]

A

BILL

Further to amend the Indian Tariff Act, 1894, in order to safeguard the manufacture of cotton yarn in British India.

WHEREAS it is expedient further to amend the Indian Tariff Act, 1894, in order to safeguard the cotton textile industry in British India against competition in cotton yarn produced under industrial conditions which enable such yarn to be produced at a cost below that at which it can be produced in British India; It is hereby enacted as follows :— VIII of 1894.

Short title.

1. This Act may be called the Indian Tariff (Cotton Yarn Amendment) Act, 1927.

Amendment of the Second Schedule to Act VIII of 1894.

2. (*1*) In Item No. 44 of the Second Schedule to the Indian Tariff Act, 1894, after the figure and words " 5 per cent " the figure and words " or 1½ annas per pound, whichever is higher " shall be added. VIII of 1894.

(*2*) The amendment made by sub-section (*1*) shall have effect up to the 31st day of March, 1930.

STATEMENT OF OBJECTS AND REASONS.

The Tariff Board which was appointed to inquire into the depression in the cotton textile industry reported that, owing to the double shift working rendered possible by the night work of women, the Japanese mills producing cotton yarn possessed an unfair advantage over the Indian mills, and that this advantage amounted to 10 per cent. of the selling price at the time the Report was submitted. This advantage is only partially neutralised by the existing five per cent. duty. In the opinion of the Board, the Japanese mills will retain their unfair advantage until June 30th, 1929, when the night work of women will be prohibited by law.

2. More than half the total imports of yarn are of counts from 31*s* to 40*s* and about 80 per cent. of the imports of these counts are from Japan. The Board found that the unfair advantage of a mill spinning an average of 20*s* was 10 pies per pound, if a reasonable return on capital was taken into account, and of a mill spinning an average of 32*s* 16 55 pies per pound. On the basis of these figures, a duty of one and-a-half annas a pound on counts from 31*s* to 40*s* and a duty of one anna a pound on lower counts would suffice to neutralise the unfair competition of the Japanese mills. The imports of counts of yarn below 31*s* are, however, less than 5 per cent. of the total imports, and for administrative reasons it is not considered advisable to vary the rate of duty according to the count. It is, therefore, proposed in the Bill that up to the 31st March, 1930, the 5 per cent. duty on cotton yarn should be subject to a specific minimum of one and-a-half annas a pound. The effect will be that duty will be leviable on all imported yarn at the rate of one and-a-half annas a pound, unless the value exceeds Rs. 1-14-0 a pound, when the duty will be levied at five per cent. *ad valorem*.

3. For protective purposes, a specific duty is preferable to an *ad valorem* duty, the amount of which varies with the price and is highest when protection is least needed and lowest when the industry most requires assistance. It is for this reason that the specific minimum duty of one and-a-half annas a pound has been proposed and not an increase in the *ad valorem* rate.

4. The night work of women in the Japanese mills will terminate, it is expected, on the 30th of June, 1929, but yarn produced under double shift conditions will still be on the market for some months afterwards. For this reason, it is proposed that the specific minimum duty should continue in force until the 31st March, 1930.

SIMLA; G. RAINY.
The 13th August, 1927.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

Further to amend the Indian Tariff Act, 1894, in order to safeguard the manufacture of cotton yarn in British India ; and Annexure.

The Governor General has been pleased to accord the sanction required by section 67(2) of the Government of India Act.

W. T. M. WRIGHT,

Secretary of the Legislative Assembly.

[*The Honourable Sir George Rainy.*]

MC234LD—650—16-8-27—GIPS

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

We, the undersigned, Members of the Select Committee to which the Bill further to amend the Indian Tariff Act, 1894, in order to safeguard the manufacture of cotton yarn in British India was referred, have considered the Bill, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. In the long title and in the preamble, we have substituted the word "protect" for the word "safeguard", as we prefer the more familiar term.

3. We have considered carefully the effect which the imposition of a specific minimum duty of 1½ annas a pound may be expected to have on the handloom industry. We recognise that this duty can benefit the cotton mill industry only to the extent to which the price of yarn is increased thereby, and that any increase in the price of yarn must be a burden on the handloom weaver unless he is able to receive a higher price for the cloth that he weaves. So far as the fabrics woven from the finer counts are concerned, the 1½ anna duty will often be less than the duty at 5 per cent. *ad valorem* and will seldom be appreciably higher. The weavers of this kind of cloth will be little, if at all, affected by the specific duty, and even when the price of the yarn they use is slightly raised, they may be able to obtain a slightly higher price from purchasers with whom quality rather than price is the first consideration. On the other hand, the imports of yarn of the counts below 30*s* are very small, and we believe that the price of such counts in India is regulated to a large extent by internal competition. The great bulk of the yarn used by the handloom weavers is of this class, and we do not anticipate that the price will be raised, if at all, to anything like the extent of the difference between the 1½ anna duty and the duty at 5 per cent. *ad valorem*. On the other hand, the imposition of the specific duty should prevent any heavy fall in the price of the lower counts such as might result from the importation of large quantities of cheap yarn from China.

4. It is in respect of the medium counts that the Indian mills have felt the competition of yarn imported from Japan (and in recent months from China) most severely, and particularly the counts from 31*s*. to 40*s*. The annual consumption of yarn of these counts in India is about 50 million pounds, and as the production of the Indian mills is more than half of the total, the quantity taken by the handloom weavers is probably not more than a half. At present prices the 1½ anna duty would be equivalent to a duty of approximately 10 per cent. *ad valorem* on such yarn, and it is possible that the price may be raised to the full extent of the difference between the 1½ anna duty and the 5 per cent. duty. In that case the additional cost is estimated to be Rs. 12 lakhs a year. But the yarn of counts from 31*s*. to 40*s*. is probably not more than 10 per cent. of the total yarn consumption of the handloom weavers, and the additional cost spread over their whole output would not seriously affect them. Our final conclusion is that the imposition of the 1½ anna duty will not materially prejudice the interests of the handloom industry, but we recognise the difficulties which always exist in forecasting the exact effect of an increase in duty, and we consider that the actual effect on the handloom industry should be watched. We recommend, therefore, that the Government should be asked to address Local Governments on the subject, desiring them to have special inquiries made and to report on the subject six months after the passage of the Bill into law.

5. The Bill was published in the Gazette of India, dated the 27th August, 1927.

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

MOHAMMAD YAKUB*.
G. RAINY*.
R. K. SHANMUKHAM CHETTY.
VICTOR SASSOON*.
PURSHOTAMDAS THAKURDAS*.
W. S. LAMB.
D. CHAMAN LALL*.
N. M. JOSHI.
GHAZANFAR ALI*.
C. DURAISWAMI AIYANGAR*.
JAMNADAS M. MEHTA*.
SATYENDRA CHANDRA MITRA*.
HIRDAY NATH KUNZRU.
ISWAR SARAN*.
M. R. JAYAKAR.

* Subject to Minute of Dissent.

MINUTES OF DISSENT.

I consider that the change made by the Committee in the preamble and in the long title of the Bill by the substitution of the word "protect" for the word "safeguard" is inadvisable, and may create the impression that some change has been made in the scope and object of the Bill. The word "safeguard" is commonly used when the danger to which the domestic industry is exposed arises from one or more of the forms of competition ordinarily designated as unfair. The word "protect", on the other hand, has a wider significance, and is appropriate when it is proposed to maintain or develop a domestic industry, irrespective of the nature of the competition to which it is exposed. The unfair competition by which the manufacture of cotton yarn in India is endangered arises from differences in industrial conditions, and in particular from the fact that night work by women is permitted in Japan, whereas in India it is prohibited by law. I hold that the Indian spinning mills are entitled to be safeguarded against this competition, but not that they are entitled to be 'protected' if that word is to be given the wider meaning which it commonly bears.

The 30th August, 1927. G. RAINY.

The 30th August, 1927. MD. YAKUB.

We are anxious to safeguard the manufacture of cotton yarn against foreign competition. We shall willingly support any measure which gives the much-needed relief to the mill industry without inflicting a corresponding loss on some other industry in the country. But unfortunately if the present Bill is passed, it is bound to prejudicially affect the handloom industry. It is our considered judgment that nothing should be done to hurt the interest of the handloom industry and thus save the poorer section of our people from additional loss or expenditure. We strongly recommend that in the interest of the mill industry the import duty on piece-goods be increased as recommended by the Tariff Board, but we have been told that this or any other proposal of a like nature is not open to us to make, and our motion on those lines was ruled out of order. We are, therefore, most reluctantly forced to say that this Bill be sent back to the Assembly with a suggestion that it be not proceeded with.

JAMNADAS M. MEHTA.

ISWAR SARAN.

This Bill is framed in the spirit of offering a mere eye-wash to the clamouring Mill owners of Bombay at the expense of the poor voiceless handloom weavers spread all over the country. It is admitted that whatever benefit is expected to be conferred on the Mill industry is at least to that extent a burden on the handloom weavers.

The handloom weavers have always been working at a great disadvantage as against the facilities given to and the influence of the Mill owners.

At page 175 of the Report the Indian Tariff Board give it as their considered opinion that the imposition of any additional duty on yarn is undesirable in view of the effect that it will have on the handloom industry and that any assistance to be given to the spinning industry is best given in the form of a bounty. This Bill brushes aside most unceremoniously the considered view of the Tariff Board and sets an unprecedented and unwholesome example of giving shadow of a protection to one indigenous industry at the cost of its neighbour. Some of us suggested that a slight enhancement of the import duty on piece-goods will afford a better protection for the Indian textile industry as a whole, but the Hon'ble the Commerce Member would not accept it and the suggestion was ruled out of order.

In the circumstances, there is no other alternative than to reject this Bill.

C. DURAISWAMI IYENGAR.

SATYENDRA CHANDRA MITRA.

The 30th August, 1927

I sign the majority report subject to the following note:—

NOTE BY SIR VICTOR SASSOON, BART.

The principle underlying the Bill is to safeguard the Cotton textile industry in British India against competition in cotton yarn produced under industrial conditions which enable such yarn to be produced at a cost below that at which it can be produced in British India.

2. Certain accusations have been made against the industry, the more important of which I should like to answer before proceeding to give my views on the present Bill. It has been contended in some quarters that the present parlous condition of the Bombay Cotton Mill Industry is due to over capitalisation. Taking the Tariff Board's own valuations of the capital cost per loom with 30 spindles at Rs. 5,450 per loom, which represents Rs. 100 per spindle and Rs. 2,450 per loom, and

allowing a reduction of 5% on these figures to compensate for the reduction in the import duty on machinery and mill stores which has been proposed, the total capital value of the land, buildings and machinery represented by the mills in Bombay would work out at Rs. 48·50 crores (excluding the cost of dyeing, bleaching and finishing machinery the value of which exceeds Rs. 2 crores) against a block value of Rs. 46·72 crores given in Appendix VI of the Tariff Board Report. This clearly shows that according to the Tariff Board's own valuation the industry is certainly not over-capitalised as there is a margin of Rs. 3·78 crores, roughly 8% to allow for the increase in efficiency which might be obtained if all the machinery was new. In this connection I might point out the fact that the Tariff Board themselves definitely refuted the imputations made as regards inefficient machinery (*vide* para. 42 of the report), and this opinion is definitely confirmed by an outside authority—the Right Hon'ble Tom Shaw, M.P., the head of the deputation from the International Textile Workers' Association which visited India recently—who declared in the House of Commons · "In his opinion most of the Indian factories were better than the Lancashire ones and the machinery was mostly new."

3. It has also been urged, even by the Government of India themselves that "industrial concerns which made substantial profits at the expense of the consumer when conditions were favourable cannot fairly claim that they shall also be protected from loss at his expense when conditions change for the worse" If one takes the profit of the Bombay industry as a whole for a period of ten years from 1917 to 1926, which includes the boom years, it will be found that the average return on capital represented by land, buildings and machinery, after allowing for depreciation, is even below 7½ per cent. Thus the consumer has given to the industry over a period of ten years a return less than what the Tariff Board and the Government of India are willing to concede is a fair return on industrial capital (*vide* Appendix A.)

4. A third charge which has been made is that the remuneration given to labour in Japan is much higher than in Bombay. A reference to the figures of wages paid in 1919 in Japan (Table LXX of the Tariff Board Report) substantiates the statement made on pages 107 and 108 of the United States Tariff Commission Report, 1919, on the Japanese Cotton Industry and Trade, where it is pointed out in response to severe public criticism on account of the low wages ruling in the cotton industry, the cotton mills decided to include in their published statement in addition to actual money wages the value of such other items as cheap board and bonus, cheap boarding, hospital and education, which were estimated to form 40 per cent of the wage now shown. No correct comparison of Japanese and Bombay wages can therefore be made since Bombay wages do not include the monetary equivalent of such services, but such comparisons as it is possible to make from the information available show that the Bombay industry has little if anything to fear in any correct comparison. In this connection it is also interesting to note that from the second half of 1920 t the second half of 1925 there has been a reduction of 19 per cent. in the number of operatives per 1,000 spindles in spinning mills, and a reduction of 30 per cent. in the number of operatives per 100 looms in weaving mills in Japan without any appreciable increase in the wages paid per operative (*vide* pages 57-58, Department of Overseas Trade Report on the Cotton Spinning and Weaving Industry in Japan, 1925-26).

5. With a view to removing misapprehensions as to the seriousness of the present position of the Indian Cotton Textile Industry, it is desirable to draw attention to the increase in imports from Japan which rose from 98 million yards in the first five months of 1926 to 131 million yards in the corresponding period of 1927, an increase of 33 per cent ; similarly, during the first five months of 1927 the imports of yarn from China reached 2·1 million pounds (chiefly 40*s* counts) as compared with the insignificant total of 8,000 pounds for the corresponding period of 1926. It is necessary to examine the prices at which these additional imports from China have been made and to compare them with the cost at which similar yarn can be manufactured in India. The price of Sino-Japanese yarn of 40*s* counts bought on August, 18th, inclusive of the existing 5 per cent. duty was 15·75 annas per lb. laid down in Bombay. The cost of producing the same count of yarn in an efficient Bombay mill from cotton at the price ruling on that date (Rs. 620 per candy) was 19·71 annas per lb. exclusive of any allowance for depreciation. In other words, the cost of producing 40*s*. yarn in Bombay was 25 per cent. higher than the selling price of Sino-Japanese yarn. It is thus clear that even after the imposition of the specific duty recommended in this Bill, which would raise the price of Sino-Japanese yarn of 40*s*. counts to 16·50 annas per lb., the handloom industry purchasing such yarn would have an advantage of roughly 20 per cent. when competing with cloth made from similar counts in Bombay mills. The latest shipments from China have, however, been of low counts of yarn.

6. The Tariff Board recognised the possibility of a rapid increase in the imports of coarse yarn at prices at which Indian mills would not be able to compete in the event of a continuation of the disturbed conditions in China (*vide* pages 72 and 192 of the Tariff Board Report), and were of the opinion that if this contingency arose, "an additional duty on yarn would be fully justified." The facts and figures quoted above eloquently prove that the contingency which the Tariff Board had in mind is arising.

7. To my mind the problem before us resolves itself into protecting the yarn industry against "dumping" and unfair competition without damaging the handloom industry. The Government of India estimate that the price of 25 million lbs. of medium count yarns consumed by the handloom industry might be affected by the imposition of the specific duty proposed in the Bill. If the prices of these yarns went up to the full extent of the increase in the duty, which I am confident will not be the case owing to the intensive competition now existing, the cost to the handloom

industry would amount to less than Rs. 12 lakhs per annum on a turnover of over Rs. 30 crores, or less than ½ per cent.

8. The Tariff Board have dealt at length with the effect of such a rise in prices (*vide* paragraph 90, page 170 of the Report) and their unanimous conclusion was that the imposition of a duty to safeguard the Indian yarn industry would prevent a much greater rise in prices which would be bound to follow any crippling of the indigenous industry.

9. In a previous paragraph I have called attention to the fact that Sino-Japanese yarns have recently been sold in Bombay at 25 per cent. less than the bare cost of manufacture of similar yarn in Indian mills. Up till recently these importations have been in counts which are not extensively manufactured in Indian Mills, but the latest shipments of foreign yarn to Bombay have been in the lower counts which form the staple trade of Indian mills and a continuance of the disturbed conditions in the markets of the Far East will result in further importations of coarse yarns at prices at which Indian mills will find it impossible to compete. The imposition of a specific duty would be of inestimable value to the mill industry during the present dislocation of the markets of the Far East, and would provide some defence against the importation of coarse counts at unreasonably cheap prices, and it is for this reason that I earnestly press for the adoption of the Bill. I recognise that the proposed duty will be insufficient to safeguard the yarn industry from the disadvantages of unfair labour conditions and the probability of 'dumping', but since it would be undesirable to penalise the handloom industry it necessarily follows that the only way in which the cotton textile industry can be adequately protected would be by increasing the duty upon both yarn and cloth. The case for an additional duty on cloth is further strengthened by the fact that, as in the case of yarn, there is every probability of even larger importations of cloth from Japan and China at prices much below the cost of production in India if the disturbed conditions of the Far Eastern markets continue.

VICTOR SASSOON.

I do not think that this Bill provides sufficient protection to the Textile Industries, while, on the other hand, it is bound to do a good deal of harm to the handloom industry, therefore I am opposed to the passing of this Bill.

GHAZANFAR ALI KHAN.

The 31st August 1927.

I voted for the import duty on yarn in the Select Committee but wish to make it clear that the constituency which I have the honour to represent in the Assembly is not in favour of handicapping the handloom industry. It is admitted even by the Honourable Member in charge of the Bill that the imposition of this duty on yarn will affect the handloom weaver to a small extent. There is no doubt about Japan and China exporting yarn to India at rates amounting to their dumping yarn in India. That the mill industry should have protection against this must be admitted by all. But when this Bill is passed there is nothing to prevent these countries from exporting cloth to India on similar terms. The protection offered by the Bill therefore becomes more of an eye-wash than a reality unless an attempt is made to import coarse counts. If Government wish to protect the industry they must do it wholeheartedly and from every direction. The protection afforded by the Bill is most defective and permits of the countries against which protection is ensured shifting their methods. And this will nullify the protection contemplated by the Bill

PURSHOTAMDAS THAKURDAS.

I regret I cannot agree with my colleagues in recommending measures contained in the Bill further to amend the Indian Tariff Act, 1894 for the purpose of safeguarding the manufature of cotton yarn in India. Protection whatever shape it might assume, is always a double edged sword. Invarably it affords assistance to an industry or a group of industrialists at the expense of either the consumer who happens in such cases usually to be the man-in-the-street or at the expense of some cognate industry thus neutralising by the imposition of burdens the advantages of protection. I turn to page 175, of the Tariff Board's Report. It is stated therein :—

> "The majority of us consider, however, that the imposition of any additional duty on yarn is undesirable in view of the effect that this would have on the handloom industry which in 1925-26 according to figures given in Appendix IV, supplied about 26 per cent. of the total consumption of cloth in India.
>
> It will also react unfavourably on the position of those mills which have weaving sheds only and are dependent on yarn either locally manufactured or imported."

Thus it is obvious that, keeping in view the interests of the handloom industry as well as the interests of weaving sheds in India, the Tariff Board's report turned down the principle of the proposal which now finds its way into this Bill.

Now there are various ways in which the Cotton industry of India might be safeguarded from attacks upon it by foreign competitors. One of the ways was dealt with at length by the Tariff Board, namely, internal economies and labour efficiency. Further although the Tariff Board's report declares that—neither over-capitalisation nor unduly high dividends in a boom period can be said to be the causes

of a subsequent depression". Yet it is obvious that the dissipation of enormous profits during the boom period, in the shape of dividends, in order perhaps to boom the value of their shares, has robbed the millowners of the capacity to hold out against the period of cyclic depression without assistance from the State. "Dividends from (not total profits) 1919 to 1922 inclusive represented 40·1, 35·2, 16·4 per cent.—that is dividends paid by the Bombay Mills. Figures for 1920, 1921, 1922 were 47·0, 40·5, 21·5 per cent. respectively. That an industry which has been in existence for a little less than a century, which has been in a position to pay such handsome dividends, which has done so little for the improvement of the life, education and efficiency of its workers because it was more concerned with profits, which has the command of cheap labour and cheap raw-material, which has an unrivalled market for its produce; that an industry which has and has had all these advantages should not be in a position to hold up its head against Japanese and Chinese competition is a fact which to me seems explicable only on the basis that capitalistic greed has outrun capitalistic caution. There is another factor which must be brought clearly to the notice of Honourable Members and that is this. The depression we notice is generally depression which is disastrous only to a certain proportion of the cotton mills of Bombay but that, although it adversely affects Ahmedabad and up-country mills, it cannot be said, by any stretch of the imagination, to be of a nature disastrous to them. For instance a report published on August 16th, 1927, of the general meeting of the Delhi Cloth and General Mills Co., Ltd., say :—

"The directors apprehended a gloomy future for the industry if immediate relief was not given to it by the Government..... .....*Dividend, free of income-tax, Rs. 45 per cent. per annum.*" In 1925 this mill paid 32 per cent. in dividends. The Tariff Board's Report on page 84 bears me out in my suggestion. "The best test is that of results and judging by these it is obvious that if the Bombay Mills had husbanded their resources to a greater extent in the boom years and still more in the years which preceded them, they would have been in a better position to meet the subsequent depression ....."

"Dividends in boom periods are apt to be governed by the share quotations rather than the quotation by the dividend. One very striking example of the results of cautious finance may be mentioned here. One mill in Bombay with a capital of Rs. 8 lakhs of which Rs. 2 lakhs were ordinary shares and Rs. 6 lakhs preference, utilised part of its profits during this period to pay off its preference shares and has in the last two years paid dividends of 150 and 130 per cent. respectively." The sins of the millowners shall be visited upon the Nation. There is one other cause for the sorry plight of the Bombay millowner. During the boom period based on valuations of that period capital was increased and in some cases reserves were capitalised by the issue of bonus shares. It is estimated that out of 79 mills working in Bombay in 1924-25 nearly 30 mills were affected by one or other of these processes. But in spite of all these troubles the Tariff Board's Report confidently asserts that "no mill in India which could be regarded as run with fair efficiency and economy has up to the present been forced into liquidation as the result of depression. None of the mills which has so far gone into liquidation had the smallest chances of surviving except in boom conditions.....Liquidation was the result of incompetency and inefficiency and in some cases of dishonesty." Furthermore the general poverty of the agricultural classes, their reduced purchasing power has also militated against the industry. Having indicated some of the sins of the industry I would like to point out that "almost all the mills which have spinning departments only except for striking exceptions in Madras, have been badly hit and have been unable to pay dividends for the last three years." This is the verdict of the Tariff Board. It is alleged that it therefore becomes imperative to protect the yarn industry of India. The total quantity of yarn imported into India and affected by the provisions of the Bill is (in thousands of pounds) 37956 for 1925-26 and 18007 for the six months ending 30th September 1926. Out of the former figure 30·126 (thousands) of pounds of yarn were imported from Japan and out of this amount 20,053 thousands of pounds of yarn were Greys 31s. to 40s. imported from Japan. This import of yarn does not generally enter into competition with the yarn produced by Indian Mills which out of 28 million pounds odd produced by them utilise nearly 25 million pounds odd leaving for the market a bare three million pounds of yarn. Hence it is obvious that without in any important measure helping the mill industry of India the provisions of this Bill will operate to make Japanese imported yarn to the extent of over 20 million pounds (some compute it at 25 million pounds) which is used by the handloom industry of India and by none else, more expensive. Either the handloom industry, to that extent, will go under or the excess will be passed on to the consumer. I cannot set my seal upon this act of vandalism. Some of the millowners of Bombay were themselves of the opinion that the provisions of the Bill militated against the existence and prosperity of the handloom industry without giving them an appreciable advantage which could extricate them from their present plight. It is obvious that the troubles of the mill-industry are due not only to world conditions but are also in a great measure of its own making. Nevertheless scientific, national scheme of assistance which would bring prosperity to the mill hand, whose welfare should be our main consideration, would command the support of those who feel that the worker, the real producer of the wealth got out of this industry, has been made to bear the brunt of the suffering in the shape of low wages and unemployment as a result not only of the depression, but of the system under which he works. The proposals of the Bill instead of adding appreciably either to the prosperity of the industry or of the worker will ruin many homes of handloom workers throughout the country. I see no reason why the poor should be made to pay for the rich by conscious acts of the Legislature in which the opposition is supposed to protect the interests primarily of the masses. For these reasons I regret I cannot support the Select Committee's recommendations.

D. CHAMAN LALL.

(AS AMENDED BY THE SELECT COMMITTEE.)

(The word printed in antique and italics indicates the amendment suggested by the Committee.)

A

BILL

Further to amend the Indian Tariff Act, 1894, in order to **protect** *the manufacture of cotton yarn in British India.*

WHEREAS it is expedient further to amend the Indian Tariff Act, 1894, in order to *protect* the cotton textile industry in British India against competition in cotton yarn produced under industrial conditions which enable such yarn to be produced at a cost below that at which it can be produced in British India; It is hereby enacted as follows :— VIII of 1894.

Short title.

1. This Act may be called the Indian Tariff (Cotton Yarn Amendment) Act, 1927.

Amendment of the Second Schedule to Act VIII of 1894.

2. (*1*) In Item No. 44 of the Second Schedule to the Indian Tariff Act, 1894, after the figure and words " 5 per cent " the figure and words " or 1½ annas per pound, whichever is higher " shall be added. VIII of 1894.

(*2*) The amendment made by sub-section (*1*) shall have effect up to the 31st day of March, 1930.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

Report of the Select Committee on the Bill further to amend the Indian Tariff Act, 1894, in order to safeguard the manufacture of cotton yarn in British India ; with Bill as amended.

MG283LD—750—31-8-27—GIPS

[As passed by the Legislative Assembly.]

A

BILL

Further to amend the Indian Tariff Act, 1894, in order to protect the manufacture of cotton yarn in British India.

WHEREAS it is expedient further to amend the Indian Tariff Act, 1894, in order to protect the cotton textile industry in British India against competition in cotton yarn produced under industrial conditions which enable such yarn to be produced at a cost below that at which it can be produced in British India; It is hereby enacted as follows :— V III of 1894.

Short title.

1. This Act may be called the Indian Tariff (Cotton Yarn Amendment) Act, 1927.

Amendment of the Second Schedule to Act VIII of 1894.

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(*2*) The amendment made by sub-section (*1*) shall have effect up to the 31st day of March, 1930.

STATEMENT OF OBJECTS AND REASONS.

The Tariff Board which was appointed to inquire into the depression in the cotton textile industry reported that, owing to the double shift working rendered possible by the night work of women, the Japanese mills producing cotton yarn possessed an unfair advantage over the Indian mills, and that this advantage amounted to 10 per cent. of the selling price at the time the Report was submitted. This advantage is only partially neutralised by the existing five per cent. duty. In the opinion of the Board, the Japanese mills will retain their unfair advantage until June 30th, 1929, when the night work of women will be prohibited by law.

2. More than half the total imports of yarn are of counts from 31*s* to 40*s* and about 80 per cent. of the imports of these counts are from Japan. The Board found that the unfair advantage of a mill spinning an average of 20*s* was 10 pies per pound, if a reasonable return on capital was taken into account, and of a mill spinning an average of 32*s*. 16·55 pies per pound. On the basis of these figures, a duty of one and-a-half annas a pound on counts from 31*s* to 40*s* and a duty of one anna a pound on lower counts would suffice to neutralise the unfair competition of the Japanese mills. The imports of counts of yarn below 31*s* are, however, less than 5 per cent. of the total imports, and for administrative reasons it is not considered advisable to vary the rate of duty according to the count. It is, therefore, proposed in the Bill that up to the 31st March, 1930, the 5 per cent. duty on cotton yarn should be subject to a specific minimum of one and-a-half annas a pound. The effect will be that duty will be leviable on all imported yarn at the rate of one and-a-half annas a pound, unless the value exceeds Rs. 1-14-0 a pound, when the duty will be levied at five per cent. *ad valorem*.

3. For protective purposes, a specific duty is preferable to an *ad valorem* duty, the amount of which varies with the price and is highest when protection is least needed and lowest when the industry most requires assistance. It is for this reason that the specific minimum duty of one and-a-half annas a pound has been proposed and not an increase in the *ad valorem* rate.

4. The night work of women in the Japanese mills will terminate, it is expected, on the 30th of June, 1929, but yarn produced under double shift conditions will still be on the market for some months afterwards. For this reason, it is proposed that the specific minimum duty should continue in force until the 31st March, 1930.

SIMLA; G. RAINY.

The 13th August, 1927.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

Further to amend the Indian Tariff Act, 1894, in order to protect the manufacture of cotton yarn in British India; and Annexure.

[*As passed by the Legislative Assembly.*]

M308LD—400—8-9-27—GIPS.

[To be introduced in the Legislative Assembly.]

A

BILL

TO

Amend the law relating to the fostering and development of the bamboo paper industry in British India.

WHEREAS it is expedient to amend the law relating to the fostering and development of the bamboo paper industry in British India; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bamboo Paper Industry (Protection) Act, 1927.

Amendment of Act VIII of 1894.

2. (*1*) In the Second Schedule to the Indian Tariff Act, 1894, there shall be made the amendments specified in the Schedule to this Act. VIII of 1894.

(*2*) The amendments made by sub-section (*1*) shall have effect up to the 31st day of March, 1932.

Retrospective effect in certain cases

3. Printing paper (excluding chrome, marble, flint, poster and stereo), containing no mechanical wood pulp, on which a duty has been paid at 15 per cent. *ad valorem* under item No. 99 of Schedule II to the Indian Tariff Act, 1894, between the 21st of September, 1925, and the commencement of this Act, shall be deemed to have been liable to pay duty at one anna per pound under item No. 155 of that Schedule; and any deficiency between the duty which has been paid on such paper and the duty hereby made payable shall be deemed to be duty short-levied within the meaning of section 39 of the Sea Customs Act, 1878, and that Act shall apply accordingly. VIII of 1894. VIII of 1878.

Amendment of Act XXV of 1925.

4. The second item of the Schedule to the Bamboo Paper Industry (Protection) Act, 1925, is hereby repealed. XXV of 1925.

THE SCHEDULE.

AMENDMENTS TO BE MADE IN SCHEDULE II TO THE INDIAN TARIFF ACT, 1894.

(*See section 2*)

For Items Nos. 155 and 156, the following shall be substituted, namely:—

"155	PRINTING PAPER (excluding chrome, marble, flint, poster and stereo), all sorts which contain no mechanical wood pulp or in which the mechanical wood pulp amounts to less than 65 per cent. of the fibre content	Pound.	One anna.
156	WRITING PAPER—		
	(*a*) Ruled or printed forms (including letter paper with printed headings) and account and manuscript books and the binding thereof . .	Pound.	One anna or 15 per cent *ad valorem*, whichever is higher.
	(*b*) All other sorts . . .		One anna."

STATEMENT OF OBJECTS AND REASONS.

This Bill amends in three respects the Bamboo Paper Industry(Protection) Act, 1925, which added entries 155 and 156 in the Import Tariff Schedule (Schedule II to the Indian Tariff Act, 1894).

2. Firstly, by entry 155 a protective duty of one anna per pound was imposed on printing paper containing less than 65 per cent. of mechanical wood pulp, the intention being to exclude newsprint (which usually contains 65 per cent. or more of mechanical pulp) from the protective duty, and leave it under the revenue duty of 15 per cent. *ad valorem*. It has recently been held, however, that entry 155, as worded, excludes from the protective duty not only 'newsprint' as defined by the Tariff Board, but also paper containing no mechanical wood pulp at all. The effect is that the protective duty does not apply to a class of imported paper with which paper manufactured in India particularly competes, and to this extent the Act fails of its intended purpose.

This Bill, therefore, makes printing paper containing no mechanical wood pulp liable to the protective duty of one anna per pound, with retrospective effect from the 21st September, 1925, the date on which the Bamboo Paper Industry (Protection) Act became law.

The Bill also empowers the Governor General in Council to recover the difference between the protective duty and the duty at 15 per cent. *ad valorem* in the case of all paper containing no mechanical wood pulp on which duty has been paid at 15 per cent. *ad valorem* only, and which was imported between the 21st September, 1925, and the date on which this Bill becomes law.

3. Secondly, for more than a year after the passing of the Act, the Customs authorities calculated the percentage of mechanical wood pulp mentioned in entry 155 on the fibre content of the paper; but in January, 1927, it was held that the entry, as worded, required that the percentage should be calculated on the *total weight* of the paper, including 'loading'. It was represented by importers that the effect of this interpretation was to bring within the scope of the protective duty large quantities of imported 'newsprint' which it was the intention of the Legislature to exclude, and the Tariff Board was, therefore, asked to report whether any, and if so what, changes were desirable in those entries in the Tariff Schedule which regulate the duty payable on newsprint

The Board has recommended that entry 155 should be amended so as to make it clear that the percentage is to be calculated on the fibre content and not on the total weight The effect will be to exclude from the operation of the protective duty certain classes of newsprint which were actually excluded up to January, 1927, but have since been included. This Bill gives effect to the Tariff Board's recommendation.

4. Thirdly, by entry 156 a protective duty of one anna per pound was imposed on writing paper, including ruled or printed forms and account and manuscript books and the binding thereof It has been represented that this protective duty is in some cases substantially less than the former revenue duty of 15 per cent. *ad valorem* Thus the Act is not only causing an unnecessary loss of revenue, but is also depriving the printing trade in India of the tariff assistance which it previously enjoyed. This Bill, therefore, amends entry 156 so as to make the duty one anna per pound or 15 per cent. *ad valorem*, whichever is higher.

The 5th August, 1927.

G. RAINY.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Amend the law relating to the fostering and development of the bamboo paper industry in British India; and Annexure.

The Governor General has been pleased to accord the sanction required by section 67 (*2*) of the Government of India Act.

W. T. M. WRIGHT,
Secretary of the Legislative Assembly.

(*The Honourable Sir George Rainy.*)

B C209LD—16-8-27—650—GIPS

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

We, the undersigned, members of the Select Committee to which the Bill to amend the law relating to the fostering and development of the bamboo paper industry in British India was referred, have considered the Bill and have now the honour to submit this our Report.

2. Under clause 3 of the Bill the protective duty is applied with retrospective effect to printing paper containing no mechanical wood pulp with effect from the date when the Bamboo Paper Industry (Protection) Act, 1925, became law. As the law was interpreted up to the 1st July, 1927, such paper was liable to duty at the protective rate, and clause 3 of the Bill validates all payments at this rate already made It also empowers the Government to collect the difference between duty at the protective rate and duty at the revenue rate on all paper of this kind which may have been imported before the Bill becomes law on payment of duty at the revenue rate only.

3. We recognise that only the most exceptional reasons could justify this unusual proposal to give retrospective effect to a tariff enactment, but we think that in this case the following considerations justify the course proposed to be taken:—

(1) There is no doubt that it was the intention of the Legislature, when the Bamboo Paper Industry (Protection) Act, 1925, was passed, that printing paper containing no mechanical wood pulp should be subject to the protective duty and not to the revenue duty

(2) For a period of eighteen months duty was actually collected at the protective rate in accordance with the intention of the Legislature, and it is clearly desirable to validate these payments

(3) If, at the time the correct interpretation of the existing law was made public, Government had not simultaneously announced their intention to propose the amendment of the law with retrospective effect it was probable that large quantities of paper would have been imported into India on payment only of the revenue rate of duty, and the protection intended to be given to the Bamboo Paper Industry would to that extent have been nullified.

(4) The announcement made by Government on the 1st July, 1927, that it was proposed to amend the law with retrospective effect made the position clear to all concerned, and all bargains must subsequently have been made upon the assumption that duty at the protective rate would ultimately be payable.

4. Under the law as it stands, printing paper containing not less than 65 per cent. of mechanical wood pulp is not subject to duty at the protective rate, but only at the revenue rate. Up to the 2nd February, 1927, the percentage was calculated on the fibre content of the paper, but on that date Government issued a ruling (No. 1 of 1927) that, in accordance with the wording of the law, the percentage must be calculated on the total weight of the paper. The effect of this ruling was to bring within the scope of the protective duty considerable quantities of newsprint which under the earlier interpretation would have been imported on payment at the revenue rate. It is proposed in the Bill to amend the law so as to make it clear for the future that the percentage must be calculated on the fibre content only, and not on the total weight of the paper.

5. We have considered whether, in this case also, retrospective effect should be given to the amendment of the law so as to enable refunds to be made to importers of the difference between duty at the protective rate and duty at the revenue rate, but in our view the exceptional circumstances which alone can justify fiscal legislation with retrospective effect are absent. Our reasons are as follows:—

(1) The effect of Ruling No. 1 of 1927 was to bring within the scope of the protective duty paper which previously had been subject to the revenue duty, and the protection intended to be given to the Bamboo Paper Industry was in no way endangered.

(2) We believe that the provision in the Bill by which the percentage of mechanical wood pulp is to be calculated on the fibre content only is in accordance with the intention of the Legislature at the time the Bamboo Paper Industry (Protection) Act, 1925, was passed, but until the Tariff Board had investigated the question, it could not be said that this was plain beyond all doubt. For this reason it was impossible for Government at the time Ruling No. 1 of 1927 was published to announce that they intended to propose the amendment of the law.

(3) It must be assumed, we think, that from the 2nd February, 1927, when Ruling No. 1 of 1927 was published, printing paper has been bought and sold on the basis that duty would be payable at the protective rate if not less than 65 per cent. of its total weight consisted of mechanical wood pulp. If refunds of the difference between the two rates of duty are now to be given, there is no guarantee that the benefit will reach the ultimate consumer, and there is no reason why an importer who has been paid a price which includes duty at the protective rate should receive a refund from Government.

(4) If refunds were given only to those who imported for their own use and not for

sale, it would mean an unjustifiable discrimination between one class of importers and another.

(5) In order to ascertain whether a refund was payable or not, it would be necessary to make sure—

(*a*) that duty had actually been paid at the protective rate, and

(*b*) that the paper contained not less than 65 per cent. of mechanical wood pulp calculated on the fibre content.

The second of these points could not be established unless an analysis of the paper was made at the time of importation, and unless the percentage of mechanical wood pulp was determined both on the total weight and on the fibre content. We understand that since Ruling No. 1 of 1927 was published, some of the analyses made for customs purposes have been made on the basis of total weight only, that being all that was required in order to determine the duty payable under the existing law, and in such cases definite proof of the percentage of the fibre content which consisted of mechanical wood pulp would be lacking. The possibility of obtaining a refund would then depend on the accidental circumstances whether or not an analysis had been made in a particular way by the Customs Department.

6. We therefore recommend that the Bill be passed in the form in which it was introduced.

7. The Bill was published in the Gazette of India dated the 27th August, 1927.

G. RAINY.

N. C. KELKAR.

K. C. ROY.

NILAKANTHA DAS.

A. H. GHUZNAVI.

ARTHUR MOORE.

K. C. NEOGY.

The 31st August, 1927.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

Report of the Select Committee on the Bill to amend the law relating to the fostering and development of the Bamboo paper industry in British India.

M278LD—31-8-27—750—GIPS

[As passed by the Legislative Assembly]

[To be introduced in the Legislative Assembly.]

A

BILL

TO

Amend the law relating to the fostering and development of the bamboo paper industry in British India.

WHEREAS it is expedient to amend the law relating to the fostering and development of the bamboo paper industry in British India; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bamboo Paper Industry (Protection) Act, 1927.

Amendment of Act VIII of 1894.

2. (*1*) In the Second Schedule to the Indian Tariff Act, 1894, there shall be made the amendments specified in the Schedule to this Act. VIII of 1894.

(*2*) The amendments made by sub-section (*1*) shall have effect up to the 31st day of March, 1932.

Retrospective effect in certain cases.

3. Printing paper (excluding chrome, marble, flint, poster and stereo), containing no mechanical wood pulp, on which a duty has been paid at 15 per cent. *ad valorem* under item No 99 of Schedule II to the Indian Tariff Act, 1894, between the 21st of September, 1925, and the commencement of this Act, shall be deemed to have been liable to pay duty at one anna per pound under item No. 155 of that Schedule; and any deficiency between the duty which has been paid on such paper and the duty hereby made payable shall be deemed to be duty short-levied within the meaning of section 39 of the Sea Customs Act, 1878, and that Act shall apply accordingly. VIII of 1894. VIII of 1878.

Amendment of Act XXV of 1925.

4. The second item of the Schedule to the Bamboo Paper Industry (Protection) Act, 1925, is hereby repealed. XXV of 1925.

THE SCHEDULE.

AMENDMENTS TO BE MADE IN SCHEDULE II TO THE INDIAN TARIFF ACT, 1894.

(*See section 2.*)

For Items Nos. 155 and 156, the following shall be substituted, namely :—

"155	PRINTING PAPER (excluding chrome, marble, flint, poster and stereo), all sorts which contain no mechanical wood pulp or in which the mechanical wood pulp amounts to less than 65 per cent of the fibre content .	Pound.	One anna
156	WRITING PAPER—		
	(*a*) Ruled or printed forms (including letter paper with printed headings) and account and manuscript books and the binding thereof	Pound.	One anna or 15 per cent. *ad valorem*, whichever is higher.
	(*b*) All other sorts		One anna."

STATEMENT OF OBJECTS AND REASONS.

This Bill amends in three respects the Bamboo Paper Industry(Protection) Act, 1925, which added entries 155 and 156 in the Import Tariff Schedule (Schedule II to the Indian Tariff Act, 1894).

2. Firstly, by entry 155 a protective duty of one anna per pound was imposed on printing paper containing less than 65 per cent. of mechanical wood pulp, the intention being to exclude newsprint (which usually contains 65 per cent. or more of mechanical pulp) from the protective duty, and leave it under the revenue duty of 15 per cent. *ad valorem*. It has recently been held, however, that entry 155, as worded, excludes from the protective duty not only 'newsprint' as defined by the Tariff Board, but also paper containing no mechanical wood pulp at all The effect is that the protective duty does not apply to a class of imported paper with which paper manufactured in India particularly competes, and to this extent the Act fails of its intended purpose.

This Bill, therefore, makes printing paper containing no mechanical wood pulp liable to the protective duty of one anna per pound, with retrospective effect from the 21st September, 1925, the date on which the Bamboo Paper Industry (Protection) Act became law.

The Bill also empowers the Governor General in Council to recover the difference between the protective duty and the duty at 15 per cent. *ad valorem* in the case of all paper containing no mechanical wood pulp on which duty has been paid at 15 per cent. *ad valorem* only, and which was imported between the 21st September, 1925, and the date on which this Bill becomes law.

3. Secondly, for more than a year after the passing of the Act, the Customs authorities calculated the percentage of mechanical wood pulp mentioned in entry 155 on the fibre content of the paper; but in January, 1927, it was held that the entry, as worded, required that the percentage should be calculated on the *total weight* of the paper, including 'loading'. It was represented by importers that the effect of this interpretation was to bring within the scope of the protective duty large quantities of imported 'newsprint' which it was the intention of the Legislature to exclude, and the Tariff Board was, therefore, asked to report whether any, and if so what, changes were desirable in those entries in the Tariff Schedule which regulate the duty payable on newsprint.

The Board has recommended that entry 155 should be amended so as to make it clear that the percentage is to be calculated on the fibre content and not on the total weight. The effect will be to exclude from the operation of the protective duty certain classes of newsprint which were actually excluded up to January, 1927, but have since been included. This Bill gives effect to the Tariff Board's recommendation.

4. Thirdly, by entry 156 a protective duty of one anna per pound was imposed on writing paper, including ruled or printed forms and account and manuscript books and the binding thereof. It has been represented that this protective duty is in some cases substantially less than the former revenue duty of 15 per cent. *ad valorem* Thus the Act is not only causing an unnecessary loss of revenue, but is also depriving the printing trade in India of the tariff assistance which it previously enjoyed. This Bill, therefore, amends entry 156 so as to make the duty one anna per pound or 15 per cent. *ad valorem*, whichever is higher.

The 5th August, 1927.

G. RAINY.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Amend the law relating to the fostering and development of the bamboo paper industry in British India; and Annexure.

The Governor General has been pleased to accord the sanction required by section 67 (*2*) of the Government of India Act.

W. T. M. WRIGHT,
Secretary of the Legislative Assembly.

(*The Honourable Sir George Rainy.*)

MC209LD—16-8-27—650—GIPS

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

We, the undersigned, Members of the Select Committee to which the Bill to amend the Indian Securities Act, 1920, for certain purposes was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed hereto.

Clause 2.—We have deleted that portion of sub-clause (*2*) which directs the addition of a new sub-section (*5*) to section 10 of the Indian Securities Act, 1920. In our opinion the proposed sub-section merely expresses the law as it stands, and it is undesirable to make a special statement relating to particular cases of what is already a general proposition of law. However, we recommend to the Government of India that it should reconsider the whole question; and if it is found that the Civil Courts issue succession certificates which on the face of them bind Government to grant a duplicate certificate to the legal representative of the deceased holder of a lost certificate, without the inquiry required by section 10, then a Bill should be framed to amend Part X of the Indian Succession Act, 1925, so as to safeguard the procedure laid down in the Indian Securities Act, 1920.

Clause 3.—In the case of certain non-terminable loans, the holders regard their securities as permanent pieces of property, and we consider it inequitable to impose now the time-limit for payment of the principal of these securities which is set out in this clause. As regards other kinds of securities, we see no reason for making any provision for limitation for payment of the principal outside the ordinary law. The case as regards interest, however, is on a different footing, and we consider that Government is entitled to refuse payment of interest after the date fixed by the terms of the loan or fixed by notice given under the terms of the loan. We accordingly propose to substitute for clause 3 a clause inserting a new section 18A, providing that Government may in all cases refuse to pay interest after the date on which the payment of the amount due on the securities could have been claimed.

2. The Bill was published in the Gazette of India, dated the 29th January, 1927.

3. Although we have amended this Bill extensively, we do not think that its scope has been so altered that republication is required. The first amendment proposed by us removes what is in our opinion an unnecessary provision; and the second amendment reduces a provision which governs both principal and interest to one which governs interest only. We recommend that the Bill be passed as now amended.

BASIL P. BLACKETT.*

VICTOR SASSOON.

GANGANAND SINHA.

ABDUL QAIYUM.

VIDYA SAGAR PANDYA.

V. K. ARAVAMUDHA AYANGAR.*

K. C. NEOGY.

JAMNADAS M. MEHTA.

S. SRINIVASA IYENGAR.*

M. S. ANEY.*

B. S. MOONJE.

The 30th August, 1927.

* Subject to minute of dissent.

MINUTES OF DISSENT.

We, the undersigned, are not in agreement with our colleagues in regard to the changes made in this Bill. We are, however, prepared to accept the Bill as now modified as a partial solution of the difficulties it was intended to meet.

BASIL P. BLACKETT.

V. K. ARAVAMUDHA AYANGAR.

I was under the impression that at the meeting it was agreed. I may be wrong but that was my impression—that, while interest should not be allowed to accumulate at the option of the holder indefinitely, he should be allowed interest for six years after the principal became payable. And I am of that opinion still—the new clause does not give effect to it.

S. SRINIVASA IYENGAR.

I think that the terms of clause 3 in the draft appended to the Report is wider than those that were generally agreed to in the Select Committee regarding interest. If I remember aright some members agreed that all interest should stop only after a certain period on notice being duly given. This was what I understood to be the view of some of us. At any rate this is my view at present.

SIMLA, M. S. ANEY.

The 30th August, 1927.

[AS AMENDED BY THE SELECT COMMITTEE.]

[Words printed in italics indicate the amendments suggested by the Committee.]

A

BILL

TO

Amend the Indian Securities Act, 1920, for certain purposes.

WHEREAS it is expedient to amend the Indian Securities Act, 1920, for certain purposes hereinafter appearing; It is hereby enacted as follows :— X of 1920.

Short title.

1. This Act may be called the Indian Securities (Amendment) Act, 192 .

Amendment of section 10, Act X of 1920.

2. (*1*) In sub-section (*1*) of section 10 of the Indian Securities Act, 1920 (hereinafter referred to as the said Act), after the word "lost" in both places where it occurs the word "stolen" shall be inserted, and after the word "loss" in both places where it occurs the word "theft" shall be inserted; and in sub-section (*2*) of the same section after the word "loss" the word "theft" shall be inserted. X of 1920.

(*2*) To the same section after sub-section (*3*) the following sub-section shall be added, namely :—

"(*4*) If at any time before the Government becomes discharged under the provisions of this Act from liability in respect of any security the whole of which is alleged to have been lost, stolen or destroyed, such security is found, any order passed in respect thereof under this section shall be cancelled.

* * * * * *"

Insertion of new section 18A in Act X of 1920.

3. *After section 18 of the said Act the following section shall be inserted, namely :—*

Discharge in respect of interest.

"18A. Save as otherwise expressly provided in the terms of a Government security, no person shall be entitled to claim interest on any such security in respect of any period which has elapsed after the earliest date on which demand could have been made for the payment of the amount due on such security."

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

Report of the Select Committee on the Bill to amend the Indian Securities Act, 1920, for certain purposes; with the Bill as amended.

H 285LD—31-8-27—750—GIPS

[AS PASSED BY THE LEGISLATIVE ASSEMBLY.]

A

BILL

TO

Amend the Indian Securities Act, 1920, for certain purposes.

WHEREAS it is expedient to amend the Indian Securities Act, 1920, for certain purposes hereinafter appearing; It is hereby enacted as follows :— X of 1920.

1. This Act may be called the Indian Securities (Amendment) Act, 192 .

Short title.

2. (1) In sub-section (1) of section 10 of the Indian Securities Act, 1920 (hereinafter referred to as the said Act), after the word "lost" in both places where it occurs the word "stolen" shall be inserted, and after the word "loss" in both places where it occurs the word "theft" shall be inserted; and in sub-section (2) of the same section after the word "loss", the word "theft" shall be inserted. X of 1920.

Amendment of section 10, Act X of 1920.

(2) To the same section after sub-section (3) the following sub-section shall be added namely :—

"(4) If at any time before the Government becomes discharged under the provisions of this Act from liability in respect of any security the whole of which is alleged to have been lost, stolen or destroyed, such security is found, any order passed in respect thereof under this section shall be cancelled.

3. After section 18 of the said Act the following section shall be inserted, namely :—

Insertion of new section 18A in Act X of 1920.

"18A. Save as otherwise expressly provided in the terms of a Government security, no person shall be entitled to claim interest on any such security in respect of any period which has elapsed after the earliest date on which demand could have been made for the payment of the amount due on such security."

Discharge in respect of interest.

STATEMENT OF OBJECTS AND REASONS.

The object of the Bill is to limit the liability of Government in respect of discharged loans and to prevent recourse to the Indian Succession Act, 1925, to evade the safeguards attached by the Indian Securities Act, 1920, to the issue of duplicate Notes.

The elaborate safeguards prescribed in section 10 of the Indian Securities Act for the protection of Government and other claimants, before a duplicate of a lost security can be issued, can be circumvented by a claimant on a lost Government security which stands in the name of a deceased person, if he obtains a certificate under the Indian Succession Act that he is the owner of the particular security. As the law now stands, Government will in such case be compelled without further inquiry to honour the certificate and to issue a duplicate of the lost security. Section 10 is also incomplete at present as it does not deal with cases where securities have been stolen. Again, under section 18 of the Act, Government remains liable to pay the principal as well as the interest on a discharged loan up to the date of the demand, and it is optional with the owner of a Promissory Note to defer the demand as long as he pleases without entitling Government to plead limitation. The Bill proposes to remedy these defects by an amendment of the above sections of the Act.

The 20th November, 1926.

BASIL P. BLACKETT.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

BILL

To

Amend the Indian Securities Act, 1920, for certain purposes; and Annexure.

(As passed by the Legislative Assembly.)

M312LD—406—10-9-27—GIPS

[To be introduced in the Legislative Assembly.]

BILL

TO

Establish a gold standard currency for British India and constitute a Reserve Bank of India.

WHEREAS it is expedient to provide for the establishment of a gold standard currency for British India; to constitute a Reserve Bank of India to control the working of that standard and regulate the issue of bank notes and the keeping of reserves with a view to securing stability in the monetary system of British India; and generally to make provisions for matters incidental thereto; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent, commencement and duration

1. (*1*) This Act may be called the Gold Standard and Reserve Bank of India Act, 1927.

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(*3*) This section shall come into force at once, and the remaining provisions of this Act shall come into force on such date or dates, not later than the 1st day of January, 1929, as the Governor General in Council may, by notification in the Gazette of India, appoint.

(*4*) Chapter III shall be in force for a period of twenty-five years, and its operation may thereafter be extended for such further period or periods as the Governor General in Council may, by notification in the Gazette of India, direct.

Definitions.

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

(*a*) "the Bank" means the Reserve Bank of India constituted by this Act;

(*b*) "the Banking Department" means and includes all departments of the Bank other than the Issue Department;

(*c*) "bank rate" means the rate published by the Bank under section 44;

(*d*) "the Board" means the Board of Directors constituted in accordance with section 9;

(*e*) "bank note" means a promissory note payable to bearer on demand which is a legal tender throughout British India;

(*f*) "general meeting" means a meeting of the registered shareholders of the Bank;

(*g*) "gold standard country" means any country, other than British India, from which any person is at liberty to export gold and in which any person may obtain gold on demand from the principal currency authority on payment of the equivalent thereof, as prescribed by law, in legal tender currency;

(*h*) "Government of India debt" means the registered public debt and securities of the Governor General in Council;

(*i*) "Issue Department" means that department of the Bank which is charged by section 20 with the conduct and management of the note issue;

(*j*) "the Reserve" means the assets of the Issue Department as specified in section 28;

(*k*) "the Reserve Fund" means the Reserve Fund referred to in section 43; and

(*l*) "rupee coin" means silver rupees which are legal tender under the provisions of the Indian Coinage Act, 1906. III of 1906.

CHAPTER II.

INCORPORATION, SHARE CAPITAL, MANAGEMENT AND BUSINESS.

Establishment and incorporation of the Reserve Bank of India.

3. (*1*) A Bank to be called the Reserve Bank of India shall be constituted for the purpose of taking over the management of the currency from the Governor General in Council and of carrying on the business of banking in accordance with the provisions of this Act. Report para. 92.

Establishment and incorporation of Reserve Bank.

(*2*) The Bank shall be a body corporate by the name of the Reserve Bank of India, having perpetual succession and a common seal, and shall by the said name sue and be sued.

Share Capital.

4. (*1*) The original share capital of the Bank shall be fifty million rupees divided into shares of five hundred rupees each, which shall be fully paid up. Report para. 91.

Share capital.

(*2*) Of the original share capital of the Bank the Imperial Bank of India shall be given the option of subscribing three-tenths and the remainder, together with any shares not taken up by the Imperial Bank of India under this option, shall be offered for public subscription.

(*3*) If the full amount of the share capital is not so subscribed, the Governor General in Council shall take up the remainder of the shares at par, and shall subsequently dispose of the same by sale to the public within three years.

5. (*1*) The share capital of the Bank may be increased by the Board with the previous sanction of the Governor General in Council. Report para. 101.

Increase and reduction of share capital.

(*2*) Every such increase shall be fully paid up, and the price at which such further shares may be issued shall be fixed by the Board with the like sanction.

(3) The Board may determine the manner in which any increase of capital shall be effected.

(4) The share capital of the Bank may be reduced by the Board, with the previous sanction of the Governor General in Council, to such extent and in such manner as may be determined by the Bank in general meeting.

Head Office, Branches and Agencies.

Branches and agencies.

6. The Head Office of the Bank shall be established in Bombay, and the Bank shall have branches in Calcutta, Madras and London and may establish branches or agencies in any other places, whether in India or elsewhere. Report para. 97.

Management of the Bank.

Management.

7. The general superintendence of the affairs and business of the Bank shall be entrusted to a Board of Directors which may exercise all powers and do all such acts and things as may be exercised or done by the Bank and are not by this Act expressly directed or required to be done by the Bank in general meeting. Report paras. 93 and 94.

Certain persons disqualified for directorships.

8. Save as expressly provided in this Act, no person may be a Director who is an officer of Government or a member of the Indian or a local Legislature or is a director, officer or employee of any other bank. Report paras. 95 and 96.

Composition of Board.

9. (1) The Board shall consist of the following Directors, namely:— Report para 94.

(a) a Governor and a Deputy Governor, who shall be appointed by the Governor General in Council for a period of five years and shall devote their whole time to the affairs of the Bank and shall receive such salaries and allowances respectively as may be determined by the Board;

(b) nine Directors elected by the shareholders, each of whom shall be the registered holder in his own right of not less than twenty unincumbered shares of the Bank, and of whom two shall be elected to represent business interests in Calcutta, two to represent business interests in Bombay, one to represent business interests in Madras, and two to represent business interests in British India exclusive of Calcutta, Bombay and Madras;

(c) three Directors nominated by the Governor General in Council to represent the interests of commerce, industry and agriculture, respectively; and

(d) an officer of Government appointed by the Governor General in Council.

(2) The Directors nominated by the Governor General in Council under clause (c) of sub-section (1) shall hold office for such terms respectively, not exceeding three years in any case, as he may direct at the time of nomination, but any such Director whose term of office has expired may be re-nominated.

(3) The Director appointed under clause (d) of sub-section (1) may attend any meeting of the

Board and take part in its deliberations, but shall not be entitled to vote on any question arising at any such meeting.

(4) Of the nine Directors elected under clause (*b*) of sub-section (*1*), three shall retire annually by rotation but shall be eligible for re-election; the order of the retirement of the nine Directors first elected shall be determined by lot.

(5) Any casual vacancy in the office of a Director elected under clause (*b*) of sub-section (*1*) shall be filled by the Board, but all such appointments shall be subject to confirmation at the next general meeting. A person appointed to fill a casual vacancy shall hold office for the unexpired portion of the term of office of his predecessor.

(6) For the purposes of clause (*b*) of sub-section (*1*), a person shall not be deemed to represent business interests in any place unless he is a director of a company, registered under the Indian Companies Act, 1913, of which the registered office is situated in that place. VII of 1913.

10. The Governor or Deputy Governor or any Director nominated or appointed under clause (*c*) of sub-section (*1*) of section 9 may be removed from office by the Governor General in Council before the expiration of his period of office, if a resolution is passed in this behalf by the Board by a majority consisting of not less than nine Directors, and any Director elected under clause *b*) of that sub-section or appointed by the Board under sub-section (5) of section 9 may be so removed by special resolution passed at a general meeting by a majority consisting of not less than one-half of the total number of the votes held by the shareholders.

Removal of Governor, Deputy Governor or Director.

11. Meetings of the Board shall be convened once in each month by the Governor. They shall ordinarily be held in Bombay, but a meeting of the Board shall be held in Calcutta at least once in every four months. Report para. 97.

Meetings of Board.

12. (*1*) A general meeting (hereinafter in this Act referred to as the annual general meeting) shall be held annually at Bombay within six weeks from the date on which the annual accounts of the Bank are closed, and a general meeting may be convened by the Board at any other time.

General meetings.

(*2*) At a general meeting every shareholder shall have one vote for every four shares of which he has been a registered holder for not less than six months, or ten votes, whichever number is less, and no shareholder shall be entitled to tender, whether personally or as a proxy, more than ten votes in all. Report para. 98.

Temporary Provision.

13. Notwithstanding anything contained in section 9—

Temporary provision for formation of the first Board.

(*a*) the salaries and allowances of the first Governor and Deputy Governor shall be such as may be determined by the Governor General in Council; and

(*b*) the Directors referred to in clause (*b*) of sub-section (*1*) of that section shall, for the purpose of the constitution of the first Board, be nominated by

the Governor General in Council for a term of one year only and shall thereafter be elected as provided in that sub-section.

Business of the Bank.

14. The Bank shall be authorised to carry on and transact the several kinds of business hereinafter specified, namely :— Report para. 163.

Business which the Bank may transact.

(*1*) the accepting of money on deposit without interest from, and the collection of money for, the Secretary of State in Council, the Governor General in Council, Local Governments, banks and other persons;

(*2*) (*a*) the purchase, sale and rediscount of bills of exchange and promissory notes, payable in India and arising out of *bonâ fide* commercial or trade transactions, bearing two or more good signatures, one of which shall be that of a bank, and maturing within ninety days from the date of such purchase or rediscount;

(*b*) the purchase, sale and rediscount of bills of exchange and promissory notes, bearing two or more good signatures, one of which shall be that of a bank, drawn or issued for the purpose of financing seasonal agricultural operations or the marketing of crops, and maturing within six months from the date of such purchase or rediscount: provided that the face value of bills or notes so purchased or rediscounted shall not at any time exceed one-fifth of the total face value of all bills and notes purchased or rediscounted by the Bank;

(*c*) the purchase, sale and rediscount of bills of exchange and promissory notes, bearing the signature of a bank, and issued or drawn for the purpose of holding or trading in Government securities, and maturing within ninety days from the date of such purchase or rediscount;

(*3*) the purchase from and sale to banks and persons approved by the Board, in amounts of not less than the equivalent of one hundred thousand rupees, of the currencies of gold standard countries, and of bills of exchange (including treasury bills) drawn in or on any place in a gold standard country, and maturing within ninety days from the date of such purchase; and the keeping of balances with banks in such countries;

(*4*) the making of loans and advances for fixed periods not exceeding ninety days against the security of—

(*a*) stocks, funds and securities (other than immoveable property) in which a trustee is authorised to invest trust money by any Act of Parliament or by any Act of the Governor General in Council or the Indian Legislature;

(*b*) gold coin and bullion or documents of title to the same;

(c) such bills of exchange and promissory notes as are eligible for purchase or rediscount by the Bank: provided that loans and advances against such securities as are referred to in sub-clause (b) of clause (2) shall not exceed one-fifth of the total loans and advances made by the Bank;

(d) such bills of exchange as are eligible for purchase by the Bank under clause (3);

(e) promissory notes of any bank mentioned in the First Schedule, supported by documents giving title to goods which have been transferred, assigned or hypothecated to any such bank as security for a cash credit granted for *bonâ fide* commercial or trade transactions, or for the purpose of financing seasonal agricultural operations or the marketing of crops : provided that no loan or advance shall be made on the security of any promissory note such as is referred to in this sub-clause after the expiry of five years from the date on which this section comes into force ;

(5) the making of advances to the Governor General in Council repayable in each case not later than three months after the close of the financial year in respect of which the advance has been made ;

(6) the issue of demand drafts and the making, issue and circulation of bank post bills made payable on its own branches;

(7) the purchase and sale of securities, maturing within five years from the date of such purchase, of the Government of any gold standard country;

(8) the purchase and sale of securities of the Government of India of any maturity for the purpose of holding the same in the Reserve or for the purpose of the investment of the staff or superannuation funds ;

(9) the purchase and sale of securities of the Government of India of any maturity or of securities of a Local Government maturing within five years from the date of their purchase, for the purpose of investment of the share capital of the Bank or of the Reserve Fund;

(10) the purchase and sale of securities of the Government of India or of Local Governments or of local authorities in British India for any purpose other than those referred to in clauses (8) and (9) :

Provided that the total value of such securities so purchased shall not at any time exceed two-fifths of the liabilities for the time being of the Banking Department in respect of deposits, and of such total value an amount not exceeding one-fifth of such liabilities may be represented by securities maturing after six months and within ten years from the date of their purchase (of which, however, securities representing at least half that proportion shall be securities maturing within one year from the date of their purchase) and the remainder shall be represented by securities maturing within six months from the date of their purchase ;

(*11*) the custody of monies, securities and other articles of value, and the collection of the proceeds, whether principal, interest or dividends, of any such securities;

(*12*) the sale and realisation of all property, whether moveable or immoveable, which may in any way come into the possession of the Bank in satisfaction, or part satisfaction, of any of its claims;

(*13*) the acting as agent for the Secretary of State in Council, the Governor General in Council or any Local Government in the transaction of any of the following kinds of business, namely :—

(*a*) the purchase and sale of gold or silver;

(*b*) the purchase, sale, transfer and custody of bills of exchange, securities or shares in any company;

(*c*) the collection of the proceeds, whether principal, interest or dividends, of any securities or shares;

(*d*) the remittance of such proceeds, at the risk of the principal, by bills of exchange payable either in India or elsewhere;

(*e*) the management of public debt;

(*14*) the purchase and sale of gold coin and bullion;

(*15*) the opening of an account with, and the acting as agent or correspondent of, any other bank;

(*16*) the making and issue of bank notes subject to the provisions of this Act; and

(*17*) generally, the doing of all such matters and things as may be incidental or subsidiary to the transaction of the various kinds of business hereinbefore specified.

Report para. 102.

15. After such date as the Governor General in Council may fix in this behalf, the Bank may, notwithstanding any limitation contained in sub-clauses (*a*) and (*b*) of clause (*2*) of section 14, purchase, sell or discount any bills of exchange or promissory notes arising out of *bonâ fide* commercial or trade transactions, bearing two or more good signatures and maturing within ninety days from the date of such purchase or discount.

Power of direct discount.

Report para. 163.

16. Save as otherwise provided in sections 14 and 15, the Bank may not—

Business which the Bank may not transact

(*1*) engage in trade or otherwise have a direct interest in any commercial, industrial, or other undertaking, except such interest as it may in any way acquire in the course of the satisfaction of any of its claims: provided that all such interests shall be disposed of at the earliest possible moment;

(*2*) purchase its own shares or the shares of any other bank or of any company, or grant loans upon the security of any such shares;

(*3*) advance money on mortgage of, or otherwise on the security of, immoveable property or documents of title relating

thereto, or become the owner of immoveable property, except so far as is necessary for its own business premises and residences for its officers and servants;

(4) make unsecured loans or advances;

(5) draw or accept bills payable otherwise than on demand;

(6) allow interest on deposits.

CHAPTER III.

CENTRAL BANKING FUNCTIONS.

Relations of the Bank with the Secretary of State in Council and the Governor General in Council.

Obligation of Bank to transact Government business.

17. The Bank shall undertake to accept monies for account of the Secretary of State in Council and the Governor General in Council and to make payments up to the amount standing to the credit of their accounts respectively, and to carry out their exchange, remittance and other banking operations, including the management of the Government of India Debt, on such conditions as may be agreed upon. Report para. 140.

Bank to have the right to transact Government business.

18. (1) The Governor General in Council shall undertake to entrust the Bank, on such conditions as may be agreed upon, with all his money, remittance, exchange and banking transactions in India and elsewhere and, in particular, to deposit free of interest all his cash balances with the Bank: Report para. 140.

Provided that nothing in this sub-section shall prevent the Governor General in Council from carrying on money transactions at Government treasuries or sub-treasuries at places where the Bank has no branches or agencies, and the Governor General in Council may hold at such treasuries and sub-treasuries such balances as he may require.

(2) The Governor General in Council shall undertake to entrust the Bank, on such conditions as may be agreed upon, with the management of the Government of India Debt and with the issue of any new loans.

Note Issue.

Right to issue bank notes.

19. (1) The Bank shall have the sole right to issue bank notes in British India, and may, for a period of one year from the date on which this Chapter comes into force, issue currency notes of the Government of India supplied to it by the Governor General in Council, and the provisions of this Act applicable to bank notes shall, unless a contrary intention appears, apply to all currency notes of the Government of India issued either by the Governor General in Council or by the Bank in like manner as if such currency notes were bank notes, and references in this Act to bank notes shall be construed accordingly. Report para. 141.

(2) On and from the aforesaid date the Governor General in Council shall not issue any currency notes or any other kind of paper money.

Issue Department.

20. (1) The issue of bank notes shall be conducted by the Bank in an Issue Department which shall be separated and kept wholly distinct from Report para. 143.

the Banking Department, and the assets of the Issue Department shall not be subject to any liability other than the liabilities of the Issue Department as hereinafter defined in section 29.

(2) The Issue Department shall not issue bank notes to the Banking Department or to any other person except in exchange for other bank notes or for such coin, bullion or securities as are permitted by this Act to form part of the Reserve.

Denominations of notes.

21. Bank notes shall be of the denominational values of 5, 10, 50, 100, 500, 1,000 and 10,000 rupees, and of such other denominational values, if any, as may be directed by the Governor General in Council. Report para. 142.

Form of bank notes.

22. The design, form and material of bank notes shall be such as may be approved by the Governor General in Council. Report para. 155.

Legal tender character of notes.

23. (1) Subject to the provisions of sub-section (2), every bank note shall be legal tender at any place in British India in payment or on account for the amount expressed therein, and shall be guaranteed by the Governor General in Council. Report para. 149.

(2) The Governor General in Council may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender save at an office or agency of the Bank.

Re-issue of notes.

24. The Bank shall not re-issue bank notes which are torn, defaced or excessively soiled, and any bank note re-issued from any office of the Bank shall be sterilized and disinfected before re-issue. Report para. 155.

Recovery on notes lost, stolen, mutilated or imperfect.

25. Notwithstanding anything contained in any enactment or rule of law to the contrary, no person shall of right be entitled to recover from the Bank the value of any lost, stolen, mutilated or imperfect bank note:

Provided that the Bank may, with the previous sanction of the Governor General in Council, prescribe the circumstances in and the conditions and limitations subject to which the value of such bank notes may be refunded as of grace.

Prohibition of issue of private bills or notes payable to bearer on demand.

Issue of demand bills and notes.

26. No person in British India other than the Bank or, as expressly authorised by this Act, the Governor General in Council shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person:

Provided that cheques or drafts payable to bearer on demand or otherwise may be drawn on bankers, shroffs or agents by their customers or

constituents in respect of deposits of money in the hands of those bankers, shroffs or agents and held by them at the credit and disposal of the persons drawing such cheques or drafts.

Penalty.

27. (*1*) Any person contravening the provisions of section 26 shall, on conviction by a Presidency Magistrate or a Magistrate of the first class, be punishable with a fine equal to the amount of the bill, hundi, note or engagement in respect whereof the offence is committed.

(*2*) No prosecution under this section shall be instituted except on complaint made by the Bank.

Assets of the Issue Department.

The Reserve.

Report para. 145.

28. (*1*) The Reserve shall consist of gold coin, gold bullion, gold securities, rupee coin and rupee securities to such aggregate amount as is not less than the total of the liabilities of the Issue Department as hereinafter defined.

(*2*) Of the total amount of the Reserve not less than two-fifths shall consist of gold coin, gold bullion or gold securities :

Provided that the amount of gold coin and gold bullion shall not at any time be less than three hundred million rupees in value and shall not be less than one-fifth of the total amount of the Reserve after the end of the fifth year, or than one-quarter of the total amount of the Reserve after the end of the tenth year, from the date on which this Chapter comes into force.

(*3*) The remainder of the Reserve shall be held in rupee coin, Government of India rupee securities of any maturity and such bills of exchange and promissory notes drawn and payable in British India as are eligible for purchase by the Bank under sub-clause (*a*) or sub-clause (*b*) of clause (*2*) of section 14 or under section 15 :

Provided that the amount held in rupee coin shall not exceed—

(*a*) during the three years after the date on which this Chapter comes into force, seven hundred million rupees,

(*b*) during the next three years, five hundred million rupees,

(*c*) during the next four years, three hundred and fifty million rupees, and

(*d*) two hundred and fifty million rupees thereafter,

or one-tenth of the total amount of the Reserve, whichever amount is greater :

Provided further that the amount held in Government of India rupee securities shall not at any time exceed one-fourth of the total amount of the Reserve or five hundred million rupees, whichever amount is less.

(*4*) For the purposes of this section, gold coin and gold bullion shall be valued at 8·47512 grains of fine gold per rupee, rupee coin shall be valued at its face value, and gold and rupee securities shall be valued at the market rate for the time being obtaining.

(*5*) Of the gold coin and gold bullion held in the Reserve not less than one-half shall be held

in British India, and all gold coin and gold bullion forming part of the Reserve shall be held in the custody of the Bank or its agencies :

Provided that gold belonging to the Bank which is in any other bank or in any mint or in transit may be reckoned as part of the Reserve.

(6) For the purposes of this section, the gold securities which may be held as part of the Reserve shall be securities of any of the following kinds payable in the currency of any gold standard country, namely : —

(a) balances at the credit of the Issue Department with a bank which is the principal currency authority under the law for the time being in force of such country ;

(b) bills of exchange bearing two or more good signatures and drawn on and payable at a place in any such country and having a maturity not exceeding ninety days ;

(c) securities of the Government of any such country maturing within five years :

Provided that, for a period of two years from the date on which this Chapter comes into force, any of such securities may be securities maturing after five years, and the Bank may at any time before the expiry of that period dispose of such securities notwithstanding anything contained in section 14.

Liabilities of the Issue Department.

Report para. 146.

29. (1) The liabilities of the Issue Department shall be an amount equal to the total of the amount of the currency notes of the Government of India and bank notes for the time being in circulation and of an initial amount of five hundred million rupees for the purpose of providing for rupee redemption, which last-mentioned amount shall be reduced by one rupee for every five rupees delivered to the Governor General in Council under the provisions of section 31, and shall be increased by one rupee for every five rupees received from him under section 32.

Liabilities.

(2) For the purposes of this section, any currency note of the Government of India or bank note which has not been presented for payment within forty years from the 1st day of April following the date of its issue shall be deemed not to be in circulation, and the value thereof shall, notwithstanding anything contained in sub-section (2) of section 20, be paid by the Issue Department to the Governor General in Council or the Banking Department, as the case may be ; but any such note, if subsequently presented for payment, shall be paid by the Banking Department, and any such payment in the case of a currency note of the Government of India shall be debited to the Governor General in Council.

Initial Assets and Liabilities.

Report para. 141.

30. On the date on which this Chapter comes into force, the Issue Department shall take over from the Governor General in Council the liability for all the currency notes of

Transfer of assets and liabilities to the Bank.

the Government of India for the time being in circulation, and the Governor General in Council shall transfer to the Issue Department gold coin, gold bullion, gold securities, rupee coin and rupee securities to such aggregate amount as is equal to the total of the amount of the liability so transferred and of a sum of five hundred million rupees. The coin, bullion and securities shall be transferred in such proportion as to comply with the requirements of section 28 :

Provided that the total amount of the gold coin, gold bullion and gold securities so transferred shall not be less than one-half of the whole amount transferred.

Supply of coin, and of different forms of legal tender currency.

Delivery to Government of surplus rupee coin.

31. The Bank may deliver to the Governor General in Council all rupee coin held by it in excess of the amount which the Issue Department is permitted to hold as part of the Reserve under section 28, against payment of four rupees in bank notes, gold or gold securities for every five rupees so delivered. Report para. 147.

Purchase of rupee coin.

32. When the amount of rupee coin for the time being held in the Reserve does not exceed two hundred and fifty millions or one-tenth of the total amount of the Reserve, whichever is greater, the Bank may demand delivery of rupee coin from the Governor General in Council, on payment of four rupees in bank notes, gold or gold securities for every five rupees so delivered. Report para. 147.

Obligations of Government and Bank in respect of rupee coin.

33. The Governor General in Council shall undertake not to re-issue any rupee coin delivered under section 31 nor to put into circulation any new rupees, except through the Bank and on the Bank's demand; and the Bank shall undertake not to dispose of rupee coin otherwise than for the purposes of circulation or by delivery to the Governor General in Council under that section. Report para. 148.

Obligation to supply different forms of currency.

34. The Bank shall issue rupee coin on demand in exchange for currency notes of the Government of India, and shall issue currency notes or bank notes on demand in exchange for rupee coin, and it shall, in exchange for currency notes or bank notes of five rupees or upwards, supply currency notes or bank notes of lower value or rupees or other coins which are legal tender under the Indian Coinage Act, 1906, in such quantities as may, in the opinion of the Bank, be required for circulation; and the Governor General in Council shall, subject to the provisions of section 32, supply such rupees or other coins to the Bank on demand. If the Governor General in Council at any time fails to discharge this duty, the Bank shall be released from its obligation to supply such coins to the public. Report para. 152. III of 1906.

Obligation to sell gold.

Sale of gold.

35. (*1*) The provisions of this section shall have effect from such date, not later than the 1st day of January, 1931, as the Governor General in Council may, by notification in the Gazette of India, appoint. Report para 150.

(*2*) The Bank shall sell, to any person who makes a demand in that behalf at its office at Bombay, Calcutta or Madras and pays in legal tender currency the purchase price as determined under the provisions of this section, gold bullion for delivery, at the option of the purchaser, either in Bombay or at such place in a gold standard country as may be notified in this behalf by the Governor General in Council:

Provided that no person shall be entitled to demand an amount of gold bullion containing less than 1,065 tolas of fine gold.

(*3*) The price of gold bullion for delivery at the notified place shall be twenty-one rupees, three annas and ten pies per tola of fine gold with the addition of an amount representing the normal cost per tola of transferring gold bullion in bulk from Bombay to that place, including interest on its value during transit.

(*4*) The price of gold bullion for delivery in Bombay shall be twenty-one rupees, three annas and ten pies per tola of fine gold with an addition representing twice the normal cost per tola of transferring gold bullion in bulk from Bombay to the notified place, including interest on its value during transit:

Provided that no such addition shall be made when the rate at which the currency of the country in which the notified place is situate can be purchased in Bombay for immediate delivery at that place is such that the equivalent of the price at which the principal currency authority of that country is bound by law to give gold in exchange for currency is equal to or less than twenty-one rupees, three annas and ten pies per tola of fine gold after deduction of the normal cost per tola of transferring gold bullion in bulk from Bombay to the notified place, including interest on its value during transit.

(*5*) The Governor General in Council shall from time to time determine in accordance with the provisions of sub-sections (*3*) and (*4*) the prices at which the Bank shall sell gold bullion for delivery in Bombay and the notified place respectively, and shall notify the prices so determined in the Gazette of India. Such notification shall be conclusive as between the Bank and any other person as to the price which the Bank shall be entitled to charge in respect of any sale of gold bullion.

Interim provisions.

36. (*1*) The provisions of this section shall cease to have effect on the date appointed by the Governor General in Council under sub-section (*1*) of section 35. Report para. 166.

(*2*) The Bank shall sell, to any person who makes a demand in that behalf at its office at Bombay, Calcutta or Madras and pays the purchase price in legal tender currency, at a rate equivalent to twenty-one rupees, three annas and ten pies per tola of fine gold, the currency of such gold standard country as may be notified

in this behalf by the Governor-General in Council in the Gazette of India, for immediate delivery in that country:

Provided that no person shall be entitled to demand an amount of currency of less value than that of 1,065 tolas of fine gold.

(3) For the purpose of determining the equivalent rate applicable to the sale of currency under this section, twenty-one rupees, three annas and ten pies shall be deemed to be equivalent to such sum in that currency as is required to purchase one tola of fine gold in that country at the rate at which the principal currency authority of that country is bound by law to give gold in exchange for currency, after deduction therefrom of an amount representing the normal cost per tola of transferring gold bullion in bulk from Bombay to that country, including interest on its value during transit.

(4) The Governor General in Council shall from time to time determine the equivalent rate in accordance with the provisions of sub-section (3), and shall notify the rate so determined in the Gazette of India.

Obligation to buy gold.

37. The Bank shall buy, from any person who makes a demand in that behalf at its office in Bombay, Calcutta or Madras, gold bullion for delivery in Bombay at the rate of twenty-one rupees, three annas and ten pies per tola of fine gold, if such gold is tendered in the form of bars containing not less than 1,065 tolas of fine gold:

Obligation of Bank to buy gold. Report para. 151.

Provided that the Bank shall be entitled to require such gold bullion to be melted and assayed, by persons approved by the Bank, at the expense of the person tendering the bullion.

Suspension of Reserve requirements and tax on note issue.

38. (1) The Bank may, with the previous sanction of the Governor General in Council, for periods not exceeding thirty days in the first instance, which may, with the like sanction, be extended from time to time by periods not exceeding fifteen days, hold in the Reserve gold coin, gold bullion or gold securities of less aggregate amount than that required by sub-section (2) of section 28 and, whilst the holding is so reduced, the proviso to that sub-section shall cease to be operative.

Suspension of Reserve requirements. Report para. 153.

(2) In respect of any period during which the holding of gold coin, gold bullion and gold securities is reduced under sub-section (1), the Bank shall pay to the Governor General in Council a tax upon the amount by which such holding is reduced below the minimum prescribed by sub-section (2) of section 28; such tax shall be payable at the bank rate for the time being in force, with an addition of one per cent. per annum when such holding exceeds thirty-two and a half per cent. of the total amount of the Reserve and of a further one and a half per cent. per annum in respect of every further decrease of two and a half per cent. or part of such decrease:

Provided that the tax shall not in any event be payable at a rate less than six per cent. per annum.

Bank exempt from further note tax.

39. Save as provided by section 38, the Bank shall not be liable to the payment of any stamp duty or other duty or tax in respect of bank notes issued by it. Report para. 154.

Duration of the privilege of note issue.

Powers of Government in respect of note issue and assets of the Bank in certain circumstances.

40. If at any time the Bank fails to comply with any provision of this Chapter or with any other provision of this Act, the Governor General in Council may, by notification in the Gazette of India, declare that the Bank has forfeited the right of note issue, and shall thereupon take over the liabilities of the Issue Department together with such portion of the assets of the Bank as is required to meet such liabilities, and thereafter the business of the Issue Department shall be carried on in the manner prescribed by this Act by such agency as the Governor General in Council may determine. Report para. 149.

Cash reserves to be maintained by banks.

Cash reserves of certain banks to be kept with the Bank.

41. (*1*) Every bank mentioned in the First Schedule which transacts business in India shall maintain a minimum balance with the Bank equal to seven and one half per cent. of the demand liabilities and two and one half per cent. of the time liabilities of such bank to the public in India. Report para. 161.

(*2*) Every such bank shall send to the Governor General in Council and to the Bank a monthly return signed by two responsible officers of such bank, showing—

(*a*) the amounts of its demand and time liabilities respectively to the public in India,

(*b*) the total amount held in India in currency notes of the Government of India and bank notes,

(*c*) the amounts held in India in rupee coin and subsidiary coin respectively,

(*d*) the amounts of advances made and of bills discounted in India respectively, and

(*e*) the balance held at the Bank,

at the close of the month to which the return relates.

(*3*) Every such return shall be sent not later than fourteen days after the close of the month to which it relates and shall state whether the bank has during that month maintained with the Reserve Bank the minimum balance required by sub-section (*1*).

(*4*) A summary of the monthly return of each bank shall be published in the Gazette of India.

(*5*) Any bank failing to comply with the provisions of sub-section (*2*) or sub-section (*3*) shall be liable, on application made by or on behalf of the Governor General in Council to the principal Civil Court having jurisdiction in a place where an office of the bank is situated, to a penalty of one hundred rupees for each day during which the failure continues.

(6) When it appears from any such monthly return or from a report of the Board that any bank has failed to maintain the minimum balance required by sub-section (1), the Governor General in Council may call for such further return, or make such inspection of the books and accounts of the bank in default, as may be necessary to ascertain the amount of the deficiency and the period during which it has continued; and the bank so in default shall be liable, on application made by or on behalf of the Governor General in Council to the principal Civil Court having jurisdiction in a place where an office of the bank is situated, to a penalty at a rate per annum which shall be three per cent. above the bank rate on the amount of the deficiency for each day during which the default has continued, and shall be raised to five per cent. above the bank rate after the first seven days of the deficiency.

(7) The Governor General in Council may, by notification in the Gazette of India, make such additions to or other alterations in the First Schedule as he thinks fit.

Agreement with the Imperial Bank of India.

Agreement with the Imperial Bank.

42. The Bank shall enter into an agreement with the Imperial Bank of India which shall be subject to the approval of the Governor General in Council and shall be expressed to come into force on the date on which this Chapter comes into force and to remain in force for twenty-five years and shall further contain the provisions set forth in the Second Schedule.

CHAPTER IV.

General Provisions.

Reserve Fund and allocation of surplus.

Allocation of surplus.

Report para. 100.

43. After making provision for bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds, and such other contingencies as are usually provided for by bankers, and after payment out of the net annual profits of the Bank of a dividend at the rate of five per cent. per annum on the capital, one-half of the surplus shall be allocated to a Reserve Fund, until such Reserve Fund is equal to one-half of the capital, and the remaining one-half shall be paid to the Governor General in Council. Thereafter, until the Reserve Fund is equal to the capital, one-twentieth of the surplus or three per cent. on the capital, whichever is less, shall be paid to the shareholders, one-tenth of the surplus shall be allocated to the Reserve Fund, and the balance shall be paid to the Governor General in Council. When the Reserve Fund is equal to the capital, one-twentieth of the surplus or three per cent. on the capital, whichever is less, shall be paid to the shareholders and the balance shall be paid to the Governor General in Council:

Provided that, until the Reserve Fund is equal to the capital, five million rupees of the surplus, or the whole surplus if it is less than that amount, shall be allocated to the Reserve Fund.

Bank rate.

Publication of bank rate.

44. The Bank shall make public from time to time the minimum rate at which it is prepared to buy or rediscount bills of exchange or other commercial paper eligible for purchase under this Act. Report para. 158.

Audit.

Auditors.

45. (*1*) Not less than two auditors shall be elected and their remuneration fixed at the annual general meeting. The auditors may be shareholders, but no Director or other officer of the Bank shall be eligible during his continuance in office. Any auditor shall be eligible for re-election on quitting office. Report para. 156.

(*2*) The first auditors of the Bank may be appointed by the Board before the first annual general meeting and, if so appointed, shall hold office only until that meeting. All auditors elected under this section shall severally be and continue to act as auditors until the first annual general meeting after their respective elections:

Provided that any casual vacancy in the office of any auditor elected under this section may be filled by the Board.

Appointment of special auditors by Government.

46. Without prejudice to anything contained in section 45, the Governor General in Council may at any time appoint such auditors as he thinks fit to examine and report upon the accounts of the Bank. Report para. 156.

Powers and duties of auditors.

47. (*1*) Every auditor shall be supplied with a copy of the annual balance-sheet, and it shall be his duty to examine the same, together with the accounts and vouchers relating thereto; and every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books, accounts and other documents of the Bank, and may, at the expense of the Bank if appointed by it or at the expense of the Governor General in Council if appointed by him, employ accountants or other persons to assist him in investigating such accounts, and may, in relation to such accounts, examine any Director or officer of the Bank. Report para. 156.

(*2*) The auditors shall make a report to the shareholders or to the Governor General in Council, as the case may be, upon the annual balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and, in case they have called for any explanation or information from the Board, whether it has been given and whether it is satisfactory. Any such report made to the shareholders shall be read together with the report of the Board at the annual general meeting.

Returns.

Returns.

48. (*1*) The Bank shall prepare and transmit to the Governor General in Council a weekly account of the Issue Department and of the Banking Report para. 157.

Department in the Form set out in the Third Schedule or in such other Form as the Governor General in Council may, by notification in the Gazette of India, prescribe. The Governor General in Council shall cause these accounts to be published weekly in the Gazette of India.

(2) The Bank shall also, within two months from the date on which the annual accounts of the Bank are closed, transmit to the Governor General in Council a copy of the annual accounts signed by the Governor, Deputy Governor and the Chief Accounting Officer of the Bank, and certified by the auditors, and the Governor General in Council shall cause such accounts to be published in the Gazette of India.

(3) The Bank shall also, within two months from the date on which the annual accounts of the Bank are closed, transmit to the Governor General in Council a statement showing the name, address and occupation of, and the number of shares held by, each shareholder of the Bank.

Liquidation.

49. (1) Nothing in the Indian Companies Act, 1913, shall apply to the Bank, and the Bank shall not be placed in voluntary or compulsory liquidation save with the sanction of the Governor General in Council and in such manner as he may direct. VII of 1913.

Provision regarding application of Act VII of 1913 and liquidation.

(2) In such event the Reserve Fund and surplus assets, if any, of the Bank shall be divided between the Governor General in Council and the shareholders in the proportion of sixty per cent. and forty per cent. respectively.

Regulations.

50. (1) The Board may, with the previous sanction of the Governor General in Council, make regulations consistent with this Act to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Act. Report para. 164.

Power of the Board to make regulations.

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

(a) the maintenance of the share register, the manner in which and the conditions subject to which shares may be held and transferred, and, generally, all matters relating to the rights and duties of shareholders ;

(b) the manner in which general meetings shall be convened and the procedure to be followed thereat ;

(c) the manner in which elections of Directors shall be held ;

(d) the manner in which the business of the Board shall be transacted, and the procedure to be followed at meetings thereof ;

(*e*) the establishment of Local Boards and the delegation to such Boards of powers and functions;

(*f*) the constitution and management of staff and superannuation funds for the officers and servants of the Bank;

(*g*) the manner and form in which contracts binding on the Bank may be executed;

(*h*) the provision of an official seal of the Bank and the manner and effect of its use;

(*i*) the manner and form in which the balance sheet of the Bank shall be drawn up, and in which the accounts shall be maintained;

(*j*) the manner in which notices may be served on behalf of the Bank upon shareholders or other persons;

(*k*) the circumstances in which and the conditions and limitations subject to which the value of any lost, stolen, mutilated or imperfect currency note of the Government of India or bank note may be refunded; and

(*l*) generally for the efficient conduct of the business of the Bank.

Amendments and repeal.

Report para. 66.

51. In the Indian Coinage Act, 1906,— III of 1906.

Amendment of Act III of 1906.

(*a*) for section 11 the following section shall be substituted, namely:—

"11. Gold coins, whether coined at His Majesty's Royal Mint in England or at any mint established in pursuance of a proclamation of His Majesty as a branch of His Majesty's Royal Mint, shall not be legal tender in British India in payment or on account, but such coins shall be received by the Reserve Bank of India at its offices and agencies in India at the bullion value of such coins calculated at the rate of 8·47512 grains troy of fine gold per rupee," and

Demonetisation of sovereign and half sovereign.

(*b*) the word "and" at the end of clause (*d*) of sub-section (2) of section 21 and clause (*e*) of that sub-section shall be omitted.

52. The Indian Paper Currency Act, 1923, is hereby repealed. X of 1923.

Repeal of Act X of 1923.

THE FIRST SCHEDULE.

[See sections 14 (4) (c) and 41.]

SCHEDULE OF BANKS.

1. Imperial Bank of India.
2. Allahabad Bank.
3. Bank of Baroda.
4. Bank of India.
5. Central Bank of India.
6. Indian Bank.
7. Punjab National Bank.
8. Chartered Bank of India, Australia and China.
9. Eastern Bank.
10. Grindlay and Company.
11. Hongkong and Shanghai Banking Corporation.
12. Imperial Bank of Persia.
13. Lloyds Bank.
14. Mercantile Bank of India.
15. National Bank of India.
16. P. and O. Banking Corporation.
17. Thomas Cook & Son.
18. American Express Company Incorporated.
19. National City Bank of New York.
20. Banco National Ultramarino.
21. Comptoir National d'Escompte de Paris.
22. Nederlandsche Handel-Maatschappij.
23. Nederlandsch Indische Handelsbank.
24. Sumitomo Bank.
25. Bank of Taiwan.
26. Yokohama Specie Bank.

THE SECOND SCHEDULE.

(See section 42.)

Provisions to be contained in the agreement between the Reserve Bank of India and the Imperial Bank of India.

1. The Imperial Bank of India shall be the sole agent of the Reserve Bank of India at all places in British India where there is a branch of the Imperial Bank of India and no branch of the Reserve Bank of India.

2. In consideration of the performance by the Imperial Bank of India on behalf of the Reserve Bank of India of the functions which the Imperial Bank of India was performing on behalf of the Governor General in Council at the places referred to in clause 1 before the coming into force of the Reserve Bank of India Act, 1927, the Reserve Bank of India shall pay to the Imperial Bank of India a commission calculated on the total of the receipts and disbursements dealt with annually on account of Government by the Imperial Bank of India on behalf of the Reserve Bank of India. Such commission shall be one-sixteenth of one per cent. on the first 250 crores of such total and one-thirty-second of one per cent. on the remainder.

3. Subject to the condition that the Imperial Bank of India shall keep open branches not less in number than those existing at the time of the coming into force of the Reserve Bank of India Act, 1927, the Reserve Bank of India shall allow the following balances to the Imperial Bank of India at the interest rates hereinafter specified, namely :—

(*a*) during the first five years—3 crores free of interest;

(*b*) during the second five years—2 crores free of interest and, at the option of the Imperial Bank of India, an amount not exceeding 1 crore at 2 per cent. per annum;

(*c*) during the third five years—1 crore free of interest and, at the option of the Imperial Bank of India, an amount not exceeding 2 crores at 2 per cent. per annum; and

(*d*) during the last 10 years—at the option of the Imperial Bank of India, an amount not exceeding 3 crores at 2 per cent. per annum.

4. The Imperial Bank of India shall not without the approval of the Reserve Bank of India open any branch in substitution for a branch existing at the time this agreement comes into force.

5. For each new branch opened by the Imperial Bank of India with the approval of the Reserve Bank of India in addition to the branches already opened when this agreement comes into force the Imperial Bank of India shall be allowed the following balances free of interest for each branch so opened, namely :—

(*a*) during the first five years—3 lakhs, and

(*b*) during the second five years—2 lakhs.

THE THIRD SCHEDULE.

(See section 48.)

RESERVE BANK OF INDIA.

An Account pursuant to the Gold Standard and Reserve Bank of India Act, 1927, for the week ending on the day of

Issue Department.

Liabilities.	Rs.	Rs.	*Assets.*	Rs.
Bank Notes held in the Banking Department			Rupee coin	
Bank Notes in circulation			Government of India rupee securities	
Total Bank Notes issued			Internal Bills of Exchange and other commercial paper	
Government of India Notes in circulation			Gold securities	
Rupee redemption			Gold coin or bullion	

Ratio of gold and gold securities to liabilities, per cent.

Dated the day of 19 .

Banking Department.

Liabilities.	Rs.	*Assets.*	Rs.
Capital paid up		Notes	
Reserve Fund		Rupee coin	
Deposits—		Subsidiary coin	
(*a*) Government		Bills discounted—	
(*b*) Banks		(*a*) Internal	
(*c*) Others		(*b*) External	
Bills payable		(*c*) Government of India Treasury Bills	
Other liabilities		Balances held abroad	
		Loans and advances to the Government	
		Other Loans and Advances	
		Investments	
		Other Assets	

Dated the day of 19 .

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to give effect to the recommendations of the Royal Commission on Indian Currency and Finance for the establishment of a Gold Standard for India and for constituting a Reserve Bank of India to control the working of that Standard. The various clauses of the Bill are briefly explained below.

Clause 1.—It is proposed to give the Bank the sole right of note issue for a period of twenty-five years in the first instance subject to renewal as recommended in paragraph 141 of the Commission's report. The provision that the Act shall come into force not later than 1st January, 1929, is based upon the time-table recommended by the Commission in paragraph 165 of the report.

Clause 3.—The name, the Reserve Bank of India, is that suggested in paragraph 92 of the report.

Clause 4.—The Commission recommend that the capital of the Bank should be Rupees five crores fully paid up, and that the Imperial Bank's shareholders should be given the first opportunity of subscribing for the capital stock of the Bank as consideration for foregoing important privileges which the Imperial Bank now enjoys. A clear-cut division of functions between the Reserve Bank of India and the Imperial Bank of India is the essence of the proposal creating a Reserve Bank and, if avoidable, it is undesirable to give the shareholders of the Imperial Bank of India a preponderant voice in deciding the currency policy of the Reserve Bank. It is, therefore, proposed in this clause to give the Imperial Bank of India as an institution and not to its individual shareholders the option of subscribing thirty per cent. of the capital It will be open to the Imperial Bank to distribute the allotment among its shareholders if it so desires. The Central Board of the Imperial Bank of India has expressed its willingness in principle, in view of the other terms proposed to be given to the Imperial Bank, to recommend this proposal for the acceptance of the shareholders.

It is necessary that the Government should be prepared to take up any unallotted shares, but it is not desirable that these should continue to be held permanently by them. It is, therefore, proposed that the Governor General in Council should dispose of any unallotted shares taken up by him within three years.

Clause 5—This is based on paragraph 101 of the Commission's report. It is necessary to make provision for the contingency of a reduction of the share capital in regard to which the Commission have made no recommendation.

Clause 6.—The Head Office of the Bank will be located in Bombay as recommended by the Commission in paragraph 97 of the report.

Clause 8.—This gives effect to the recommendations in paragraphs 95 and 96 of the report.

Clause 9.—This is based on paragraph 94 of the Commission's report. The Commission recommend therein that the Reserve Bank should have Local Boards in Bombay, Madras and Calcutta, and that representatives from these Boards should constitute a majority on the Central Board. It is considered undesirable for various reasons to base the constitution of the Central Board on a system of Local Boards. If the Local Boards are dispensed with, it is necessary that shareholders as a body should elect those Directors who are not appointed by the Government.

As regards nominated Directors, it is considered desirable in order that all interests may be represented that the three Directors nominated by Government should represent Commerce, Industry and Agriculture, respectively. The term of office of nominated Directors is proposed by the Commission to be fixed at one year which is too short to conduce to efficient work. It is, therefore, proposed to extend it to three years.

Clause 10.—It is provided in this clause that the Governor, Deputy Governor or any nominated Director may be removed by the Governor General in Council if a resolution to that effect is passed by a majority of the Board consisting of not less than nine Directors, that is by a substantial majority of the Board.

The provision for the removal of elected Directors follows the lines of a similar provision in the Imperial Bank of India Act. It seems undesirable that elected Directors should be removable by a bare majority at a general meeting.

Clause 11.—As there may be no Local Board at Calcutta, it is desirable to provide that the Central Board shall meet in Calcutta at least once in every four months

Clause 12—This gives effect to the recommendations in paragraph 98 of the Commission's report.

Clause 13.—This is based upon similar provision in section 30 of the Imperial Bank of India Act. It is necessary to make special provision for the formation of the first Board.

Clauses 14 and 16.—These embody the proposals in Schedule II to the report defining the functions and capacities of the Bank.

The Commission have not provided for the Reserve Bank receiving non-interest-bearing deposits from private persons It is considered that like most other Central Banks in the world the Reserve Bank of India should also be allowed to receive deposits from private persons provided no interest is paid.

The financing of industry and the movement of crops in India is carried on by cash credits and as provision recommended by the Commission stands it will be difficult for the Reserve Bank to assist other banks in providing necessary credit without some considerable changes in banking methods. It is, therefore, proposed in sub-clause (4) (*e*) that for a period of five years the Bank should be authorised to advance money against promissory notes of scheduled banks under certain conditions.

It is considered undesirable to limit the amount of securities held at any time in the Banking department to so low a figure as 25 per cent. of the liabilities as recommended by the Commission in clause 3 (*d*) of Schedule II to their report, as in view of the very fluctuating nature of

deposits the limitation might force the sale of securities merely to bring the Bank within the provisions of its charter for a few days.

The Commission recommend in clause 7 (*a*) of Schedule II to the report that the paid-up capital and reserve may be invested in securities of the Government of India having not more than five years to run. In view of the fact that the Government of India are now funding their short-term loans into long-term loans the limitation of maturity to five years might unduly restrict the power of the Bank to invest in such securities after a few years. It is, therefore, proposed to modify the provision so as to permit of investment in Government of India securities of any maturity.

Clause 15.—This gives effect to the recommendation in paragraph 102 of the report regarding operations in the open market.

Clauses 17 and 18.—These give effect to the recommendations in paragraph 140 of the report regarding the relations of the Bank with the Government.

Clause 19.—This gives effect to the recommendations in paragraph 141 of the report.

The Commission recommend that the right of note issue should be transferred to the Bank as soon as the Bank was in a position to issue its own notes. It is not desirable to postpone the early functioning of the Bank till it is able to arrange for the manufacture and issue of its own notes, and it is, therefore, proposed to allow the Bank to issue notes of the Government of India for a year from the date on which the Bank takes over the control of the currency.

Clause 20.—This gives effect to the recommendations in paragraph 143 of the report regarding the separation of the Banking and Issue Departments of the Bank.

Clause 21.—This gives effect to the recommendations in paragraph 142 of the report; freedom is retained to postpone the issue of one rupee notes for a time if such postponement appears desirable with reference to the size of the holding of silver rupees in the Reserve.

Clause 22.—This gives effect to the recommendations in paragraph 155 of the report regarding the form and material of Bank notes.

Clause 23.—This is based upon recommendation in paragraph 149 of the report that the notes of the Bank shall be legal tender for the payment of any amount and shall be guaranteed by the Government of India.

The Commission recommend in paragraph 141 of the report that not later than 5 years from the date of the Bank charter becoming operative the Government of India notes still outstanding should cease to be legal tender except at Government treasuries. By the end of 5 years very few Government of India notes will remain outstanding, and it is undesirable to take away the legal tender character of the note in the absence of any very definite advantage to be gained by so doing. It is, however, proposed to take power for the Governor General in Council and the Bank to call in notes of particular series, if necessity arises.

Clause 24.—This is based on paragraph 155 of the Commission's report, regarding the re-issue of Banknotes.

Clause 25.—This is based upon a similar provision in the Indian Paper Currency Act, 1923, and is necessary to protect the Bank against civil action in respect of notes lost, stolen, mutilated or imperfect.

Clauses 26 and 27.—These are based upon a similar provision in the Indian Paper Currency Act, 1923.

Clause 28.—This gives effect to the recommendations in paragraph 145 of the Commission's report regarding the constitution of the Reserve.

Clause 29.—This gives effect to the recommendations in paragraph 146 of the Commission's report defining the liabilities of the Issue Department.

The provision in sub-clause (2) of this clause is similar to that in the proviso to sub-section (*6*) of section 18 of the Indian Paper Currency Act, 1923, although it differs in detail. Under the Indian Paper Currency Act, 1923, notes of denominational value exceeding rupees one hundred cannot be deemed to be not in circulation until 100 years after the date of issue, whereas notes of lower denominations are so deemed after 40 years. This distinction between the higher and the lower denominations of notes is undesirable. In practice, notes of higher denomination are much less likely to be outstanding for a very long period than notes of lower denomination, and the practice at the Bank of England is to treat all notes as not in circulation after 40 years. It is considered that the Reserve Bank might with advantage follow the practice of the Bank of England.

Clause 30.—This is based upon paragraph 144 of the report. The Commission recommend that coin and bullion and securities to be transferred to the Issue Department should be specified in a Schedule. The amount of notes in circulation at the time of inauguration of the Bank will not be known when the Bill is introduced and passed and also between the dates of introduction of the Bill and its passing into law and the inauguration of the Bank, there will be changes in the constitution of the reserve held against note issue. It is, therefore, proposed to provide for the transfer to the Bank of assets of such a nature as to enable the Bank to constitute the Reserve in accordance with the requirements laid down in the Act. In order to give the new Bank the necessary margin over minimum requirements, it is proposed to include in the assets transferred, gold and gold securities equal to one-half of the liabilities of the Issue Department as suggested in clause 3(*a*) of Schedule III to the report.

Clause 31.—This gives effect to the recommendations in paragraph 147 of the report regarding the disposal of surplus rupee by the Bank.

Clause 32.—This gives effect to the recommendations in paragraph 147 of the report. As it would be uneconomical to coin new rupees until the stock of silver rupees in the Reserve is reduced, to the minimum of 25 crores or one-tenth of the total amount of the Reserve, whichever is greater, it is proposed to limit the right of the Bank to demand delivery of rupee coin from Government,

Clause 33.—This gives effect to the recommendations in paragraph 148 of the report regarding the mutual obligations of the Government and the Bank in regard to rupee coin.

Clause 34.—This gives effect to the recommendations in paragraph 152 of the report.

Clause 35.—This gives effect to the recommendations in paragraph 150 of the report regarding the sale of gold by the Bank.

The provision in sub-clause (*1*) regarding the latest date on which the obligation to sell gold should come into force is based upon the recommendation of the Commission in paragraph 165 of the report.

Clause 36.—This gives effect to the recommendation in paragraph 166 of the report. The Commission recommend that during the transition period the Reserve Bank shall be under an obligation to sell gold or gold exchange at its option As the Bank will be engaged in building up its gold holding in order to be in a position to undertake the definite obligation to sell gold later, it is proposed to omit the option to sell gold during the interim period.

Clause 37.—This gives effect to the recommendations in paragraphs 151 and 166 of the Commission's report.

Clause 38.—This gives effect to the recommendations in paragraph 153 of the report regarding the suspension of Reserve requirements.

Clause 39.—This gives effect to the recommendations in paragraph 154 of the report regarding the exemption of the Bank from the payment of any tax or duty upon its note issue.

Clause 40.—The provisions in this clause are in accordance with the recommendations in paragraph 149 of the report. The Commission recommend that the Governor General in Council should have the right to take over the assets of the Issue Department so far as they are required to meet the liability of the note or of rupee redemption. It is proposed to give the Governor General in Council the right to take over the assets not only of the Issue Department but of the Banking Department as well, as in theory such a necessity might arise if the Bank failed to keep sufficient assets in the Issue Department. A provision is also made for the carrying on of the note issue in such circumstances by some other agency determined by the Governor General in Council.

Clause 41.—This gives effect to the recommendations in paragraph 161 of the Commission's report with slight modifications. The percentages for minimum reserve balances recommended by the Commission appear somewhat high for India. It is, therefore, proposed to reduce these percentages to 7½ and 2½ per cent. of the demand and time liabilities, respectively.

The definition of "bank or banker" suggested in paragraph 162 of the Commission's report is imperfect, but it is difficult to arrive at any satisfactory definition. It is, therefore, proposed to exhibit in a Schedule attached to the Bill the banks to which the provisions in this clause should apply in the first instance and to give the Governor General in Council power to make alterations in the Schedule later.

As the monthly return will show only the position at the close of the month to which it relates, it is necessary to provide for the receipt of the information mentioned in sub-clause (*3*) of this clause.

It is also necessary that provision should be made to enable the Government to take action not only on the monthly return submitted by the Bank, but also on any report received from the Board of the Reserve Bank.

Clause 42.—This follows the intention of paragraph 87 of the report.

Clause 43.—This is based upon the recommendations in paragraph 100 of the Commission's report. It is considered unnecessary to build up the Reserve Fund as quickly as the Commission suggest, and a lower rate of accumulation has, therefore, been proposed.

Clause 44.—This gives effect to the recommendations in paragraph 158 of the Commission's report.

Clauses 45 to 47.—These give effect to the recommendations in paragraph 156 of the report.

Clause 48.—This gives effect to the recommendation in paragraph 157 of the report.

Clause 49.—It is necessary to make provision for the contingency of the liquidation of the Bank and the distribution of the Reserve Fund and surplus assets, if any, of the Bank.

Clause 50.—This is based upon the recommendations in paragraph 164 of the report. The Commission proposed that the Governor General in Council should be given absolute power to make regulations It is thought preferable that regulations should be made by the Board with the previous approval of the Governor General in Council.

Though Local Boards are not to be constituted on the creation of the Reserve Bank, it is proposed in sub-clause (*2*) *(e)* to give power to the Reserve Bank to establish such Local Boards if considered necessary later on and to delegate to them such powers and functions as may be desirable

Clause 51.—The obligations proposed to be imposed on the Government by the Currency Bill to receive sovereigns and half-sovereigns from the public at their bullion value will be taken over by the Bank simultaneously with the transfer of the conduct of the note issue to it.

The Second Schedule.—The provisions contained in this Schedule have been accepted by the Central Board of the Imperial Bank of India and will be placed before the shareholders of the Imperial Bank. The proposed terms will involve no fresh charge on the taxpayer. They are designed to remunerate the Imperial Bank of India for the agency work done for the Reserve Bank and the loss in respect of non-paying branches and to encourage the further extension of banking in India.

BASIL P. BLACKETT.

13th January, 1927.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Establish a gold standard currency for British India and constitute a Reserve Bank of India; and Annexure.

The Governor General has been pleased to accord the sanction required by clause (*a*) of section 67(*2*) of the Government of India Act.

L. GRAHAM,

Secretary of the Legislative Assembly.

(*The Honourable Sir Basil Blackett.*)

GIPD—223 LD—19-1-27—1,000.

LEGISLATIVE ASSEMBLY.

NOTICE OF AMENDMENTS.

The Gold Standard and Reserve Bank of India Bill.

To be moved at a meeting of the Legislative Assembly after the motion that the Bill, as reported by the Joint Committee, be taken into consideration.

By the Honourable Sir Basil Blackett :—

1. That in sub-clause (*3*) of clause 1 for the figures "1929" the figures "1930" be substituted.

2. That in clause 2—

(*i*) the definition of "bank note" be inserted after the definition of "the Banking Department", and that in the same definition for the words "by a bank" the words "by the bank" be substituted;

(*ii*) immediately before the definition of "gold standard country" the following definition be inserted, namely :—

"'general meeting' means a meeting of the registered shareholders of the Bank"; and

(*iii*) the sub-clauses of the clause be re-lettered accordingly.

3. That for clause 4 and the heading thereto, the following heading and clause be substituted, namely :—

"*Share capital.*

Share capital.

4. (*1*) The original share capital of the Bank shall be five crores of rupees, divided into shares of one hundred rupees each of which shall be fully paid up.

(*2*) If the full amount of the share capital is not subscribed by the public, the Governor General in Council shall take up the remainder of the shares at par.

(*3*) The Board may, with the previous sanction of the Governor General in Council, increase the share capital of the Bank in such manner and to such extent as it may determine.

(*4*) Every such increase shall be fully paid up, and the price at which further shares shall be issued shall be fixed by the Board, with the previous sanction of the Governor General in Council.

(*5*) The Board may, with the previous sanction of the Governor General in Council, reduce the share capital of the Bank to such an extent and in such manner as may be determined by the Bank in general meeting."

4. That in clause 6 for the word "branches", in both places where it occurs, the words "branch offices" be substituted.

5. That in clause 6 for the words "under this Act" the following be substituted, namely :—

"and are not by this Act expressly directed or required to be done by the Bank in general meeting.";

6. That in clause 7, after sub-clause (*a*), the following sub-clause be inserted, namely :—

"(*b*) is a member of the Indian or a local Legislature, or ";

and sub-clauses (*b*), (*c*) and (*d*) be re-lettered (*c*), (*d*) and (*e*), respectively, and for the letter "(*d*)" in the *Explanation* the letter "(*e*)" be substituted.

7. That in clause 8 the following amendments be made, namely :—

(*i*) in clause (*a*) of sub-clause (*1*), the words " of whom one shall be an Indian and " be omitted ;

(*ii*) for clause (*b*) of the same sub-clause the following be substituted, namely :—

"(*b*) nine Directors elected by the shareholders, each of whom shall be the registered holder in his own right of not less than one hundred unencumbered shares of the Bank :

provided that, for the purpose of the constitution of the first Board, of these nine Directors two shall be elected by the Associated Chambers of Commerce, two by the Federation of the Indian Chambers of Commerce, and five shall be nominated by the Governor General in Council ; and such Directors shall hold office until the first annual general meeting ";

(*iii*) for clause (*c*) of the same sub-clause the following be substituted, namely :—

"(*c*) two Directors, to be elected, respectively, by the Associated Chambers of Commerce and the Federation of the Indian Chambers of Commerce.";

(*iv*) in clause (*d*) of the same sub-clause after the word " banks " the words " to represent agricultural interests " be added ;

(*v*) for clause (*e*) of the same sub-clause the following be substituted, namely :—

"(*e*) three Directors nominated by the Governor General in Council ;"

(*vi*) clause (*f*) of the same sub-clause be omitted, and clause (*g*) be re-lettered as clause (*f*) ;

(*vii*) after sub-clause (*1*) of clause 8, the following sub-clause be inserted, namely :—

" (*2*) If the Governor or Deputy Governor is by infirmity or otherwise rendered incapable of executing his duties or is absent on leave or otherwise in circumstances not involving the vacation of his appointment, the Governor General in Council may appoint another person to officiate for him ; such person may be an officer of the Bank notwithstanding anything contained in clause (*d*) of section 7.";

and sub-clauses (*2*), (*3*) and (*4*) of this clause be re-numbered (*3*), (*4*) and (*5*), respectively ;

(*viii*) for sub-clause (*4*) of the same clause, as so re-numbered the following be substituted, namely :—

"(*4*) The Directors elected under clauses (*b*), (*c*) and (*d*) of sub-section (*1*) shall hold office for a period of five years, and the Directors nominated under clause (*e*) shall hold office for a period of three years, but any Director shall be eligible for re-nomination or re-election :

Provided that the term of office of the first Directors elected under clauses (*c*) and (*d*) shall be three years ";

(*ix*) in sub-clause (*5*) as so re-numbered for the letter "(*g*)" the letter "(*f*)" be substituted ;

(*x*) after sub-clause (*5*), as so re-numbered, the following sub-clause be inserted, namely .—

"(*6*) Any casual vacancy in the office of a Director elected under clause (*b*) of sub-section (*1*) shall be filled by the Board, but every such appointment shall be subject to confirmation at the next general meeting.",

and sub-clauses (*5*) to (*7*) be re-numbered as sub-clauses (*7*) to (*9*), respectively ,

(*xi*) in sub-clause (8), as so re-numbered, for the words " under this section " the words " under the proviso to clause (*b*) and under clauses (*c*) and (*d*) of sub-section (*1*) " be substituted ; and

(*xii*) in sub-clause (*9*), as so re-numbered, for the figure "*6*" the figure "8" be substituted.

8. That for clause 9 the following clause be substituted, namely :—

"9. The Governor or Deputy Governor or any Director elected under clause (*c*) or clause (*d*) of sub-section (*1*) of section 8, or nominated under clause (*e*) of that sub-section, may be removed from office by the Governor General in Council before the expiration of his period of office if a resolution is passed in this behalf by the Board by a majority consisting of not less than ten Directors ; and any Director elected under clause (*b*) of that sub-section or appointed by the Board under sub-section (*6*) of section 8 may be so removed by special resolution passed at a general meeting by a majority consisting of not less that one-half of the total number of votes held by all the shareholders."

Removal of Governor, Deputy Governor or Director.

9. That after clause 10 the following clause be inserted as clause 11, and that the remaining clauses of the Bill be re-numbered and consequential references be amended accordingly, namely :—

"11. (*1*) A general meeting (in this Act referred to as the annual general

General meetings.

meeting) shall be held annually at Bombay within six weeks from the date on which the annual accounts of the Bank are closed, and a general meeting may be convened by the Board at any other time.

(*2*) At a general meeting every shareholder shall have one vote for each of the first five shares of which he has been the registered holder for not less than six months, an additional vote for each further five such shares up to twenty-five votes, and an additional vote for each further twenty-five such shares up to a total maximum of one hundred votes."

10. That in clause 11, the following amendments be made, namely :—

(*i*) in sub-clause (*8*) for the word "capital," wherever it occurs, the words "share capital" be substituted ; and

(*ii*) in the proviso to sub-clause (*14*) for the words "five crores of rupees or half the aggregate amount of the capital of the Bank and of the Reserve Fund for the time being whichever is greater", the words "the amount of the share capital of the Bank" be substituted.

11. That in clause 12 the words "not less than two-thirds of the Directors present at a meeting of" be omitted.

12. That in clause 13—

(*i*) for the words and figures "sections 11 and 12" the words and figures "sections 11, 12 and 39" be substituted ; and

(*ii*) in sub-clause (*2*) after the word "purchase" the words "its own shares or" be inserted.

13. That in sub-clause (*1*) of clause 16 for the words "bank notes", where they first occur, the words "paper money" be substituted.

14. That in clause 18 the words "one-quarter mohur or", "one-half mohur or", "one mohur or twenty rupees", "two and-a-half mohurs or," "five mohurs or", twenty-five mohurs or", "fifty mohurs or" and "five hundred mohurs or" be omitted.

15. That in clause 22—

(*i*) after the words "be entitled to recover from" the words "the Governor General in Council or" be inserted ;

(*ii*) after the words "mutilated or imperfect" the words "currency note of the Government of India or" be inserted ; and

(*iii*) in the proviso after the words "the value of such" the words "currency notes or" be inserted.

16. That in clause 25—

(*i*) in the proviso to sub-clause (*2*), the words beginning with "and that, after the end of the tenth year" and ending with "consist of gold securities" be omitted ;

(*ii*) in the second proviso to sub-clause (*3*) for the words " five hundred million " the words " " fifty crores of " be substituted;

(*iii*) for sub-clause (*4*) the following sub-clause be substituted, namely :—

"(*4*) For the purposes of this section, gold coin and gold bullion shall be valued at 8·47512 grains of fine gold per rupee, rupee coin shall be valued at its face value, and gold and rupee securities shall be valued at the market rate for the time being obtaining ";

(*iv*) in the proviso to sub-clause (*5*) after the word " mint " the words " or treasury " be inserted; and

(*v*) clause (*b*) of sub-clause (*6*) be re-lettered clause (*c*), and the following be inserted as clause (*b*), namely :—

" (*b*) bills of exchange bearing two or more good signatures and drawn on and payable at a place in any such country and having a maturity not exceeding ninety days ;"

17. That in clause 31 the words " or mohurs ", the words " and of sub-section (*1*) of section 3A of the Indian Coinage Act, 1906 " and the word " mohurs " be omitted.

18. That in sub-clause (*1*) of clause 32, for the figures " 1931 " the figures " 1932 " be substituted.

19. That in clause 38—

(*i*) in sub-clause (*1*), for the words " seven and one-half " the word " ten " and for the words " two and one-half " the word " three " be substituted, respectively, and after the words " of such bank in India " the following words be added, namely :—

" Not more than one-half of such minimum balance may be in the form of such securities of the Government of India as may be approved by the Board "; and

(*ii*) in sub-clause (*7*) the following be added after the words " at any time becomes less than three lakhs of rupees ", namely :—

" or goes into liquidation or otherwise ceases to carry on banking business. "

20. That for clause 40 the following clause be substituted, namely :—

" 40. After making provision for bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds, and such other contingencies as are usually provided for by bankers, and after payment out of the net annual profits of the Bank of a cumulative dividend at the rate of six per cent. per annum on the share capital, one-half of the surplus shall be allocated to the Reserve Fund until such Reserve Fund is equal to one-half of the share capital, and the remaining one-half shall be paid to the Governor General in Council. Thereafter, until the Reserve Fund is equal to the share capital, one-tenth of the surplus

Allocation of surplus.

shall be allocated to the Reserve Fund and the balance shall be paid to the Governor General in Council. When the Reserve Fund is equal to the share capital, the whole of the surplus shall be paid to the Governor General in Council:

Provided that, until the Reserve Fund is equal to the share capital, fifty lakhs of rupees of the surplus or the whole surplus, if it is less than that amount, shall be allocated to the Reserve Fund ".

21. That for clause 42 the following clause be substituted, namely :—

" 42. (*1*) Not less than two auditors shall be elected and their remuneration fixed at the annual general meeting. The auditors may be shareholders, but no Director or other officer of the Bank shall be eligible during his continuance in office Any auditor shall be eligible for re-election on quitting office.

Auditors.

(*2*) The first auditors of the Bank may be appointed by the Board before the first annual general meeting and, if so appointed, shall hold office only until that meeting. All auditors elected under this section shall severally be, and continue to act as, auditors until the first annual general meeting after their respective elections :

Provided that any casual vacancy in the office of any auditor elected under this section may be filled by the Board. "

22. That for sub-clause (*2*) of clause 44, the following sub-clause be substituted, namely :—

" (*2*) The auditors shall make a report to the shareholders or to the Governor General in Council, as the case may be, upon the annual balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and, in case they have called for any explanation or information from the Board, whether it has been given and whether it is satisfactory Any such report made to the shareholders shall be read, together with the report of the Board, at the annual general meeting. "

23. That to clause 45 the following sub-clause be added, namely :—

" (*3*) The Bank shall also, within two months from the date on which the annual accounts of the Bank are closed, transmit to the Governor General in Council a statement showing the name, address and occupation of, and the number of shares held by, each shareholder of the Bank ".

24. That for sub-clause (*2*) of clause 46, the following sub-clause be substituted, namely :—

" (*2*) In such event the Reserve Fund and surplus assets, if any, of the Bank shall be divided between the Governor General in Council and the shareholders in such proportion as the Governor General in Council may determine to be fair and equitable."

25. That in sub-clause (*2*) of clause 47 the following clauses be inserted as clauses (*a*), (*b*), (*c*) and (*d*), and the subsequent clauses be re-lettered accordingly, namely :—

" (*a*) the maintenance of the share register, the manner in which and the conditions subject to which shares may be held and transferred and, generally, all matters relating to the rights and duties of shareholders ;

(*b*) the manner in which general meetings shall be convened and the procedure to be followed thereat ,

(*c*) the manner in which elections of Directors by the shareholders shall be held under clause (*b*) of sub-section (*1*) of section 8 ;

(*d*) the manner in which notices may be served on behalf of the Bank upon shareholders or other persons. "

26. That for clause 48 the following clause be substituted, namely :—

" 48. In the Indian Coinage Act, 1906, for section 11 the following section shall be substituted, namely :— III of 1906.

Amendment of Act III of 1906.

'11. Gold coins, coined at His Majesty's Royal Mint in England or at any mint established in pursuance of a proclamation of His Majesty as a branch of His Majesty's Royal Mint, shall not be legal tender in British India in payment or on account, but such coins shall be received by the Reserve Bank of India at its offices and agencies in India at the bullion value of such coins calculated at the rate of 8·47512 grains troy of fine gold per rupee.' "

Demonetisation of sovereign and half-sovereign.

27. That in the First Schedule, the following amendments be made, namely :—

(*i*) after the name " Bari Doab Bank, Lahore " the name " Bhargava Commercial Bank " be inserted ;

(*ii*) the names " Indian Industrial Bank " and " Vellore Commercial Bank " be omitted, and

(*iii*) for the name " International Banking Corporation " the name " National City Bank of New York " be substituted.

W. T. M. WRIGHT,

Secretary of the Legislative Assembly.

SIMLA :

The 18th August, 1927.

M253LD—18-8-27—400—GIPS

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

We, the undersigned, Members of the Joint Committee to which the Bill to establish a gold standard currency for British India and constitute a Reserve Bank of India was referred, have considered the Bill and the marginally noted papers, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. The Committee met in Bombay on the 30th May, 1927, and sat continuously until the 4th June; and met again in Calcutta on the 18th July and sat until the 25th. Only one member of the Committee, who is unfortunately detained in England, has failed to attend one or other of the meetings, and on each occasion 25 out of 28 members were present.

3. We have made a number of changes in the Bill, several of considerable importance. We think, however, it would be more convenient to deal with the Bill clause by clause, referring to the amendments which we have made as they occur rather than to discuss matters of greater importance separately.

In this connection we desire to make it clear that, although we have attained unanimity on a large number of matters of importance, certain of the decisions at which we have arrived are decisions which a minority are not prepared to accept. We are, however, of opinion that, the decision of the majority being the decision of the Committee as a whole, it is undesirable to refer, as has been not infrequently the practice in the past, to particular decisions as being the decisions of a majority only.

4. *The title and preamble.*—We prefer the phrase "A Gold Standard" to the phrase "A Gold Standard Currency" as the Bill does not in fact purport to set up a gold currency, and a phrase which included that word might be liable to misconstruction.

Clause 1.—The latest date fixed for the commencement of the Act in sub-clause (*3*) of this clause as originally framed was the 1st day of January, 1929. We propose to alter this date to the 1st day of July, 1929, in view of the fact that it may prove inconvenient to inaugurate the Reserve Bank in the middle of the busy season, and, therefore, if the original date is retained, the Bank might have to be brought into being with undue haste during 1928.

Clause 2.—We have altered the definition of "bank note" in view of the fact that the bank note which it is proposed to issue will not be in the form of a promissory note payable to bearer on demand.

We have inserted a definition of "provincial co-operative bank" which is necessitated by the provision which we have made in clause 14 (now clause 11) for linking up the co-operative system with the Reserve Bank.

Clause 4.—This clause embodies what is perhaps the most important alteration which we have made. We have decided to substitute a Bank with capital supplied by Government in place of a Bank with private share capital as was provided for by the Bill as introduced. The reasons which have led us to favour a change of this nature are as follows:—

In the first place, it was thought that a banking institution the primary object of which was the control of the credit and finances of the country would, if directed by a body responsible only to a number of private shareholders, tend to be controlled by vested interests, and would therefore fail to secure the confidence of the Indian public; and that its utility to the public might even be endangered by a conflict of interest within the management of the Bank between Indian and external capital.

Secondly, we consider that joint-stock principles are not suitable in the case of a Central Bank the management of which should be carried on with an eye more to the public interest than to the accumulation of profits for shareholders.

We note in connection with this clause that we have substituted throughout the Bill the words "crore" and "lakh" for the references to "millions" which the Bill originally contained.

The abolition of share capital involves a number of consequential changes in the Bill, to the more important of which attention will be called in the course of our report. It involves, however, in the first instance, the omission of clause 5 and the subsequent re-numbering of other clauses.

Clause 5 (originally clause 6).—We think that provision should be made requiring the opening of a branch of the Bank at Rangoon. We also think that the previous approval of the Governor General in Council should be obtained to the opening of any new branch of the Bank outside India.

Clause 7 (originally clause 8).—We have effected important alterations in this clause, the first of which is the omission of the provision prohibiting members of the Indian or Local Legislatures from being nominated or elected as Directors of the Bank. The Committee consider that a provision of this kind would deprive the public of the services of a considerable number of those who are versed in public affairs and finance and are unable to subscribe to the view that a member of the Legislature would, by reason only of occupying that position, be unable to fulfil his duties as a Director of the Bank.

Secondly, we agree as to the desirability of the provision originally contained in the Bill excluding Directors of other Banks, on the ground that the Board of the Reserve Bank will have to exercise a close scrutiny over the financial position of all Banks likely to require financial assistance by way

of rediscounts or advances, and also on the ground that the presence on the Board of the Reserve Bank of representatives of other Banks would enable those other Banks to obtain information regarding the business of their competitors; but we do not think the same arguments apply in the case of Co-operative Banks, and we have accordingly provided that there should be no bar to the inclusion in the Board of Directors of Co-operative Banks.

Finally, we have added a clause (*d*) on the lines of clauses contained in certain other enactments establishing Central Banks, providing that no person shall be eligible either for nomination or election to the Board, unless he is or has at some time been actively engaged in agriculture, commerce, finance or industry. We are of opinion that a clause of this kind, though possibly somewhat vague, is essential, and we have endeavoured by an *Explanation* to make it clear that a person who is or has been a director of any company or corporation shall be deemed eligible under the clause.

Clause 8 (*originally clause 9*).—The principal difficulty in connection with this clause has been to devise a scheme for the constitution of a Board in place of the original scheme under which a large majority of the Directors were elected by the shareholders. The Committee have considered at great length various alternative schemes placed before them and have eventually decided on a scheme which ensures a majority upon the Board of Indian elected members. The scheme provides for a Governor and Deputy Governor, two Directors nominated by the Governor General in Council, two Directors elected by the Associated Chambers of Commerce, two Directors elected by the Federation of Indian Chambers of Commerce, one Director elected by the provincial Co-operative Banks, three Directors elected by the Indian Legislature, three Directors elected by the Local Legislatures, and one officer of Government appointed by the Government. Considerable discussion took place as to the desirability of an electorate consisting of the Indian Legislature or the Local Legislatures. The Committee eventually favoured the view that, out of the proposed fifteen Governors, three should be elected by the elected members of the Central Legislature and three by those of the Provincial Legislatures, because the said elected members represent together all the various interests of the people as a whole; and that it is reasonable and just that on the Reserve Bank of the country there should be some Governors elected by such general electorates, in addition to those who will be elected by the Chambers of Commerce and the provincial Co-operative Banks, which bodies represent special interests.

In addition to those provisions of the clause to which we have already drawn attention, we have provided that either the Governor or the Deputy Governor must be an Indian, and that the two Directors who are to be nominated by the Governor General in Council under clause (*b*) shall also be Indians.

The supplementary provisions which we have made in sub-sections (*2*) to (*7*) of this clause include a provision that the Board shall be consulted as regards the appointment of the successors to the first Governor and Deputy Governor, and that all elections shall be held under the system of proportional representation by the single transferable vote. Sub-clause (*7*) gives power to the Governor General in Council to make such regulations as may be necessary for determining the manner in which the elections shall be held.

Clause 10 (*originally clause 11*).—We have inserted words to make it clear that meetings of the Board may be held more frequently than once in each month and have provided that meetings at Calcutta shall be held at least three times in each year rather than once in every four months.

Clauses 12 and 13 of the Bill as introduced have been omitted owing to the elimination of shareholders. Clause 13, which contained temporary provisions, was only necessitated by the fact that the constitution of a Board was necessary for the purpose of issuing the share capital.

Clause 11 (*originally clause 14*).—We have made a small amendment in sub-clause (*1*) to make clear what was always the intention, namely, that the Bank should be allowed to receive deposits, not bearing interests, from all persons without restriction.

Sub-clause (*2*).—This sub-clause as well as clause 12 (originally clause 15) is intended to refer to inland bills of the kind defined in section 11 of the Negotiable Instruments Act, 1881, and is in accordance with similar provisions in other statutes constituting central banks. The restriction to scheduled banks of the facilities provided in this section and elsewhere is intended to give to the scheduled banks some compensating advantage for the obligation which the Bill imposes upon them to maintain compulsory deposits free of interest in the Reserve Bank. We have also thought it advisable to make it clear that the days of grace for which provision is made in section 22 of the Negotiable Instruments Act, 1881, may be added to the periods of maturity referred to in this clause and elsewhere.

As India is predominantly an agricultural country, it seems to us desirable to increase the scope of clause (*b*) of this sub-clause by raising the limit of bills and notes purchased or rediscounted from one-fifth of the total value of all bills and notes purchased or rediscounted by the Bank to one-quarter, and a similar and consequential amendment has been made in clause (*c*) of sub-clause (*4*).

Sub-clause (*3*).—This sub-clause as originally framed gave the Bank full discretion to purchase and sell the currencies of any foreign country having a gold standard. We think that such a wide discretion is undesirable and that operations of this nature should be confined to such countries having a gold standard as the Governor General in Council may designate for the purpose.

Sub-clause (*4*).—A small amendment has been made to make it clear that the loans and advances referred to include loans and advances re-payable on demand.

Sub-clause (*8*).—We have drafted this sub-clause to take the place of original sub-clauses

(*8*), (*9*) and (*10*) which provided that the Bank might purchase and sell certain securities for the purpose of the investment of its capital or Reserve Fund. Capital and the Reserve Fund, however, although shown separately in the statement of the Banking Department, would necessarily both form part of the general funds of that Department, and it might be difficult to say in respect of any particular transaction whether it was a transaction on behalf of capital or of the Reserve Fund, or partly on behalf of the one and partly of the other. The only object of the clause is in fact to limit the total amount of securities which may be held and not to lay down the purpose for which such securities may in each case be purchased. Further, the date of the purchase of securities upon which emphasis was laid in sub-clause (*10*) as originally drafted is irrelevant, the only consideration which is of any importance being the remaining time which the securities have to run. Finally, our re-draft renders it possible for securities held by the Bank to pass automatically from the long-dated to the shorter-dated class which would have been precluded by the use of the words "from the date of their purchase" occurring in the proviso to sub-clause (*10*) of the original draft.

Sub-clause (*13*) [*originally sub-clause* (*15*)].—We think that the power of the Reserve Bank to open accounts and act as agents of other banks should be restricted to central banks which are the principal currency authorities in their respective countries and among which we include the Federal Reserve Banks in the United States of America.

Sub-clause (*14*).—It is essential that the Bank should have power to borrow in London in view of the obligation imposed upon it to keep the Secretary of State in funds, and it is almost as essential that the Bank should be able to borrow in India so as to facilitate the control of credit. The limitation which this clause as now drafted by us provides will prevent the Bank from using its power of borrowing in order to compete with other banks for fixed deposits.

Sub-clause (*16*) [*originally sub-clause* (*17*)].—We considered the desirability of making specific mention in this sub-clause or possibly elsewhere of the power of the Reserve Bank to supervise clearing house business. We, however, consider this to be so clearly a banking function which may suitably be undertaken by the Reserve Bank that it is hardly necessary to make special mention of it.

Clause 12 (*originally clause 15*).—It is admitted that the power which this clause proposes to give to the Reserve Bank to operate in the bill market is necessary to enable the Bank to fulfil its responsibility for conserving the money market and for enforcing its discount policy. But we consider it necessary to lay down distinctly that the Bank is not entitled to enter into indiscriminate competition with commercial banks, and for this reason we have provided that action under this clause must be approved of by a majority of the Board of Directors and have indicated the purposes for which alone they should approve the undertaking of such operations.

Clauses 14 and 15 (*originally clauses 17 and 18*).—We think it desirable that the Reserve Bank should have control of all Government balances, not excluding those of such of the Local Governments as may have the custody and management of their own provincial revenues, and we have provided accordingly in this clause. We note that an amendment of section 23 of the Government of India Act will be necessary to enable the Secretary of State in Council to utilise the services of the Reserve Bank and to keep his balances with the Reserve Bank instead of with the Bank of England, and we understand that the necessary amendment will be undertaken as soon as this Bill is passed.

Clause 18 (*originally clause 21*).—We regard it as a matter of the first importance that the transition to a gold standard should be conspicuously marked by the introduction of a standard gold coin which we propose to call a *mohur*. We think that it is only by the introduction under a statutory enactment of a legal tender gold coin that the reality of the gold standard can be brought home to the public in India. We have accordingly provided in clause 48 for an amendment of the Indian Coinage Act which will give the Governor General in Council the statutory power of coining a *mohur*, which will contain 169·5024 grains of fine gold, being the equivalent of the gold value of twenty rupees, to be the standard of value under the new system. We realize, however, that it is not possible to give the public the right of having gold bullion coined into *mohurs* at the mints. Whilst, therefore, we have recognized, by the amendments which we have made in this clause (clause 18) that the new *mohur* is to be the standard of value and a definite proof that Indian currency has been linked to gold, we have provided that the amount of *mohurs* to be coined shall be in the absolute discretion of the Governor General in Council.

Clause 19 (*originally clause 22*).—We think it desirable that the bank notes to be issued by the Reserve Bank should bear the signature of an officer of Government and also, if possible, an engraving of the portrait of His Majesty, in order that the public may not lack confidence in treating them in every way as legal tender. In view of the fact that the bank notes are to be guaranteed by the Government of India, we understand that it will be possible to meet our desire in this matter.

Clause 22 (*originally clause 25*).—We observe that the present practice by which a note may be cut into two halves and the halves, when pasted together, accepted as legal tender remains unaffected.

Clause 23 (*originally clause 26* —We have altered the proviso from the form in which it stood for many years in order to make it clear that cheques upon overdrawn accounts are not prohibited by this clause.

Clause 25 (*originally clause 28*).—In sub-clause (*2*) of this clause we have decided to add to the proviso a condition that, of the proportion of gold coin and gold bullion and gold securities which the clause requires to be held as part of the

Reserve after ten years, at least one-half shall consist of gold coin or gold bullion. Our object in making this amendment is to ensure that the free flow of gold into India shall not be checked by any tendency on the part of the Reserve Bank to substitute gold securities for coin or bullion.

In sub-clause (*3*) of this clause we have increased by 25 crores each of the limits of the amount of rupee coin which may be held at various periods in the Reserve. We understand that the amount of silver coin and bullion now held in the Paper Currency Reserve is 108 crores—an increase of no less than 23 crores as compared with the amounts so held at the time at which the Royal Commission made their recommendations. It would clearly be impossible, without a radical disturbance of the silver market of the world, to get rid of this surplus silver within a period of ten years, and we feel sure that the change is one which would have commended itself to the Royal Commission had they envisaged the problem as it has now presented itself to us. Further, the obligation imposed on the Bank by clause 31 to supply rupees freely to the public on demand might in times of emergency require a larger reserve of rupee coin than the maximum which the Bank was required to keep by the original provisions of this clause. Finally, we desire to express our view that the Government shou d be extremely cautious as to the time at which, and the amounts in which, surplus silver should be offered for sale.

In sub-clause (*4*) of this clause we have made an amendment consequential upon the decision, to which we shall presently refer, to retain the sovereign and the half-sovereign as legal tender coins; we have also provided for the valuation of the new *mohur* for the purposes of the Reserve.

In sub-clause (*5*) of this clause we have raised from one-half to 85 per cent. the proportion of the gold coin and gold bullion held in the Reserve which must be kept in British India. We agree that under certain circumstances it may be advisable to allow gold belonging to India to be located outside India, and we think a maximum of 15 per cent. should be sufficient for this purpose. The possibility of raising the proportion in this manner is largely due to an amendment which we have made in clause 32 whereby the provision for the sale of gold for delivery outside India has been eliminated.

Sub-clause (*6*) of this clause defines the gold securities which may be held as part of the Reserve. Following upon our decision to which we have already referred in our remarks on sub-clause (*3*) of clause 11, we have decided to limit these securities to securities which are not only payable in the currency of a gold standard country whose parity with gold has been firmly established but which are also liabilities of such a gold standard country. We have also omitted clause (*b*), which allowed the holding in the Reserve of bills of exchange drawn on foreign gold standard countries. We agree with the opinions which have been freely expressed that any such provision would be an unnecessary and undesirable feature of a gold reserve.

Finally, we have provided that the sterling securities of the Government of India shall be included among the gold securities which may be held as part of the Reserve.

Clause 31 (*originally clause 34*).—Though we agree that there is good reason for removing the statutory convertibility of notes into silver coin, we have been assured that the stock of rupees for many years to come will be sufficient to enable the Bank to maintain the existing practice of making rupee coin freely available for purposes of circulation.

Clauses 32 and 33 (*originally clauses 35 and 36*).—We have replaced the obligation to sell gold at foreign centres by a permanent obligation to sell gold exchange in any gold standard country notified in this behalf by the Government of India. We consider the obligation imposed on the Reserve Bank to keep the value of the internal currency stable will be made capable of fulfilment by this provision, while at the same time it will make it possible for a greater proportion of gold to be held in India—a point to which we have already referred in connection with clause 25.

The original figure for a minimum purchase or sale of 1,065 tolas is based merely on the fact that the weight of commercial bars in London is 400 ounces. We have accordingly reduced this figure in both cases to 250 tolas as being a figure more suited to Indian conditions.

We have made slight amendments of a purely drafting nature in the proviso to sub-clause (*3*) of clause 32 and in sub-clause (*2*) of clause 33.

Clause 38 (*originally clause 41*).—In the Bill as introduced the obligation to maintain balances with the Reserve Bank was imposed only on a limited number of the more important banks in the country. We consider, however, that, if the Reserve Bank is to exercise its proper control over the credit system of the country, this obligation must be extended as widely as possible and should fall upon every bank of any standing or importance doing business in British India. This is in effect a reversion to the actual proposals of the Royal Commission. To facilitate the computation of the requisite proportion of the demand and time liabilities of the banks affected, we have inserted a new sub-clause (*2*) on the lines of similar provisions in the Federal Reserve system of the United States of America, whereby the calculation will be made on a daily average which will be computed in respect of half-monthly periods.

Our decision necessitates a provision which will be found in sub-clause (*7*) of this clause to enable the Governor General in Council to include among the scheduled banks any bank which attains the necessary qualifications and, similarly, to exclude any bank which falls short of that standard. We have omitted the provision which was contained in sub-clause (*4*) of the original clause 41 requiring a summary of the monthly return of each bank to be published, as we agreed with a widely expressed opinion that the particulars required for the purposes of this clause are only a partial statement of the bank's

affairs and that their publication might mislead the public as regards the financial position of a bank.

Clause 40 (originally clause 43).—The amendments made in this clause are consequential on the abolition of the provision for share capital. We have been furnished with a rough statement of the estimated cost to the public exchequer of the loss represented by the loss of interest on the present Gold Standard and Paper Currency Reserves which is at present credited to public revenues; this statement shows that the cost is not likely to be so great as to require the imposition of additional taxation or the retardation of the final extinction of provincial contributions to the central revenues.

Clause 42 (originally clause 45).—The alterations in this clause are purely consequential upon the abolition of share capital.

Clause 48 (originally clause 51).—We have explained the proposal to authorise the coining of a new *mohur* in our remarks upon clause 18, and we have similarly alluded, in our remarks on sub-clause (4) of clause 25, to our decision to re-establish the sovereign and half-sovereign as legal tender.

Some members of our Committee, whilst agreeing not to raise during the discussions of the Committee the question of the ratio of the rupee to gold, desired it to be made clear that they are not thereby precluded from raising this matter at the stage when the Bill will be taken into consideration. Provision, therefore, for fixing the rupee value of the sovereign at Rs. 13⅓ has been adopted by the Committee subject to this reservation.

Other amendments which we have proposed in the Indian Coinage Act are consequent upon the decision in respect of the *mohur* and of sovereigns and half-sovereigns.

The First Schedule.—We have added considerably to the number of banks included in the First Schedule. We desire, however, to offer certain suggestions. In the first place the list of banks is based upon the report of the Registrar of Joint Stock Companies for 1925-26 and will require to be brought up to date. We think it possible that some banks may have been included which are undergoing or about to undergo reconstruction and are not at the moment receiving fresh deposits from the public. We think that the question should be considered of granting power to the Government of India to grant some temporary relaxation of the provisions of clause 38 in such cases, which would necessarily be accompanied by a corresponding withdrawal of rediscount facilities under clause 11.

The Second Schedule.—We have made two amendments of substance in the conditions contained in this Schedule. We have, in the first place, reduced from 25 years to 20 the period during which the Imperial Bank should be entitled to claim balances free of interest or at a nominal rate of interest, although we maintain the period of 25 years as the period during which the contract shall be in force. Secondly, we have omitted clause (5) of the conditions, which provided for additional payments in respect of the opening of additional branches as apprehension has been expressed that provision of this kind might prove detrimental to the interests of indigenous banking.

5. We have made a number of other amendments in the Bill which are either of a purely consequential or of a drafting nature and to which we do not think it necessary to refer in detail.

We desire to add that the question was raised as to the continuance by the Imperial Bank of India of the facilities which have hitherto been accorded to Co-operative Banks, and the Committee are of opinion that such facilities should be continued. We have received an assurance from the Government that the possibility of providing for this matter either in this Bill or in the Imperial Bank of India (Amendment) Bill will be considered in due course.

6. We annex to this report copies of the following documents :—

(*i*) a memorandum on gold currency supplied to the Committee by the Honourable the Finance Member,

(*ii*) a memorandum containing the rough draft of the conditions which are contemplated in clause 14 of the Bill in respect of the agreement between the Government and the Reserve Bank also supplied by the Honourable the Finance Member,

(*iii*) a note by the Financial Secretary on the relations between Co-operative Banking and the Reserve Bank, and

(*iv*) the rough statement referred to in our remarks on clause 40.

7. The Bill was published as follows :—

In English.

Gazette.	Date.
Gazette of India Extraordinary	17th January, 1927.
Fort Saint George Gazette	1st February, 1927.
Bombay Government Gazette	10th February, 1927.
Calcutta Gazette	10th February, 1927.
United Provinces Gazette	29th January, 1927.
Punjab Government Gazette	28th January, 1927.
Burma Gazette	12th February, 1927.
Assam Gazette	10th March, 1927.
Bihar and Orissa Gazette	16th February, 1927.
Coorg District Gazette Extraordinary	25th February, 1927.
Sind Official Gazette	17th February, 1927.

In the Vernaculars.

Province.	Language.	Date.
Madras	Tamil	.. 22nd March, 1927.
	Telugu	.. 22nd March, 1927.
	Hindustani	.. 19th April, 1927.
	Kanarese	.. 5th April, 1927.
	Malayalam	.. 29th March, 1927.
Bombay	Marathi	.. 26th May, 1927.
	Gujarathi	.. 19th May, 1927.
	Kanarese	.. 19th May, 1927.
Punjab	Urdu	.. 25th February, 1927.
Coorg	Kanarese	.. 2nd May, 1927.
Sindh	Sindhi	.. 7th April, 1927.

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

BASIL P. BLACKETT.*
CHARANJIT SINGH.*
A. C. McWATTERS.*
UMAR HAYAT.*
A. F. L. BRAYNE.*
P. C. D. CHARI.
J. W. A. BELL.*
M. SUHRAWARDY.*
KUMARSANKAR RAY CHAUDHURY.
PHIROZE SETHNA.
MANMOHANDAS RAMJI.
GOVIND DAS.*
V. RAMADAS PANTULU.*
RAM SARAN DAS.
JAMNADAS M. MEHTA.*
N. C. KELKAR.*
R. K. SHANMUKHAM CHETTY.*
KIKABHAI PREMCHAND.*
PURSHOTAMDAS THAKURDAS.*
MADAN MOHAN MALAVIYA.
FAZAL I. RAHIMTOOLA.*
A. RANGASWAMI IYENGAR.*
HUGH G. COCKE.*
V. K. ARAVAMUDHA AYANGAR.*
GHAZANFAR ALI.*

The 18th August, 1927.

* Subject to minute of dissent.

APPENDIX I.

Memorandum on the practicability of a Gold Currency for India.

The standard of value which the Gold Standard and Reserve Bank Bill establishes for India is a gold rupee of 8·47512 grains. Under the plan proposed, there will be no gold coin in India representing that standard nor any gold coin of any kind in circulation. The silver rupee will remain as at present unlimited legal tender and Reserve Bank notes will also be unlimited legal tender. The standard will be a notional gold rupee just as, *e.g.*, in Germany the standard is a notional gold mark. The legal tender media of circulation will be kept stable in relation to gold by the operation of the law requiring the Currency Authority to buy gold and to give gold bullion in exchange for legal tender (gold exchange up to 1st January 1931 and gold bullion thereafter) subject to specified conditions.

2. It is objected that the notional gold rupee is an abstract idea which the average mortal finds extreme difficulty in assimilating or in dissociating from the silver rupee which connotes a silver standard and does not, by its recent history, give him any kind of confidence in its future stability in terms of gold. It is claimed that India ought to have a visible symbol of the gold standard and of her admission among gold standard countries, and that this might be done fairly simply by giving India a new standard of value and a new unit of account, *e.g.*, a 10 rupee gold mohur containing 84·7512 grains of gold. It is urged that this change, though striking in form, would involve no modification of substance in the Government's proposals so long as the discretion as to the amount of gold mohurs to be coined and put into circulation is vested entirely in the Government.

3. Such a change would give India a gold coin as her standard of value. But it would not necessarily result in any gold coins being minted and put into circulation either immediately or at any future date, seeing that the Government would have complete discretion whether or not to coin gold mohurs. Some of the advocates of a gold currency, therefore, go further and demand that either at once or after a certain date, the Indian mints should be opened to the coinage of gold brought to them by the public, and that an obligation should be put upon the Currency Authority to redeem rupees and notes in gold coins on demand.

4. The question to which an answer is demanded is the question why India should not have a gold currency in circulation either—

(*a*) in the form of gold mohurs minted by the Government and put into circulation at its discretion, or

(*b*) in the form of sovereigns and half sovereigns which would be legal tender though not minted in India, or

(*c*) in the form of gold mohurs minted by the Indian mints from gold brought to them by the public.

5. As is well known, there are strong arguments for the view that a gold currency in circulation in any form is a useless extravagance and that the gold bullion standard with no gold coins in circulation in any form is preferable to a gold currency standard. It is not open to question that the trend of currency development in western countries since the War has, for the time being at least, been away from the use of a gold coin in circulation It is not proposed, however, in this note to develop the arguments for and against the adoption of a gold currency standard The question whether a gold coin in circulation is practicable in India will be examined entirely apart from the question whether it is desirable.

6. There is one major difficulty in the way of any proposal to give India a full value gold coin in circulation So long as conditions in India are not radically changed from those which at present exist, a full value gold coin will not in practice remain in circulation for the ordinary purposes of monetary transactions but will inevitably be withdrawn from circulation for the purpose of being melted down or hoarded, that is, locked up for indefinite periods as a store of value. So long as the social customs and habits of the people are not radically modified, there must always be in India a very large demand for the precious metals for non-monetary purposes. If, therefore, now or at any date in the immediately foreseeable future the Currency Authority were to issue a full value gold coin, say, a 20 rupee gold-mohur containing 169·5024 grains of gold, there will always be a demand for this coin for non-monetary purposes which will prevent its circulation as money, because in almost all circumstances the gold mohur would be the cheapest as well as generally speaking, the most convenient form in which gold would be obtainable. The gold required by the goldsmiths for making into gold bangles and ornaments would be obtained by them by melting down gold mohurs. Even if the fact that gold mohurs were freely available in exchange for legal tender and could be freely changed back into legal tender, led to ornaments being made out of strings of gold mohurs instead of out of melted mohurs, the gold mohur would none-the-less cease to function as currency. For the purposes of hoarding, gold coins might tend to be preferred to gold bullion, but even so, they would not function as currency in circulation. If, therefore, gold coins are to function at all as currency, some solution must be found for this major difficulty.

7. The average annual demand for gold for non-monetary purposes in India is not less than 20 to 30 crores of rupees worth, and in some years rises to twice the larger figure or even higher. If gold coins are to function as currency at all, they (or their equivalent in gold bullion) must be available in quantities sufficient to meet the maximum demand for gold for non-monetary purposes in all circumstances with a surplus over to supply the gold coins which are to remain in circulation. It can hardly be doubted that an attempt to supply gold mohurs in such enormous quantities is not

a satisfactory solution of the difficulty above-mentioned. In the first place, the accumulation of a reserve sufficient to stand up against the maximum demand will obviously be an operation which would have to be spread over a very long period and would be very costly owing to the loss of interest obtained. The reserve would have to be big enough not merely to supply the maximum demand but also to ensure that the minimum amount of gold left in the reserve at any time should be sufficient to maintain undiminished confidence in the stability of the currency. In addition to the heavy cost due to loss of interest there would be a large annual charge to the Currency Authority, that is, to the taxpayer for importing gold. The Currency Authority would get Rs. 20 per mohur for each mohur issued, but the cost of importing the gold would amount to something appreciably more than 20 rupees (approximately Rs. 20-4-3). If, for example, the average amount of mohurs issued yearly were 30 crores of rupees worth of gold mohurs and the average rate of exchange were 1*s.* 6*d.* per rupee, the loss on importing gold would amount to about 40 lakhs of rupees per annum. A small seignorage charge to cover the cost of minting would no doubt be fully justified. But if the gold mohur is to be the standard coin and standard of value for India, it would clearly be impossible to charge a seignorage to cover the cost of importing gold. The alternative of issuing an overvalued gold mohur is discussed below.

8. The only method by which the Currency Authority could reduce this heavy charge upon the taxpayer would be by attempting to keep exchange always up to the gold import point, say, 1*s.* 6-3/16*d.* It could not do this successfully, if at all, without keeping bank rate always high and rigidly controlling the supply of legal tender money and of credit in a way that would result in continued stringency in the money market. The cost to the country of such action will be at least as serious as the cost to the taxpayer of the alternative.

9. It is not possible to get over this difficulty by relieving the Currency Authority of the liability to redeem rupees and notes in gold mohurs. It is sometimes suggested that the difficulty could be avoided by simply opening the mints to the coinage of gold mohurs out of gold brought to them by the public, while not putting any obligation upon the Currency Authority to give gold in exchange for legal tender except at the price as proposed in the Gold Standard and Reserve Bank Bill corresponding to the gold export point. Any such attempt would obviously result at once in gold mohurs being permanently at a premium as compared with legal tender with the result that they could not possibly function as currency. On the contrary, it would obviously be necessary to impose on the Currency Authority an obligation to sell gold in exchange for legal tender at par not only in the form of gold mohurs but also in the form of bullion, in order to avoid the absurdity and the cost of continually minting gold into coins to be melted down as soon as they were issued.

10. There is a theoretical alternative method for surmounting the major difficulty referred to above, namely, the issue of an over-valued gold mohur. For example, if instead of coining a gold mohur of Rs. 20 containing $20 \times 8{\cdot}47512 = 169{\cdot}5024$ grains of gold, the Government were to mint a gold mohur containing only 165½ grains, such a coin could be issued to the public as the equivalent of 20 rupees, if the public would accept it as such, without any loss to the taxpayer, since the difference of 4 grains of gold between the monetary value and the gold value of the coin would be sufficient to meet the cost of importing the gold and minting it into coin, even if exchange were at the export gold point at the moment of import of the gold. The charge of about 4 grains of gold per mohur would be regarded as a seignorage charge, and its theoretical justification would be exactly the same as the justification given in Schedule I to the Currency Commission's Report for the selling rate of Rs. 21-11-9 per tola for gold for delivery in Bombay under the plan for a gold bullion standard proposed by them and adopted in the Government's Gold Standard and Reserve Bank Bill.

11. A gold mohur of 165½ grains might well remain in circulation as legal tender for 20 rupees. It would not tempt the goldsmiths who would in normal circumstances be able to get a slightly larger amount of gold for melting by buying gold bullion in the market for 20 rupees. Such a coin might still be used for hoarding as being more convenient and more easy to convert back into money than gold bullion, but the hoarder would generally prefer to keep his hoard in bullion or in sovereigns as these would represent full value in gold, and whenever exchange was above the gold export point, he could purchase rather more than 165½ grains of gold for 20 rupees.

12. If therefore the demand for a gold coin in circulation is simply a demand for the convenience of having such a coin in circulation, this method offers a means of meeting it, and when the time arrives and India's gold reserves are strong enough to be able to spare gold for circulation as currency the plan of a gold mohur of 165½ grains will be worthy of careful consideration provided that those who desire a gold currency still desire it and are satisfied that the public want and will accept such a coin. It must however be made clear that a 20 rupee gold mohur of 165½ grains cannot become the standard of value for India. That standard of value would still have to be the notional gold rupee of 8·47512 grains. The 20 rupee gold mohur would simply be an additional and possibly a very convenient form of unlimited legal tender. Further, in times of contraction of currency, gold mohurs of 165½ grains coming back from circulation into the Currency Reserve would not be entirely satisfactory from the standpoint of the Currency Authority, since they would not be convertible into 20 rupees worth of gold bullion for purposes of export. If held in the Currency Reserve, as they doubtless would be at times, they would always leave, if valued at 20 rupees, a small margin of the liability for outstanding notes and rupees uncovered by gold. A fiduciary element corresponding to the fiduciary element in the silver rupee, though trifling in amount by comparison, would still remain in the gold mohur of 165½ grains. In other words, the standard would still be a gold

bullion standard and the gold mohur of 165½ grains would still be, to a small extent, a token coin, not a full value gold coin, and this solution of the difficulty though worthy of full consideration does not meet the demand in so far as it is a demand for a full value gold coin.

13. In so far therefore as the demand for a gold currency standard is a demand for a full value gold coin in effective circulation, it appears that the only possible answer to the demand is that it is frankly impracticable in the immediate future. How long this condition of affairs will remain cannot be forecasted. The chief hope of reducing the demand for gold in India for non-monetary purposes lies in the development of the habits of banking and investment. It is no doubt the view of many competent judges that once India has a full value gold coin freely available to her, she will be far more ready than at present to make use of gold productively, and will bring large quantities of gold out of hoards for use as money. But even if this claim is granted, the process of bringing gold out of hoards must clearly be a slow one and it is certain that, quite apart from the demand for gold for hoards, the demand for gold for melting down into ornaments will remain very large. So long as this is the case any attempt to put a full value gold coin into circulation involves the import by the Currency Authority at the expense of the taxpayer of large quantities of gold which will immediately be taken out of circulation and melted down. The double cost of keeping up the gold reserves to the figure necessary for meeting this non-monetary demand and of continually importing gold for issue at a loss remains a formidable obstacle.

14. It is not clear how far those who look to a gold currency as a means to bring gold out of hoards would regard the plan of issuing a 20 rupee gold mohur of 165½ grains as satisfying their condition. As has been shown, such a gold coin might become an effective part of the circulation and once the necessary gold reserves have been built up, a gold currency would be a practicable proposition. If, however, it is upon the ready availability of full value gold coins as currency that the rapid development of the banking and investment habits depends, a larger reserve and a longer delay will be necessary though it will no doubt still be desirable to introduce a full value gold coin as soon as may be. But it is in any case evident that the gold reserves required either for the purpose of an overvalued gold coin or for that of a full value gold coin are not at present in the possession of the Currency Authority, and the first step to take is therefore in any event to set to work to build them up quickly. This is what is proposed by the Government in the Gold Standard and Reserve Bank Bill, and a strong argument is thus offered for the gold bullion standard. It is unnecessary for the present to arrive at a final decision on the question whether, if the introduction of a gold currency is ultimately held to be desirable for India, the gold coin to be minted should be a full value one or a slightly overvalued one. This decision may well be deferred till the gold bullion standard has been in operation for some time and the gold reserves have accumulated and further experience has been gained of the extent to which the banking and investment habits have been developed. Nothing is gained and something is lost by attempting to arrive at a decision on this point now.

15. If the reasoning of this memorandum is correct, the answer to the third part of the question in paragraph 4 may now be given. It is impracticable to secure for India a gold currency in circulation for some long time to come by opening the mints to the coinage of a full value gold coin in exchange for gold brought to them by the public. It might be possible at an earlier date to put into and keep in effective circulation a slightly overvalued gold coin by opening the mints to the coinage of such gold coins from gold brought to them by the public. But the first step in any event is to adopt the gold bullion standard and build up the gold reserve, since all the available gold is required for the present inside the reserve, and postponement of the choice between the full value and the overvalued gold mohur will enable the decision to be taken, if and when desired, in the light of fuller experience.

16. The answer to the first part of the question in paragraph 4 is contained in the answer to the third part. It would of course be possible to legislate at once for the minting of a gold coin which the Government would be under no obligation to mint for the present in any but the smallest quantities—a few specimens only. This would not however give India a gold currency in circulation and, besides requiring an immediate decision on the controversial question whether a gold coin is ultimately desirable, involves a premature choice between the alternatives of a full value and a slightly overvalued coin in favour of the former thus actually postponing the date at which it may eventually be possible to have a gold coin in effective circulation in India.

17. The second part of the question in paragraph 4 relates to the use of sovereigns and half sovereigns as legal tender in India. The objections to this course are partly but not entirely the same as those to the other two courses. Even though demonetised, sovereigns can of course be freely imported into India and will continue to be so imported, but they will not function as currency. Monetisation, however, will not make them function as currency under the Gold Bullion Standard for exactly the same reasons which would prevent a full value gold mohur from functioning as currency, *viz.*, the fact that they would in normal circumstances be worth more as bullion than as money and would consequently command a premium over other forms of legal tender. There is however a further objection to monetisation of the sovereign under the Gold Bullion Standard. Just as the presence in hoards of a large quantity of silver rupees which are unlimited legal tender and may at any time come back into circulation complicates the task of the Currency Authority in controlling the supply of currency and weakens its effectiveness, so would the presence of large quantities of sovereigns which are legal tender but are not, save in exceptional circumstances, functioning as part of the medium of circulation impair the power of the Currency Authority and the efficiency of its action. It is desirable

to avoid a drain on the gold assets in the reserves and still more a demand for gold from the Currency Authority even at the higher of the two prices fixed by the Gold Standard and Reserve Bank Bill not in the circumstances envisaged by the Bill when it is really required to support the exchange value of the rupee, but simply for the purpose of facilitating the import of sovereigns into India. Gold can be freely minted into sovereigns in South Africa on the demand of the public (this being possible there because South Africa is a regular exporter of gold) and in certain circumstances it is conceivable that large quantities of sovereigns would be imported into India with serious reactions on the efforts of the Currency Authority to maintain ample reserves to secure the stability of the exchanges. In fine, the monetisation of the sovereign, while not giving India a gold currency in effective circulation, is fraught with many dangers for the working of the Gold Bullion Standard, and must inevitably retard the building up of the Gold Reserves and the arrival of the day when India will be in a position, if she so desires, to decide for a Gold Currency in effective circulation.

18. It may be useful before this memorandum is closed to consider in rather greater detail two points which have been mentioned more or less casually hitherto, the cost involved in the introduction of a gold currency, and the necessity for allowing a fair interval of time for the building up of the gold reserves. The last point may be taken first. The objection that an attempt by India to convert her sterling securities into gold forthwith would damage the monetary interests of Great Britain or of the Western World in general is often misunderstood. India has not at present the resources required to make it certain that she could obtain the necessary quantities of gold which will be needed to make her gold reserves amply secure against all emergencies if she embarked on the policy of introducing a gold currency standard without delay and would therefore have to make sure of being able to borrow in England or in the United States of America in case of necessity. It is therefore essential to the success of the attempt that she should retain sufficient goodwill in London and New York to make them willing to lend. The enquiries of the Currency Commission have made it clear that neither London nor New York are ready to promise unqualified assistance in this matter. But it does not follow that these monetary centres are sacrificing India to their own selfish interests. Their attitude is based on the belief that the extra demand upon the gold stocks of the world which India's action would entail would be such as to cause a tremendous dislocation and that, even if worse consequences did not ensue as many believe, threatening the stability of the gold value of every currency in the world, one result would inevitably be a very heavy fall in gold prices everywhere. India would not escape this fall, and the dislocation would be very severe, particularly for India's industrial enterprises. Whatever differences may have arisen over the question of the 1*s.* 6*d.* ratio, it is common ground that India does not want a renewed heavy fall in wholesale prices. India is therefore at least as much interested as London and New York in preventing a cataclysmic fall in gold prices. And it is well to remember that if London and New York are convinced that a particular course of action by India will have these results, even though their reasoning may conceivably be mistaken or exaggerated, the consequences they fear will probably follow simply because they fear them. It is not therefore a sufficient or complete answer for India to say that the view taken by London and New York is, in India's opinion, an erroneous or exaggerated one.

19. The extent to which India's adoption of a gold currency standard would cause an increased demand upon the world's gold stocks must be a matter of opinion. Certain figures were put before the Currency Commission which gave reasons for holding that even those large estimates were below the mark, or at any rate, below the potential maximum. Those who look for a large return of unproductive gold from hoards in India are entitled to argue that the figures placed before the Currency Commission are an overestimate. It is however inevitable that the first effect of a decision by India to introduce a gold currency must be to cause a considerable extra demand for gold. Even the introduction of a gold bullion standard means—and has indeed already meant—the gradual conversion of a considerable portion of India's sterling securities into gold. It is pertinent to observe that the recent purchases of gold in London for the Gold Standard Reserve have had the effect of retarding the fall of interest rates in London and keeping Bank rate at 5 per cent. for a little longer than it would otherwise have been there, and that this has reacted on money conditions in India and made it necessary to keep rates up here also. The minimum gold reserves required before a gold currency standard could safely be embarked upon would clearly be very much larger than those required for a gold bullion standard. It has been remarked already that the process of drawing gold out of hoards in India must necessarily be a gradual one, so that the gold obtained from this source for supplementing the existing stock of gold in the world available for monetary purposes would do little in the first few years to diminish the strain. Further, if the newly available gold coins went into hoards to replace silver bullion, silver rupees, or notes, these, together with any gold coins which went into effective circulation, would all represent a new demand for gold, and at the same time an additional demand on the gold resources of the Currency Authority in India. Finally, time must obviously be allowed to the Currency Authority in India to find a solution for the problems which are raised by the recent large flow of silver rupees into the Currency Reserves accelerated as it would be by the issue of a gold coin. For all these reasons, it is clearly impossible for India to build up her gold reserves otherwise than cautiously and by gradual stages.

20. The question of the cost of a gold currency to India can best be approached if we begin from the cheapest of the theoretically possible alternatives, *viz.*, a sterling exchange standard. Under a sterling exchange standard it would be possible to dispense altogether with gold in the reserves, but there are some valid objections to this course,

and it will be enough to assume that under such a standard India would have been content to hold and to continue to hold not more than the amount of gold, approximately 30 crores, which she held when the Currency Commission reported. At 4 per cent. the cost of holding 30 crores of gold may be taken to be 1·20 crores per annum. It may further be assumed that the pace at which silver rupees are being displaced from hoards would not be less than it is, had a sterling exchange standard been favoured and that the amount of currency notes in circulation would also be unaffected. It is true that the case for selling surplus rupees in order to obtain gold assets would have been less strong under the sterling exchange standard, but the loss involved in melting down silver rupees is to a certain extent a paper loss, and the expense of carrying large stocks of silver rupees is comparable to the expense of holding gold bullion. In any case the difference in cost of the sterling exchange standard and the gold bullion standard in so far as holdings of silver rupees are concerned is not in point in the present connection. With a total circulation of 180 crores of notes and after allowing for 50 crores for the proposed rupee redemption liability, the minimum amount of gold required by the provisions of the Gold Standard and Reserve Bank Bill [Section 28 (2)] is 30 crores at the start, one-fifth of 230 crores or 46 crores after 5 years and one-fourth of 230 crores or 57½ crores at the end of 10 years It is reasonable to allow for a growth of the circulation amounting to 20 crores in the first five years and 30 crores in the next five. The amount of gold required may then be taken as $\frac{250}{5}$=50 crores after five years and $\frac{280}{4}$=70 crores after 10 years. The growth of the gold reserve may further be assumed to be taking place at a fairly regular pace throughout the period, say, 4 crores a year. The extra cost of holding these amounts in gold instead of in securities at 4 per cent. is then :—

16 lakhs in the first year.
32 lakhs in the second year.
48 lakhs in the third year.
64 lakhs in the fourth year.
80 lakhs in the fifth year.
96 lakhs in the sixth year.
112 lakhs in the seventh year.
128 lakhs in the eighth year.
144 lakhs in the ninth year.
160 lakhs in the tenth year.

The additional cost thereafter would be 160 lakhs a year *plus* something extra representing the cost of keeping a minimum of 25 per cent. in gold against further expansions of circulation. The complications caused by the proposed transfer of the note issue to the Reserve Bank may be ignored. They do not affect the argument.

21. It is a matter of guess work to estimate the minimum gold reserves that would be required to be accumulated before it would be safe to inaugurate a gold currency standard with a full value gold coin in circulation. The figure may perhaps be put at a minimum of 125 crores. In order to secure this, the Currency Authority would have to borrow outside India and special steps would be necessary to dispose of silver rupees. The cost in interest would therefore on the average probably be more than 4 per cent, but taking the same figure of 4 per cent. as before, the gross interest charge works out at 500 lakhs, the extra charge for interest as compared with the sterling exchange standard being 380 lakhs and as compared with the gold bullion standard 220 lakhs. The charge for interest is however not the only extra cost involved by the gold currency standard. Account must be taken of the cost of issuing gold at a loss. It may be assumed that the minting charge will cover the cost of minting, but some further expenditure will be involved in withdrawing light weight coins from circulation If 30 crores worth of gold a year be taken as the average amount of gold that would be imported by the Currency Authority for issue to the public, the loss involved is, as already stated, approximately 40 lakhs per annum. The annual charge for withdrawing uncurrent coin which might amount to a lakh, may be ignored. Experience in England shows that sovereigns lose on the average 0·026 grains a year in weight and half-sovereigns 0·040 grains. In India the loss would be greater. The extra cost of the gold currency standard, with a full value gold coin, may therefore be estimated at 4·20 crores a year as compared with the sterling exchange standard and 2·60 crores a year as compared with the gold bullion standard.

22. The cost of adopting the alternative of an overvalued gold mohur of 165½ grains would of course be less than that of a gold currency standard, but more than that of the gold bullion standard. The taxpayer would have to bear the loss of interest on the amount required to provide the gold for such gold coins as remained in circulation. These gold coins would displace an equivalent amount of notes or rupees, but it may be assumed that the deduction in the total liabilities of the Currency Reserve due to the reduction of the total circulation would be at the expense not of the gold holding of the reserve but of its holding of securities. The amount of such gold coins as would remain in circulation may be put at a guess at 25 crores. The extra annual cost to the taxpayer then of this alternative as compared with the gold bullion standard may be put at 1 crore for interest *plus* something under a lakh for the cost of withdrawing worn coin. This is 2·60 crores per annum more than the sterling exchange standard, and 1·60 crores per annum less than the gold currency standard.

B. P. BLACKETT.

May 1927.

APPENDIX II.

MEMORANDUM ON REMITTANCES.

1. The Reserve Bank shall effect such transfers as may be required between the account of the Government of India in India and the accounts in London of the Secretary of State and the High Commissioner.

2. Transfers to London shall be made on the demand of the Secretary of State in Council or the High Commissioner, who shall on Friday in each week notify the Bank of the amounts required to be placed to the credit of their respective accounts on each day of the succeeding week, and shall at the same time advise the Government of India by telegram of the amounts so demanded.

Note.—The Secretary of State in Council and the High Commissioner will regulate their remittance programme with a view to restricting their balance so supplied to an amount not materially in excess of current requirements on capital and revenue account.

3. The rupee amounts corresponding to the transfers referred to in 2 above shall be debited to the account of the Government of India in India on the day on which the sums are credited to the accounts of the Secretary of State or the High Commissioner and shall be calculated at the selling rate of the day for Telegraphic Transfers in Bombay In the event of any fluctuation during the day, the rate shall be fixed by agreement between the Governor of the Bank and such officer of Government as the Government of India may appoint.

4. The following information shall be supplied to the Bank :—

(*a*) Before the end of December in each year the Government of India shall urnish a preliminary estimate of the probable sterling requirements for the next financial year, showing the probable amount of the drawings in each month.

(*b*) Before the end of March the Government of India shall furnish a revised estimate as above.

(*c*) Seven days before the end of each month the Secretary of State and the High Commissioner shall send to the London Office of the Bank statements showing their probable drawings during each of the next three months, noting the days on which net disbursements are likely to be heavy and the probable amount of such disbursements.

The Bank shall be given the earliest possible intimation of any substantial change in the estimates furnished as above.

5. In regard to all matters connected with the remittance programme, the Government and the Bank shall maintain close and continuous contact, and due regard shall be paid by Government to any representations made by the Bank regarding the reaction of the programme on he exchange and money market.

APPENDIX III.

MEMORANDUM ON RELATIONS BETWEEN CO-OPERATIVE BANKING AND THE PROPOSED RESERVE BANK.

1. *Summary of Organisation.*—At the outset a brief statement of the organisation of the Co-operative movement in India, taken from the *Times of India* "Indian Year Book" 1927, may be given.

The basis of the movement is the primary credit society either of the agricultural or non-agricultural type which consists of a minimum number of persons and is registered and controlled under the regulations of the Co-operative Societies Act. The main business of the Credit Society is to raise funds by deposits from members and loans from non-members, Government and other co-operative societies, and to distribute the money thus obtained in loans to members or, with the special permission of the Registrar, to other co-operative credit societies.

Agricultural Societies.—As regards agricultural societies the commonest type is that prevailing in the Punjab, Burma and the United Provinces, *i.e.*, a society of unlimited liability with a small fee for membership and a share capital, the share payments to be made in annual instalments. In some places compulsory deposits are required before full membership can be attained. The system in Bombay and parts of the Central Provinces is different, there being no share capital and only an admission fee.

Part of the working capital of agricultural societies is raised by deposits from members and local friends of the movement, but the bulk of the capital is obtained by loans from central and other co-operative societies. According to the latest available figures out of the total working capital $2\frac{1}{3}$ crores were shares, $2\frac{4}{5}$ crores reserves, 12 crores deposits of members, $1\frac{1}{4}$ crores deposits from non-members and 15 crores were loans from central societies.

2. *Non-agricultural societies.*—The non-agricultural societies have grown up in cities and towns for the improvement of the economic position of artisans, small traders, members of particular castes, employees of large firms and Government departments. These societies are usually of limited liability with substantial share capital, payments being made in monthly instalments, while the rest of the working capital is obtained from local deposits from members and others. Loans from co-operative banks and societies form only a small portion of the capital. On 31st March 1925 it is stated that out of a total working capital of over 7 crores only 72 lakhs were held from central banks. To this class belong a few societies organised as Peoples' Banks mainly in Bombay and Burma. The larger banks open current accounts, grant cash credits and overdrafts and discount local bills of exchange. Some of the larger non-agricultural societies after meeting the needs of their members have large balances which they advance to the smaller societies, but this practice is being discouraged and the surpluses of primary societies are generally concentrated in the central banks.

3. *Financing of Societies.*—At an early stage the necessity for central organisations to control and co-ordinate the financing of societies was realised and central co-operative banks have been created controlling the societies generally in areas corresponding to revenue districts but also operating in smaller areas where the movement is intensive in character. The constitution of the central banks is not uniform but they are generally of two main types (1) banks of which the membership is confined to societies and (2) banks which include societies and individuals as their members and secure to societies separate representation on the Board of Directors. Further, in all Provinces, except the United Provinces, and also in the States of Mysore and Hyderabad there are Apex or Provincial Banks generally with the Central Banks as shareholders or affiliated to the Provincial Banks, but there is no uniformity in the constitution of the shareholders and directorate of the various banks. The Provincial Banks are the mainstay of co-operative finance and the main advisory and supervising authorities in financial operations. Their business is mainly the attraction of deposits other than those available to central banks, the rediscount of co-operative paper and the regulation of funds between central banks. They thus co-ordinate the financing of the central banks which in turn finance the primary societies. According to the returns for 1924-25 the following was the position of the movement in that year:—

Central Societies (including Provincial and Central Banks and Banking Unions) ..	555
Supervising and Guaranteeing Unions	1,340
Agricultural Societies ..	64,281
Non-agricultural Societies ..	5,432

Of the central and provincial banks, 10 had a capital and reserves of 5 lakhs and over, while 104 had capital and reserves between one lakh and 5 lakhs.

4. The External Capital Committee drew attention to the very important part played by co-operative societies in the provision of credit facilities throughout India, a part which is certain to become more influential in the future. In this connection a passage may be quoted from the evidence given to the Committee by the Bihar and Orissa Provincial Co-operative Bank:—

"If the progress of co-operative credit is to be more rapid, and if the financial requirements are to be adequately met, stronger central financing institutions will be required than those that exist at present in some of the Provinces as Apex Banks. In the matter of financial resources, all Provinces are not equally fortunate and while in a large number of the Provinces it is found that there is no outlet for the accumulated funds, in others it is equally evident that the progress of the credit movement will be retarded for lack of funds at the Apex, unless direct Government aid is granted. The latter method is admittedly not desirable, and the Joint Stock Banks or the

Imperial Bank cannot provide the necessary long term capital required. Such banks, however, have always willingly lent their support to co-operative banks on their own terms especially regarding the period. This difficulty was foreseen by the Committee on Co-operation in India in the year 1914 and now, due to the substantial progress made by the movement, it is necessary to review the financial structure of co-operative credit and to examine the necessity of either an Imperial Board of co-operation to co-ordinate the working of the movement and to facilitate the supply of funds from *plus* Provincial Banks to *minus* Provincial Banks or the organization of a strong central institution for the finance of the whole movement in India by the amalgamation of the existing Provincial Banks."

Mr. M. L. Darling, I.C.S., in his work on Co-operation in Germany, Italy and Ireland, has also suggested as a solution of the difficulties of centralising finance for the movement in India, the establishment of a *Co-operative* Apex Bank for the whole of India, linked under Government control to the Imperial Bank.

5. It may be relevant at this stage to indicate briefly how co-operative banking is related to the Central Banks (corresponding to the Reserve Bank) in other countries. Broadly speaking, the national co-operative unit is most frequently an Apex Bank *which is part of the movement* and is frequently aided by the State or given some form of guarantee, *e.g*, of its debentures. In Italy the National Institute of credit performs this function while the great Banks of Naples and Sicily assist co-operative banking in return for special privileges from the State. In France, according to Wolff on "Co-operative Banking" it was realised that the Bank of France could not provide credit directly for agriculture, because agriculture could not take up three months' paper but required advances for terms much longer than fitted in with the business usages of a central bank like the Bank of France. Therefore, under its charter of 1899, it had to hand over every year a portion of its net profits to the Minister of Agriculture to be employed at his discretion in support of agricultural credit generally by making advances on easy terms to the local central societies. The system is said not to work well. Probably the best instance for present purposes is the case of the National Bank of Egypt which was founded in 1898 to take over the note issue and the Government balances and was intended to make advances to agricultural institutions. Subsequently it was realised that the latter operations were not part of the functions of a great Central Bank of the State and a separate Agricultural Bank was organised to undertake this business. General experience therefore appears to show that the Apex Bank of a co-operative system ought to be a separate bank which is part of the co-operative movement and exists solely for co-operative finance.

6. *Relations of the Imperial Bank to Co-operative Banking.*—The Imperial Bank now grants facilities on a considerable scale to co-operative banks on the security of promissory notes of primary societies and is always ready to consider any definite proposals for extension of these facilities which may be advanced by the Registrars. In granting these facilities, the Bank has to keep before it the advisability of discouraging the use of its credit to replace deposits the accumulation of which is one of the main objects of co-operative credit banking. The general lines on which the Bank works are :—

(1) All promissory notes of co-operative credit societies or central co-operative banks require to be scrutinised and approved by the Registrar before being handed to the Bank as securities.

(2) The banks to which advances are made are required to give an undertaking that all promissory notes held by the Imperial Bank as security are covered by actual advances made to societies or central banks.

(3) A margin of 20 per cent. calculated on the actual advances given on the promissory notes by the provincial banks to the co-operative societies or central banks has to be maintained.

(4) Before granting advances, the balance-sheets of the central banks concerned have to be submitted for scrutiny.

(5) Advances are purely seasonal in their nature for crop purposes only and for a period not exceeding 6 months.

In addition societies have the concession of Remittance Transfer at par without commission up to certain limits.

The following statement shows the credits from the Bank outstanding in June 1927 in lakhs of rupees :—

IMPERIAL BANK OF INDIA.

ADVANCES TO CO-OPERATIVE BANKS.

June 1927.

Province.	Limit of Credit		Total.
	against Government and other Authorised Securities, etc.	against the borrowers D P. Notes and D.P. Notes of Rural Credit Societies.	
	Rs.	Rs.	Rs.
Bengal . . .	37,73,900	6,06,000	43,79,900
Bombay . . .	83,000	8,00,000	8,83,000
Bihar and Orissa .	..	8,00,000	8,00,000
Burma . . .	34,20,500	1,00,000	35,20,500
Central Provinces .	9,05,800	4,00,000	13,05,800
Delhi . . .	2,07,000	..	2,07,000
Kashmir . .	..	..	..
Madras . . .	11,50,000	54,31,000	65,81,000
Punjab . . .	38,96,000	21,15,000	60,11,000
United Provinces .	..	..	..
Total .	134,36,200	102,52,000	236,88,200

7. *Co-operative Banking and the Reserve Bank Bill.*—The opinions received on the Bill from Co-operative institutions indicate a strong desire that the more important co-operative banks should be included in the Schedule as members of the Reserve.

system, but this desire is generally accompanied by a stipulation that such Banks should be freed from the necessity of keeping balances with the Reserve Bank under section 41 of the Bill, *i.e.*, they desire to have the privileges of Scheduled Banks without the responsibilities. This question of including co-operative banks in the Schedule was considered when the Bill was first drafted, but it was felt that co-operative banks from the nature of their business and their comparatively small resources would not be able to keep funds locked up with the Reserve Bank.

8. The Finance Department have since consulted certain expert officers with wide experience of the co-operative movement.

The first question which arises is that of representation of the co-operative movement on the Board of Directors of the Reserve Bank. This is desirable for two reasons, firstly, because of the importance of the co-operative movement in stimulating habits of thrift and because it is by the development of co-operative banking that banking needs will be satisfied in places remote from the main centres of trade and industry and, secondly, because the co-operative movement is allied to the development of India's most important industry, agriculture.

It has been suggested that the provincial co-operative banks should be organised to provide the necessary representation of co-operation and agriculture on the Board of the Reserve Bank, but this proposal is strongly opposed to expert opinion which holds that these Banks tend to represent the urban side of the movement and their Directors are not always closely conversant with the interests of the agricultural classes. Urban interests will already be represented fully on the Board by other means and it is undesirable to add to this representation through the medium of co-operative banks. In the alternative it has been suggested that the representation of co-operation might be secured through an organisation of the provincial co-operative unions or institutes which are central organising bodies more representative of the movement than the Banks. There is, however, no uniformity in their constitution and activities in the various provinces and there is no influential central organisation in the largest agricultural province in India, *e.g.*, the United Provinces. The constitution and purposes of these central organisations vary from Province to Province. In Bombay, there is a central co-operative institute with a representative constitution. In the Punjab, there is a provincial union with 125 central institutions affiliated to it. In Madras, there is also a union for propaganda whose chief activity is the publication of a bulletin. In Bengal, there is an organisation society for propaganda. In Burma, there is a Council designed to be of representative character, but, owing to lack of funds, it is said not to be functioning properly. In Bihar and Orissa, there is a Co-operative Federation to which societies are affiliated. It employs auditors to audit the accounts of the societies and does propaganda work. In the Central Provinces, there are separate organisations in different areas and the central Co-operative Federation is said to be moribund. In Assam, there is an organisation for the Surma Valley area and an Advisory Board for Development. In the United Provinces, there is only a Standing Committee of Co-operators.

In view of the diversity of their constitution and purposes it is manifest that these bodies could not be suitably organised to provide satisfactory representation for the movement, and the only satisfactory solution left for representation of co-operation and agriculture appears to lie in the nomination by the Governor General in Council with the advice of Provincial Governments of individuals who have played an outstanding part in the development of co-operation and agriculture in India. It is considered that at least two persons should be so nominated to represent these activities.

9. As regards the proposed business of the Reserve Bank, Co-operative Banks are interested in—

(*a*) Clause 14-2 (*b*), *i.e.*, purchase, sale and rediscount of Bills of Exchange and promissory notes drawn and issued for the purpose of financing seasonal agricultural operations or the marketing of crops.

(*b*) Clause 14-4 (*a*), the making of loans and advances against the security of stocks, funds and securities.

(*c*) Clause 14-4 (*e*), Advances against promissory notes of banks supported by documents giving title to goods.

It has already been shewn that the Imperial Bank grants extensive facilities to Co-operative Banking institutions and is prepared to take any reasonable steps to extend these facilities. There is no reason to believe that the Bank will not continue to work on the same lines under the new conditions when the Reserve Bank comes into force, as during the course of the last few years the business has developed considerably and is now a source of profit to the Imperial Bank. If so, there will be no necessity for the Reserve Bank to deal directly with Co-operative Banks. There is, however, some evidence of apprehension that when the Imperial Bank attains a larger measure of independence, its terms may become less reasonable than at present or it may desire to discard this form of business. It is stated that other banks can seldom assist with terms which are profitable to co-operative institutions. It would be possible to provide in the terms to be given to the Imperial Bank that it would continue to finance Co-operative Banks as at present, but there is much force in the suggestion that the Reserve Bank should be given power to deal with Co-operative Central Banks if the Imperial Bank does not continue to offer reasonable terms. The Reserve Bank should be able to advance direct to the provincial co-operative banks against Government securities and should rediscount bills bearing their signatures. A provision of this kind would put the Co-operative Banks in a stronger position than at present as it might enable them to get better terms from the Imperial Bank.

10. If this view is accepted it would be necessary to provide—

(*a*) for a definition of "Co-operative Central Banks" and "provincial co-operative banks" and

(*b*) for inclusion in 14-2 (*b*) of provincial co-operative banks as a class of banks whose signatures on a bill will be accepted for rediscount, etc.

Expert opinion holds that, if provision is thus made, the facilities offered by the Bill will be sufficient. No useful purpose would be served by extending clause 14 (*4*) (*e*) to Co-operative Banks and thus allowing advances to be made against promissory notes. In the first place, advances would be limited to 90 days while the vast bulk of loans required by Agricultural Co-operative Societies are wanted at seed time and cannot be repaid till after the harvest, *i.e.*, a period of 6-7 months. Further, such loans are normally advanced on personal credit with sureties or mortgages and it is rare for societies to be in a position to supplement their pro-notes with documents giving title to goods hypothecated to them. The basis of the Co-operative movement is the honesty, character and credit of the individual cultivator and any provision which substitutes hypothecation of goods for this security is opposed to the fundamental principles of the movement.

11. Further suggestions have been made that the period of 6 months in 14-2 (*b*) should be extended to nine months so far as co-operative bills are concerned in order to meet the longer period required for agricultural credit.

As regards the proposal to add debentures issued by land mortgage and co-operative banks to the category of securities which the Reserve Bank may negotiate, it is held to be undesirable that any such debentures should be accepted unless they are also trust securities as in the case of the debentures of the Bombay Central Co-operative Bank.

A. F. L. BRAYNE.

18th July, 1927.

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APPENDIX IV.

Memorandum on the effect on the Budget of clause 40 of the Bill.

The following statement showing the effect of clause 40 of the Bill on the Budget of the Government of India has been prepared on the lines of a similar statement which was prepared at the instance of the Members of the Royal Commission.

2. The net profits of the Paper Currency Department and the Gold Standard Reserve on the basis of the 1927-28 Budget are—

	(In Lakhs of Rs)
Paper Currency Reserve	2,29
Gold Standard Reserve . ..	2,17
	4,46
Less charges of Currency Department	52
	3,94

3. For purposes of the estimate of the effect of the building up of the Reserve Fund at the rate which has been provided for in clause 40 of the Bill, we may take the net annual profits of the Bank as follows :—

	(In Lakhs of Rs)
Net profits at present .. .	3,94
Add investment of reserve balances, etc.	70
Deduct payments to Imperial Bank .	18
Extra establishment of Reserve Bank	10
Net profit ..	4,36

4. The following statement gives the distribution of the above profit between Government and the Bank :—

		Government.		(In Lakhs of Rs.) Bank.
I year		2,18		2,18
II year .	32 / 3,35 =	3,67	32 / 37 =	69
III year		3,86		50
IV year . .		3,86		50
V year . ..		3,86		50
VI year		3,86		50
VII year		4,23		13
				5,00

5. The loss to the Revenue Budget works out as follows :—

	(In Lakhs of Rs.) (—means gain).
I year	1,76
II „	27
III „	8
IV „ . . .	8
V „	8
VI „	8
VII „	—29

6. The amount earmarked out of the surplus of 1926-27 for meeting the temporary deficit due to the utilisation of the profits for strengthening the Reserve Fund as recommended by the Commission is about 1 crore. The anticipated deficit in the next few years is not likely to involve additional taxation or embarrass the extinction of Provincial Contributions.

Recognising that the Gold Standard and Reserve Bank Bill as redrafted by the Joint Committee reflects a substantial measure of agreement on a large number of important points, more than one of which is at any rate potentially controversial, we, the undersigned members of the Committee, are anxious to say nothing to stir up controversy. Our hope is that eventually a sufficient degree of unanimity may be secured after further discussion of the Bill in the Assembly and the Council of State to make the Bill as finally passed and the new gold standard and the new Reserve Bank when they come into operation generally acceptable to India. We refrain therefore in this minute from pursuing our objections to some provisions in the Bill in its present form with which we are not in entire agreement and confine our observations to those matters to which we attach special importance.

Clause 4.—Our reasons for preferring the original plan of privately subscribed share capital are bound up with the question of the constitution of the directorate of the Bank and are given below in our observations on clause 8. We only observe at this point that, if the whole of the capital of the Bank is subscribed by the Government, it becomes very difficult to ensure that complete independence for the Bank which is essential to its proper working.

Clause 7.—The Royal Commission on Currency recommended that members of the Central and local Legislatures should be ineligible for the office of Director of the Bank, and provision to that effect was made in clause 8 of the original Bill. We recognise the force of the objection that in present circumstances the number of suitable persons likely to be available in India for service on the directorate is none too great and that the exclusion of members of Legislatures tends to narrow an already limited field of selection. But we attach fundamental importance to the principle which is not disputed by the majority of the Joint Committee that the directorate of the Bank should be entirely free to carry out its important functions of control of Currency and Credit policy solely on lines of prudent finance. For this purpose it must not merely be expressly released from control by the Government and the Legislature, but must be free both from the risk of political pressure and from the appearance of being subject to such risk. The presence on the Board of members of the Legislatures appears to us incompatible with this fundamental principle. Moreover, in our opinion, it will be difficult for the same individual to give adequate attention to his duties as director of the Bank if he is at the same time actively engaged in his duties as member of a Legislature. We believe that, even at the present time and still more as the circle of those who are versed in public affairs and finance in India widens, there will be no great difficulty in finding the right men to serve as directors outside the ranks of members of the Legislatures.

Clause 8.—Our objection to members of the Legislatures being eligible for the office of Director applies with even greater strength to the proposal that the Indian Legislature and the Provincial Legislatures should be formed into constituencies for the election of members of the directorate. Such a proposal seems to us to be fatal to the scheme of a Reserve Bank altogether. Under this proposal eight out of fifteen voting members of the Board will be chosen by the Central Executive or the Central Legislature, while three more will be chosen by the Provincial Legislatures, making eleven out of fifteen voting members (in addition to the non-voting Government officer) who will owe their presence on the Board to State intervention. We regard it as fundamental that the majority of the members of the Board must be chosen by constituencies independent of the State. Only so can the full independence of the Board be secured. The proposal further offends against the principle that the constitutional functions of the Legislature do not and ought not to extend to the exercise of executive functions, such as the appointment of persons to specific posts. In so far as such a function has to be exercised at all in the case of the Reserve Bank by or on behalf of the State, it is a function of the Executive and not of the Legislature. We object also to the proposed invidious distinction between elected and other members of the Legislatures.

Our colleagues who voted against the proposal to constitute the Bank with private share capital agreed with us that the directorate must not in any case be subject to the direct control of the Government or of the Legislature. In the absence of a body of shareholders to whom the directorate can be answerable and for whose privately subscribed capital it is responsible, the anomaly arises that the Board once constituted is theoretically responsible to no one either for the capital subscribed by the Government or for the large funds which come under its control from the Government and the public. We were willing to consider the possibility of tolerating this anomaly if we could be convinced that a suitable electorate could be framed for the selection of a majority of the directors (it being essential that the majority should not owe their place to Government nomination) without recourse to the device of private shareholders, and that a suitable directorate could be thus created independent of Government and the Legislature and likely to work well in practice. All efforts to secure such results have failed, and our experience [illegible] us that the device of private share capital is well understood and has worked well in countries which have had to consider the question of establishing an independent Bank. We think the method best calculated to secure this end in connection. We recommend that the Bill should be altered back to some extent in this respect so as to provide for the election of at least [illegible] of the directors by

possible to adapt to a shareholders' bank some of the ideas included in the Bill in its present form, *e.g.*, the election of one director each by the Provincial Co-operative Banks, the Federation of Indian Chambers of Commerce and the Associated Chambers of Commerce, respectively. To meet the point urged against the original proposal, namely, that the whole of the original Board would be nominated by the Government, we should be prepared to entrust to similar electorates the duty of electing in the first instance those of the directors who will thereafter be subject to election by shareholders. We believe that by such means and by providing that at the time of the original subscription of share capital preference in allotment shall be given to (*a*) small subscribers, and (*b*) to persons of Indian domicile, all the objections felt by our colleagues to the proposal to found the Bank with share capital can be overcome in so far as they are valid and that a more satisfactory directorate can be secured by this procedure than by any other.

The provision that either the Governor or the Deputy Governor must always be an Indian appears to us to be objectionable, both as intruding racial and communal questions in a sphere where they ought not to belong and as subordinating the essential requisite of maximum efficiency to other considerations. Similarly, in the case of the directors nominated by the Government, we object to the inclusion in the Bill of a provision that they must be Indians, though we should be ready to agree that the directors nominated by the Government should always be selected with a view to making the Board as widely representative as possible of the various localities, communities and interests of India as a whole.

Clause 25 (2).—We are of opinion that the provision requiring that after the end of 10 years the amount of gold securities in the Reserve must never exceed one-half of the total gold assets may prove unduly hampering to the Executive of the Bank in the management of the Reserve. The provision that the Gold Bullion must never be less than one-quarter of the Reserve seems to us to impose a sufficient obligation in this respect, and we think that subject to this obligation the Board should be trusted to use its discretion in the interests of India in regard to further accumulations of gold and investments in gold securities.

Clause 48.—For the reasons given in paragraph 66 of the Report of the Currency Commission, we are opposed to the proposal to make the sovereign and half-sovereign which were demonetised by the ...rrency Act of 1927 once again legal tender. The objections to this proposal are further ex-...ained in the memorandum by the Hon'ble the ...nce Member which is annexed to the Joint ...tee's Report. The same memorandum ...bjections to the proposal to coin ...nd to express the notes of the ...terms of mohurs as well as of ...f the Bill as now drafted). We ...mai... ...v of the Joint Com-...ations ... ...ot be practicable for ...—The ...o effective circula-...siderable ... ...ears to come. We security of promiss... ...ese circumstances ...ence to a gold mohur in this Bill is at best premature and unnecessary and may arouse false expectations among the general public and lead to continued pressure upon the Government to coin mohurs and endeavour to put them into circulation in a way that could only result, were the Government to yield to such pressure, in making it impossible to maintain stability of exchange in relation to gold altogether.

BASIL P. BLACKETT.

A. C. McWATTERS.

HUGH G. COCKE.

V. K. ARAVAMUDHA AYANGAR.

A. F. L. BRAYNE.

CHARANJIT SINGH.

UMAR HAYAT.

I agree with and have signed the minute of dissent of the Hon'ble the Finance Member except that I would prefer that more definite representation on the Board for Muslims and Zamindars, in proportion to their stake in the country, should be provided in the Bill.

UMAR HAYAT,

Tiwana.

15th August 1927.

I HAVE signed the Report of the Joint Committee appointed to consider the Gold Standard and Reserve Bank of India Act, 1927, subject to the following Minute :—

While the establishment of a Reserve Bank in India may be regarded as an ideal to be achieved in the future, I am not convinced that the present is an appropriate time.

In the first place, the Government of India have just carried through an important change in the currency system of the country, by stabilising the rupee at 1/6*d.* sterling. I consider that, for some time to come, Government, and no other authority, should be responsible for maintaining the ratio which has been adopted.

In the second place, the custom of financing the trade of the country by means of operations on cash credits rather than by bank bills has become firmly established, and it would be difficult to bring about a change, even if this were desirable, which I do not think it would be. This would considerably restrict the scope for remunerative employment of the funds of a Reserve Bank. In this connection it is to be noted that the results achieved by the Reserve Banks in South Africa and Australia have been disappointing.

It is true that the immediate establishment of a Reserve Bank has been recommended by the Currency Commission, and, if this recommendation be accepted, I think that it would be better to give effect to it by transferring the Currency

Department of Government to the Imperial Bank, and allowing that institution, at least for a period of years, to carry out the functions of a Reserve Bank.

In the Majority Report of the Currency Commission this method is not supported, but the chapter in which expression is given to the opinion of the Commission on the subject is, to my mind, one of the most unconvincing chapters of the Report.

The Imperial Bank have ready at hand the whole machinery for performing the functions of a Reserve Bank, if there were transferred to an Issue Department to the Bank the Currency Department of the Government of India.

Another advantage of permitting the Imperial Bank to carry out the functions of the Reserve Bank is that it would obviate the necessity for compensating the Imperial Bank at the expense of the other banks in the country. I do not suggest that it is not right that the Imperial Bank should be compensated, notwithstanding the fact that, after 1931, no legal obligation in this direction will exist, but the method by which Government propose to meet this obligation, while it may not result, as has been suggested in indigenous banks being extinguished altogether, will certainly mean that they will be exposed to competition by a State-aided Bank, which will adversely affect their prosperity and standing to an extent to which some of them at least are likely to succumb.

If, however, Government have decided to establish a separate Reserve Bank, the choice would seem to lie between a shareholders bank and a purely State Bank without share capital. Of these two, I am strongly in favour of a shareholders bank, as I fear that the policy of a State Bank would tend to become a political one. In the case of a shareholders bank the Directors would be elected by the shareholders, not on account of their political views, but chiefly on account of their business experience. This is of the greatest importance in the case of a bank with which the other banks throughout the country will be compelled by law to make deposits of their funds amounting to many crores of rupees. Anything in the nature of political control of, or interference with, a Reserve Bank would be disastrous.

As the majority of the Committee have decided in favour of the establishment of a State Bank without capital I will now, although I disapprove of the whole scheme, mention certain points in the proposed Bill which appear to me to be open to objection.

In clause 5 it is provided that the Head Office of the Bank shall be established in Bombay, and that it shall have Branches in Calcutta, Madras, Rangoon and London. I consider that, in view of its geographical position, and its commercial importance, having regard both to the present and the future, it would be desirable to establish the Headquarters of the Bank in Calcutta. Failing this I am of opinion that the Headquarters of the Bank should be in Bombay from March to August, and in Calcutta from September to February, these periods being the seasons during which money is in strong demand for financing the trade of the country on the Bombay side and Calcutta side, respectively.

In clause 8 it is provided that of the Governor and Deputy Governor, one must be an Indian. I do not object to either of these officers being an Indian, but I think it is most undesirable that any racial distinction should be introduced in this Bill. The test should be, not whether a candidate for the position referred to is an Indian or a European, but whether he is the person, whatever his nationality may be best qualified to carry out efficiently the duties of the appointment.

I am opposed to the scheme adopted by a majority of the Committee and embodied in clause 8, for the appointment of Directors of the Bank, other than the Governor and Deputy Governor. In particular I am not in agreement with the suggestion that three Directors should be elected by the Indian Legislature and three by the Local Legislatures. While I think that it would be a mistake to lay down that a person who is a member of the Indian, or of a Local, Legislature should, for that reason only, be precluded from appointment to the Directorate, as was provided in the original draft of the Bill, I disapprove entirely of the election of Directors either by the Central Legislature or by the Local Legislatures. Whatever may be said to the contrary, there can be little doubt that Directors so elected would be chosen primarily for political considerations, and, if the Board were constituted, or partly constituted, in this manner, it would not command the confidence of the public, and the standing of the Bank, both in India and in other countries, would be adversely affected.

In clause 11 the Reserve Bank is empowered to deal in Bills of Exchange drawn in or on any place in Gold Standard countries specified on this behalf by the Governor General in Council, having a currency of ninety days exclusive of days of grace. I should have no objection to offer to the Reserve Bank being authorised to deal in Telegraphic Transfer or Bills of Exchange payable on demand, but the purchase of Bills of Ex[illegible] having a currency of ninety days involv[illegible] mercial risk which I do not consi[illegible] Reserve Bank ought to be author[illegible] take.

In clause 18 it is p[illegible] be [illegible] bank notes shall be [illegible] fractions of mohurs. [illegible] that a gold coin to [illegible] coined at the Mint [illegible] General in Cour[illegible] that certain mem[illegible] ported the inclus[illegible] that, for sentimen[illegible] be minted. I thin[illegible] sent stage for C[illegible] ing of a gold co[illegible] were successfully [illegible] minting and circ[illegible] the present reforn[illegible] increased, if inde[illegible] ticable.

Clause 38 provides that every scheduled bank shall maintain a minimum balance with the Reserve Bank, the amount of which shall at no time be less than 7½% of the daily average of the demand, and 2½% of the daily average of the time liabilities of such Banks. I do not know whether it has been realised that this provision will mean, as I have already stated, that scheduled banks will have to deposit with the Reserve Bank funds amounting to many crores of rupees on which they will receive no interest, and which deposits will be in addition to the ordinary balances which the banks will always have to maintain at their different branches. One indigenous Bank will require under this section to deposit Rs. 80 lakhs, and another Rs. 40 lakhs, with the Reserve Bank. On these large amounts these banks will require to pay interest to their depositors, but will receive no return. I consider that the percentages are too high, and that, in any case, it should be permissible for the scheduled banks to lodge a proportion of the balances, which they are required to maintain with the Reserve Bank, in the form of Government securities on which they would receive interest. The question of what this proportion should be is one for discussion, but I do not think that 50% would be an unreasonable amount.

What is written above represents my personal views only. These views have not been expressed by me as representing the Bengal Chamber of Commerce, who have submitted their opinions with regard to the Bill in a special memorandum to Government.

J. W. A. BELL.

As shaped in the Joint Committee this Bill is on the whole a progressive measure based on sound principles. It can be improved and made more perfect still by altering it in two or three important directions, and I shall now proceed to state them briefly one by one.

First, the adoption in clause 25 (*2*) of the system [illegible]roportional reserve to the note issue in pre- to in[illegible] to the fixed fiduciary system is a ser.ous and we[illegible]rate departure from the practice of the Board shou[illegible]and which experience has proved to interests of [illegible]s claimed for the proport onal tions of gold [illegible]s for greater elast city

Clause 48.—For the [illegible]eam not sure that th s 66 of the Report of the s but another name for are opposed to the propo[illegible] volume of the cur- and half-sovereign which [illegible]n unmixed bless.ng. [illegible]urrency Act of 1927 ou[illegible]d even mischievous [illegible]he objections to this propo to create drast c [illegible]ained in the memorandum [illegible]f things which. I [illegible]nce Member which is anion to bring into [illegible]ttee's Report. The [illegible]reserve should be [illegible]bjections to th[illegible]te issue and the [illegible]nd to expres[illegible]ained the system [illegible]terms of mo[illegible]ter each fresh [illegible]the Bill as [illegible]es in favour of [illegible]ma[illegible]v [illegible] safest More- [illegible]ot ortional reserve [illegible]ntirety. In the [illegible] [illegible]ere the propor- [illegible]niss[illegible]n. [illegible]e Bank has, in [illegible]ence [illegible]

addition to the 40% gold backing against the note issue, a further gold reserve of 35% and 40% respectively against its banking liabilities. If we must have the proportional reserve system, let us have it in an honest form at least.

Secondly, the power given to the Bank under clause 25 (*6*) of the Bill to invest the assets of its Issue Department in the balances and securities of what are called "gold standard countries" is full of risk. Countries which may be on gold standard to-day might cease to be so to-morrow in case of War, political crisis or similar other emergency. The assets of the Issue Department of the Bank, if invested in these countries, will thus always remain exposed to the danger of serious depreciation and even total disappearance. I would, therefore, earnestly appeal to the Assembly not to imperil the reserve behind our note issue in this hazardous manner. The only exceptions that may be made are England and the United States of America as the probabilities of their maintaining a free gold market are always greater.

Thirdly, the agreement with the Imperial Bank, Schedule second to the Bill, is unduly generous in favour of that body. The Indian tax payer is being handed over gagged and bound hand and foot for twenty years to the tender mercies of a private shareholders' concern and, in my humble opinion, it is our sacred duty to prevent such unnecessary sacrifice to the Indian Exchequer.

JAMNADAS M. MEHTA.

The 4th August, 1927.

I differ from the majority view about the provisions in this Bill as re-drafted by the Joint Committee on the following points:—

(1) I think the words "A Gold Standard Currency" should be used in the title and in the preamble of the Bill as in the original draft. Even those words do not go as far as I would like, for I hold that free Gold Currency should be progressively introduced in India, and a beginning be made with it immediately. But I shall be content with the words "Gold Standard Currency", because they at any rate express the idea that Gold Currency is a thing to be counted with and introduced sooner or later.

(2) I cannot support sub-clause '(*d*)' of clause 7, because, in my opinion, the words are so wide that they may, besides being ineffective for the purpose contemplated, also prove mischievous by way of giving scope for litigation, on the ground that a certain person does or does not conform to the description in the clause as a candidate for election or nomination as a Director of the Bank. The explanation under '(*d*)' does not sufficiently cover this ground of objection.

(3) With regard to clause 31 and clause 48 of the revised draft taken together, I would impose upon the Bank an obligation to issue Gold Mohurs, in any quantity required, in exchange for gold bullion tendered to the Bank, at the rate of 169·5024 grains of fine gold per Mohur. And I would impose a corresponding obligation on the Governor General in Council, by a suitable revision

of the Indian Coinage Act, to mint and supply to the Bank for issue Gold Mohurs in such quantities as may be required by the Bank. I remain unconvinced by the arguments on this point advanced by the Finance Member in his Memorandum on this subject.

(4) With regard to clause 32, I am not satisfied that, in respect of sale of gold bullion in India, the price fixed is reasonable, namely, twice the normal cost per tola of transferring gold bullion in bulk from Bombay to Gold Standard countries in addition to Rs. 21-3-10.

(5) With regard to clause 38, I am against the rate fixed therein, in respect of the balances which the scheduled banks have got to maintain with the Reserve Bank. This provision imposes an unnecessarily large handicap upon the indigenous banks.

(6) With regard to clause 39, I am against the provision of the Bank entering into an agreement with the Imperial Bank of India for a fixed period of 25 years I think it is possible to get the agency work of the Bank to be performed by some of the indigenous banks at least to a certain extent, with benefit both to them and the Reserve Bank.

POONA; N. C. KELKAR.

Dated 3rd August, 1927.

The undersigned differs from his colleagues in regard to the constitution of the proposed Reserve Bank of India, and the composition of its Directorate. To begin with, serious consideration of the implications of the proposal of a State Bank has shown us the advantages of the original proposal of having the Reserve Bank in India established on the basis of a shareholders' bank. The amendments carried on 21st July last by members of the Committee favouring Indianisation without regard to the efficient working of the Bank, tend to make the Reserve Bank a tool in the hands of politicians. An important amendment, for instance, laying it down that either the Governor or Deputy Governor of the Reserve Bank [clause 8, sub-clause (*1*)] should be an Indian, was carried by the narrow majority of one, showing that a large number of the members of the Committee were in favour of giving efficiency its due.

In other amendments also where the question of control of the Bank was involved, the undersigned regrets to find that the racial element was introduced again, regardless of the principle of efficiency which, in an institution like the proposed Reserve Bank, should be the only factor guiding decisions relating to the appointment of the Managing Governor, the Deputy Governor and the other Directors. The undersigned maintains that, in the interest of the country, it is essential that no question of race, colour or creed should be allowed to have sway in the appointment of the Managing Governor, the Deputy Governor or any of the other Directors. The undersigned also differs from his colleagues on the question of electing Members of the Indian Legislature as Directors of the Bank, as the amendment which was passed by the Committee suggests. In the opinion of the undersigned, this is a dangerous intrusion of politics into an institution the sole guiding principle in whose administration should be efficiency first and last.

In the circumstances, the undersigned holds the view that no political considerations should be allowed to interfere with the working of the Bank, also that the interests of efficiency can best be served by engaging the best men available as Managing Governor or Deputy Governor, and that as at the present stage of banking in India very few Indians unfortunately have the necessary qualifications, there is, therefore, no alternative but to employ Europeans.

M. SUHRAWARDY.

The 4th August, 1927.

There are some minor points on which we do not agree with the findings of the majority of our colleagues; but we do not think it necessary to append a dissenting minute on all these points. We have signed the report subject to our right of moving amendments in the House on the points on which we have disagreed.

V. RAMADAS PANTULU.
A. RANGASWAMI IYENGAR.
R. K. SHANMUKHAM CHETTY.

I do not agree with the majority vi[illegible] of the Committee on the following points:— pro-

(1) With regard to clause 25 (2). It [illegible] and deliberate departure from the pr[illegible] Bank of England to adopt the [illegible] it is portional reserve to the note is[illegible] will to the fixed fiduciary syste[illegible] ge has proved the soundne[illegible] om- claimed that the prop[illegible] the ensure greater elasti[illegible] o under- The so claimed elas[illegible] the violent fluctua[illegible] rency in circulati[illegible] anything, it is a [illegible] be not only an vous power in t[illegible] its sweet will, a thing, I tr[illegible] means to adv[illegible] The chief mer[illegible] and stability o[illegible] examinations [illegible] the experts ha[illegible] pronounced [illegible] safest. Even in the Bill is[illegible] United States [illegible] tional reserv[illegible] in addition t[illegible] the note issue 40%, respecti[illegible] If preference m[illegible] system [illegible] its b[illegible]

(2) I do not agree with clause 25 (*4*). In place of "8·4751", the figures "7·5334" be substituted.

(3) With regard to clause 25 (*5*). I not only do not agree with this, but strongly oppose the keeping of 15% of gold reserve outside of India on the ground that the balance of trade has always been in favour of India. In event of any exception to this taking place, it can easily be forded and met with. History shows this exception to have only occurred once in the past many many years and this cannot give a sufficient cause to justify the keeping any reserve gold outside of this country.

(4) With regard to clause 25 (*6*). This gives the Bank the power to invest the assets of its issue department in the balances and securities of the "gold standard countries". These investments are full of risks because it is a matter of common knowledge that war, political crisis and similar other emergencies would overthrow the gold standard existing the day previous. The investments, therefore, in securities in such countries, are surely exposed to a constant danger of serious depreciation and even total disappearance. I earnestly appeal, therefore, to the Indian Legislature not to imperil the reserve behind our note issue in this hazardous manner. Of course England and United States of America are exceptions, having the advantage of greater probabilities of maintaining a free gold market.

[illegible] regard to clause 31 and clause 48. th these of the revised draft together

As shap[illegible]ly of opinion that in all fairness the is on the w[illegible] issue Gold Mohurs in exchange for sound princ[illegible] tendered, at the rate of 169 5024 made more pe[illegible]old per Mohur, in any demanded three important d[illegible] would impose an obligation on ceed to state them brie[illegible] in Council to revise the to mint and supply Gold

First, the adoption in [illegible]able it to adequately [illegible]roportional reserve to t[illegible] I must say that to into the fixed fiduciary [illegible] the Hon'ble the and we[illegible]rate departure from [illegible]orand[illegible]m on the Board shou[illegible]and which experie[illegible]inc[illegible]on interests of I[illegible]s claimed for th[illegible]ixed tions of gold hat[illegible]s for gn unnec[illegible]d clause

Clause 48.—For the re[illegible]am no[illegible]he hand[illegible]olas of 66 of the Report of the S[illegible] but a[illegible] drastic[illegible]ould be are opposed to the propo[illegible] volumist, th[illegible] and half-sovereign which [illegible]n unnocate [illegible]urrency Act of 1927 onc[illegible]e[illegible]wit of [illegible]ing with The objections to this propo[illegible]tf the [illegible] not only [illegible]ained in the memorandum [illegible]f the [illegible]bsolutely [illegible]nce Member which is an[illegible]ve, aft[illegible] develop- [illegible]tee's Report. The s[illegible]fixed [illegible]can be no [illegible]bjections to th[illegible]t[illegible] the [illegible]tax payer [illegible]nd to expres[illegible]n not [illegible] and foot, [illegible]terms of mo[illegible]t and [illegible]areholders' [illegible]f the Bill as [illegible]ve[illegible] s[illegible]acred duty [illegible]ma[illegible]i[illegible]v[illegible]o[illegible]t[illegible]ce to the [illegible]ayons [illegible]o[illegible]t[illegible]o, a [illegible]—The [illegible]atively [illegible]siderable [illegible]e[illegible]e[illegible]DAS. security of promiss[illegible]ry [illegible]es Bana [illegible]ence [illegible]

I regret I am unable to agree with the majority of the members of the Committee in their decision for a Bank without share capital, and the manner in which it is suggested that the Directors be elected. I am, therefore, signing this report subject to the following minute of dissent.

In considering the establishment of a banking institution, the primary function of which is to control and stabilise credit and note issue finance great care must be exercised to ensure that its operations are directed by men of undoubted qualifications. Effective measures should be adopted not only to obviate the danger of either political or foreign influences, but to create a management whose operation will be free from political or subversive interests.

I cannot concur with the majority of the Committee on the question of a Reserve Bank without share capital. A most efficient operation of such a Bank can best be obtained by means of a shareholders' bank, for directors, who have much at stake through their ownership in industry and allied commercial interest will be more concerned with the success of the bank and its subsequent utility to the public than mere political office holders. Also there is no adequate guarantee that if the Reserve Bank is established without shareholders' capital, politicians will not canvass votes from various public bodies having a right of nominating members to the Board of Directors.

I do not incline to the opinion that a directorate responsible to private shareholders would tend to be controlled by vested interests or that conflicting motives would arise within the management of the bank between Indian and foreign capital. As for the fear that foreign vested interests might gain control, since the majority of the Board will be Indian as suggested in the report, there is nothing to prevent its refusing to allow foreigners to have any interest in the Bank. This fear may also be allayed by fixing the value of the shares to a small denomination of Rs. 100 each instead of Rs. 500 each as suggested by the Currency Commission and by reducing the maximum rate of interest to 6 per cent. in order that the shares may be easily held by small genuine investors without much temptation to dispose of them at fancy premium.

In establishing so important an institution as the Reserve Bank it would certainly seem in order to consider the methods followed by other countries of the world in effecting satisfactory reserve bank systems. The United States, Great Britain and France have found joint stock principles suitable in the creation of central banking systems which have proved efficient and there is no reason why they should not be applicable to India.

Granting, without prejudice to my opinion, that it may be desirable to start a Bank without share capital, it is contrary to the interest of any Bank to have its Directors nominated by any Legislatures. By this procedure the Bank will be consigned to the mercy of the political party in power and with so many parties in various legislatures it can be readily seen that it would

prove very difficult for them to select qualified and practical men to conduct the business of the Bank This would result in having men of many masters with possibly very little knowledge of finance at the helm Political control and political agitations are factors which should not be permitted to effect the operation of any Bank, more particularly a note issue Bank.

There is every reason to keep the authority which controls currency out of politics and it would seem to me that the one great objective in establishing a Reserve Bank is to exclude currency and exchange from the hands of Legislature and Government If, by vesting control under Legislature, the Bank is brought under Government and legislative control, its worthy object will be utterly defeated. With particular reference to the intermingling of politics and finance of the country I believe that the temptation of watering the currency is too great a one to ever be placed in the hands of political members I, therefore, maintain that a shareholders bank is the *only* possible solution for keeping politics and banking apart, particularly in a bank of this type.

The argument for the retention of sovereigns and half sovereigns as legal tender coins, I believe to be untenable, for sovereign has at no time in the past been employed as a legal tender coin Furthermore, the rate of Rs. 13-5-4 is extremely inconvenient for practical business operations.

KIKABHAI PREMCHAND.

Bombay, 8th August, 1927.

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1. I wish to make it clear that I do not give up my conviction as expressed in paragraphs 61-64 of my Minute of Dissent on the Report of the Royal Commission on Indian Currency and Finance. My view expressed there not having met with the approval of the Joint Committee, I tried on the Committee to mould the Bill in a manner least likely to injure the normality of the Indian Money Market and conditions.

2. In proviso to clause 23 of the Bill, I suggest the insertion of the word 'hundis' after the word 'cheques'.

PURSHOTAMDAS THAKURDAS.

The 9th August, 1927.

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1 I have signed a joint note with Messrs. A. Rangaswami Iyengar and R K Shanmukham Chetty

2 In addition to the matters referred to therein, I wish to express my dissent on the following points also.

3 I cannot agree to clause 5, sub-clause (*d*) As it stands, it will keep out from the Board men of eminence in public affairs who were engaged in the professions of Law, Medicine, Teaching, and the like The clauses in other enactments establishing Central Banks which require directors to be men who are or have been actively engaged in Agriculture, Commerce, Finance or Industry appear as qualification clauses in the case of a portion of the directorate and not in the form of a general disqualification clause.

Clause 8 (1) (a)—My recollection is that the amendment proposed in the Joint Committee was to the effect that of the Governor and Deputy Governor one *at least* shall be an Indian The words *at least* do not appear in the clause as finally printed. In any case I press for the words *at least* being inserted to make the intention clear that both may be Indians, if possible.

V. RAMADAS PANTULU

As regards the constitution I have an open mind.

FAZAL I. RAHIMTOOLA.

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1. I am opposed to the principle of making Central or Provincial Legislature as constituencies to elect directors of the Bank;

2. Any scheme of Directors which is finally adopted should contain—

(*a*) a general provision to the effect that the interests of agriculturists and minority communities are fairly and adequately represented;

(*b*) His Excellency the Viceroy shall nominate 4 directors.

GHAZANFAR ALI.

M246LD—13—18-8-28—GIPS

[AS AMENDED BY THE JOINT COMMITTEE.]

[Words printed in italics indicate the amendments suggested by the Committee.]

A

BILL

TO

Establish a gold standard for British India, and constitute a Reserve Bank of India.

WHEREAS it is expedient to provide for the establishment of a gold standard for British India; to constitute a Reserve Bank of India to control the working of that standard and regulate the issue of bank notes and the keeping of reserves with a view to securing stability in the monetary system of British India; and generally to make provisions for matters incidental thereto; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent, commencement and duration

1. (*1*) This Act may be called the Gold Standard and Reserve Bank of India Act, 1927.

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(*3*) This section shall come into force at once, and the remaining provisions of this Act shall come into force shall be on such date or dates, not later than the Gen day of *July*, 1929, as the Governor General in Council may, by notification in the Gazette of India, appoint.

(*4*) Chapter III shall be in force for a period of twenty-five years, and its operation may thereafter be extended for such further period or periods as the Governor General in Council may, by notification in the Gazette of India, direct.

Definitions.

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

(*a*) "the Bank" means the Reserve Bank of India constituted by this Act;

(*b*) "the Banking Department" means and includes all departments of the Bank other than the Issue Department;

(*c*) "bank rate" means the rate published by the Bank under section *41*;

(*d*) "the Board" means the Board of Directors constituted in accordance with section *8*;

(*e*) "bank note" means *paper money issued by a bank*;

(*f*) "gold standard country" means any country, other than British India, from which any person is at liberty to export gold and in which any person may obtain gold on demand from the

principal currency authority on payment of the equivalent thereof, as prescribed by law, in legal tender currency;

(*g*) "Issue Department" means that department of the Bank which is charged by section *17* with the conduct and management of the note issue;

(*h*) "*provincial co-operative bank*" *means any society or company registered or deemed to be registered under the Co-operative Societies Act, 1912, or registered under the Indian Companies Act, 1913, whose sole business and object is the financing of those societies in a province which are registered societies as defined in the Co-operative Societies Act, 1912;* II of 1912. VII of 1913. II of 1912.

(*i*) "the Reserve" means the assets of the Issue Department as specified in section *25*;

(*j*) "the Reserve Fund" means the Reserve Fund referred to in section *40*;

(*k*) "rupee coin" means silver rupees which are legal tender under the provisions of the Indian Coinage Act, 1906; and III of 1906.

(*l*) "scheduled bank" means a bank *included* in the First Schedule.

CHAPTER II.

INCORPORATION, CAPITAL, MANAGEMENT AND BUSINESS.

Establishment and incorporation of the Reserve Bank of India.

3. (*1*) A Bank to be called the Reserve Bank of India shall be constituted for the purposes of taking over the management of the currency from the Governor General in Council and of carrying on the business of banking in accordance with the provisions of this Act.

Establishment and incorporation of Reserve Bank.

(*2*) The Bank shall be a body corporate by the name of the Reserve Bank of India, having perpetual succession and a common seal, and shall by the said name sue and be sued.

Capital.

4. (*1*) *The original capital of the Bank shall be five crores of rupees which shall be subscribed by the Governor General in Council.*

Capital of the Bank.

(*2*) *The capital of the Bank may, with the previous sanction of the Governor General in Council, be increased or decreased in such manner and to such extent as the Board thinks necessary; and any such increase of capital shall be subscribed by the Governor General in Council.*

Head Office, Branches and Agencies.

5. The Head Office of the Bank shall be established in Bombay, and the Bank shall have branches in Calcutta, Madras, *Rangoon* and London, and may establish branches or agencies in any other places in India or, *with the previous sanction of the Governor General in Council,* elsewhere.

Branches and agencies.

Management of the Bank.

Management.

6. The general superintendence of the affairs and business of the Bank shall be entrusted to a Board of Directors which may exercise all powers and do all such acts and things as may be exercised or done by the Bank *under this Act.*

Certain persons disqualified for directorships.

7. Save as expressly provided in this Act, no person may be a Director who—

(*a*) is an officer of Government, or

(*b*) is a Director of any other bank *not being a registered society as defined in the Co-operative Societies Act, 1912*, or II of 1912.

(*c*) is an officer or employee of any bank, or

(*d*) *is not or has not at some time been actively engaged in agriculture, commerce, finance or industry.*

Explanation.—For the purposes of clause (d), a person who is or has been a director of any company as defined in clause (2) of section 2 of the Indian Companies Act, 1913, or of a corporation VII of 1913. *or company incorporated by or under any law for the time being in force in any place outside British India shall be deemed to be or to have been actively engaged in commerce, finance or industry.*

Composition of Board

8. (*1*) The Board shall consist of the following Directors, namely:—

(*a*) a Governor and a Deputy Governor, *of whom one shall be an Indian and* who shall be appointed by the Governor General in Council for a period of five years and shall devote their whole time to the affairs of the Bank, and shall receive such salaries and allowances respectively as may be determined by the Board:

Provided that the salaries and allowances of the first Governor and Deputy Governor shall be such as may be fixed by the Governor General in Council;

(*b*) *two Directors, who shall be Indians, nominated by the Governor General in Council;*

(*c*) *four Directors, of whom two shall be elected by the Associated Chambers of Commerce and two shall be elected by the Federation of the Indian Chambers of Commerce;*

(*d*) *one Director to be elected by the provincial co-operative banks;*

(*e*) *three Directors to be elected by the elected members of the Indian Legislature, of whom one shall be elected to represent the interests of commerce and industry;*

(*f*) *three Directors to be elected by the elected members of the Legislatures of the Governors' provinces, of whom two shall be elected to represent the interests of agriculture and one to represent the interests of commerce and industry;*

(g) an officer of the Government appointed by the Governor General in Council.

(2) Before appointing any Governor or Deputy Governor other than the first, the Governor General in Council shall consider any recommendation made by the Board in that behalf.

(3) The Directors elected under clauses (c) and (d) of sub-section (1) shall hold office for a period of five years, and the Directors nominated or elected under clauses (b), (e) and (f) shall hold office for a period of three years, but any Director shall be eligible for re-nomination or re-election.

(4) The Director appointed under clause (g) of sub-section (1) may attend any meeting of the Board and take part in its deliberations, but shall not be entitled to vote on any question arising at any such meeting.

(5) Any Director nominated or elected to fill a casual vacancy shall hold office only for the unexpired portion of the term of office of his predecessor, but shall be eligible for re-nomination or re-election.

(6) All elections under this section shall be according to the principle of proportional representation by means of the single transferable vote, and shall be held in accordance with regulations made by the Governor General in Council and published in the Gazette of India.

(7) Regulations made under sub-section (6) may provide for all matters for which provision is, in the opinion of the Governor General in Council, necessary or expedient for the proper conduct of elections or for the final decision of doubts or disputes regarding the qualifications of any candidate for election or regarding the validity of elections.

Removal of Governor, Deputy Governor or Director.

9. The Governor or Deputy Governor or any Director *other than the Director* appointed under clause (*g*) of sub-section (*1*) of section *8*, may be removed from office by the Governor General in Council before the expiration of his period of office, if a resolution is passed in this behalf by the Board by a majority consisting of not less than *ten* Directors.

Meetings of Board.

10. Meetings of the Board shall be convened at *least* once in each month by the Governor. Meetings shall ordinarily be held in Bombay, but *at least three* meetings of the Board shall be held in Calcutta in *each year*.

Business of the Bank.

Business which the Bank may transact.

11. The Bank shall be authorised to carry on and transact the several kinds of business hereinafter specified, namely:—

(*1*) the accepting of money on deposit without interest from, and the collection of money for, *any* person;

(2) (*a*) the purchase, sale and rediscount of bills of exchange and promissory notes, *drawn and* payable in India and arising out of *bonâ fide* commercial or trade transactions, bearing two or more good signatures, one of which shall be that of a *scheduled* bank, and maturing within ninety days from the date of such purchase or rediscount, *exclusive of days of grace* ;

(*b*) the purchase, sale and rediscount of bills of exchange and promissory notes, *drawn and payable in India and* bearing two or more good signatures, one of which shall be that of a *scheduled* bank *or a provincial co-operative bank, and* drawn or issued for the purpose of financing seasonal agricultural operations or the marketing of crops, and maturing within six months from the date of such purchase or rediscount, *exclusive of days of grace* : provided that the *total* face value of bills or notes so purchased or rediscounted shall not at any time exceed one-*fourth* of the total face value of all bills and notes purchased or rediscounted by the Bank *up to that time* ;

(*c*) the purchase, sale and rediscount of bills of exchange and promissory notes, *drawn and payable in India and* bearing the signature of a *scheduled* bank, and issued or drawn for the purpose of holding or trading in securities *of the Government of India or a Local Government*, and maturing within ninety days from the date of such purchase or rediscount, *exclusive of days of grace* ;

(3) the purchase from and sale to *scheduled* banks and persons approved by the Board, in amounts of not less than the equivalent of one *lakh of* rupees, of the currencies of *such* gold standard countries *as may be specified in this behalf by the Governor General in Council by notification in the Gazette of India*, and of bills of exchange (including treasury bills) drawn in or on any place in any such country, and maturing within ninety days from the date of such purchase, *exclusive of days of grace* ; and the keeping of balances with banks in such countries ;

(4) the making of loans and advances, *repayable on demand or on the expiry of* fixed periods not exceeding ninety days, against the security of—

(*a*) stocks, funds and securities (other than immoveable property) in which a trustee is authorised to invest trust money by any Act of Parliament or by any *law for the time being in force in British India* ;

(*b*) gold coin *or* bullion, or documents of title to the same ;

(*c*) such bills of exchange and promissory notes as are eligible for purchase or rediscount by the Bank: provided that *the total of the* loans and advances against such securities as are referred to in sub-clause (*b*) of clause (*2*) shall not *at any time* exceed one-*fourth* of the total loans and advances made by the Bank *up to that time*;

(*d*) such bills of exchange as are eligible for purchase by the Bank under clause (*3*);

(*e*) promissory notes of any *scheduled* bank *or a provincial co-operative bank*, supported by documents *evidencing* title to goods which have been transferred, assigned, hypothecated *or pledged* to any such bank as security for a cash credit granted for *bonâ fide* commercial or trade transactions, or for the purpose of financing seasonal agricultural operations or the marketing of crops: provided that no loan or advance shall be made on the security of any promissory note such as is referred to in this sub-clause after the expiry of five years from the date on which this section comes into force;

(*5*) the making of advances to the Governor General in Council repayable in each case not later than three months after the close of the financial year in respect of which the advance has been made;

(*6*) the issue of demand drafts and the making, issue and circulation of bank post bills made payable on its own branches;

(*7*) the purchase and sale of securities, maturing within five years from the date of such purchase, of the Government of any gold standard country *specified in this behalf by the Governor General in Council by notification in the Gazette of India*;

(*8*) *the purchase and sale of securities of the Government of India of any maturity, or of a Local Government or of a local authority in British India maturing within ten years from the date of purchase: provided that the amount of such securities held at any time in the Banking Department shall be so regulated that—*

(*a*) *the total value of such securities shall not exceed the aggregate amount of the capital of the Bank, the Reserve Fund and two-fifths of the liabilities of the Banking Department in respect of deposits;*

(*b*) *the value of such securities maturing after six months shall not exceed the aggregate amount of the capital of the*

Bank, the Reserve Fund and one-fifth of the liabilities of the Banking Department in respect of deposits;

(*c*) *the value of such securities maturing after one year shall not exceed the aggregate amount of the capital of the Bank, the Reserve Fund and one-tenth of the liabilities of the Banking Department in respect of deposits; and*

(*d*) *the value of such securities maturing after ten years shall not exceed the aggregate amount of the capital of the Bank and the Reserve Fund;*

(*9*) the custody of monies, securities and other articles of value, and the collection of the proceeds, whether principal, interest or dividends, of any such securities;

(*10*) the sale and realisation of all property, whether moveable or immoveable, which may in any way come into the possession of the Bank in satisfaction, or part satisfaction, of any of its claims;

(*11*) the acting as agent for the Secretary of State in Council, the Governor General in Council or any Local Government in the transaction of any of the following kinds of business, namely —

(*a*) the purchase and sale of gold or silver;

(*b*) the purchase, sale, transfer and custody of bills of exchange, securities or shares in any company;

(*c*) the collection of the proceeds, whether principal, interest or dividends, of any securities or shares;

(*d*) the remittance of such proceeds, at the risk of the principal, by bills of exchange payable either in India or elsewhere;

(*e*) the management of public debt;

(*12*) the purchase and sale of gold coin and bullion;

(*13*) the opening of an account with, and the acting as agent or correspondent of, any other bank *which is the principal currency authority of a gold standard country under the law for the time being in force in that country or any of the Federal Reserve Banks in the United States of America;*

(*14*) *the borrowing of money for a period not exceeding one month for the purposes of the business of the Bank, and the giving of security for money so borrowed:*

Provided that the total amount of such borrowings shall not at any time exceed five crores of rupees or half the aggregate amount of the capital of the Bank and of the Reserve Fund for the time being whichever is greater.

Provided, further, that no money shall be borrowed under this clause from any person in British India other than a scheduled bank;

(*15*) the making and issue of bank notes subject to the provisions of this Act, and

(*16*) generally, the doing of all such matters and things as may be incidental or subsidiary to the transaction of the various kinds of business hereinbefore specified.

Power of direct discount.

12. *When, in the opinion of not less than two-thirds of the Directors present at a meeting of the Board, it is necessary or expedient that action should be taken under this section in the interests of Indian trade or commerce or for the purpose of enabling the Bank to perform any of its functions under this Act,* the Bank may, notwithstanding any limitation contained in sub-clauses (*a*) and (*b*) of clause (*2*) of section *11*, purchase, sell or discount any bills of exchange or promissory notes *drawn and payable in India and* arising out of *bonâ fide* commercial or trade transactions, bearing two or more good signatures and maturing within ninety days from the date of such purchase or discount, *exclusive of days of grace.*

Business which the Bank may not transact.

13. Save as otherwise provided in sections *11* and *12*, the Bank may not—

(*1*) engage in trade or otherwise have a direct interest in any commercial, industrial, or other undertaking, except such interest as it may in any way acquire in the course of the satisfaction of any of its claims: provided that all such interests shall be disposed of at the earliest possible moment;

(*2*) *purchase* the shares of any other bank or of any company, or grant loans upon the security of any such shares;

(*3*) advance money on mortgage of, or otherwise on the security of, immoveable property or documents of title relating thereto, or become the owner of immoveable property, except so far as is necessary for its own business premises and residences for its officers and servants;

(*4*) make unsecured loans or advances;

(*5*) draw or accept bills payable otherwise than on demand;

(*6*) allow interest on deposits *or current accounts.*

CHAPTER III.

CENTRAL BANKING FUNCTIONS.

Relations of the Bank with the Secretary of State in Council, the Governor General in Council and Local Governments.

Obligation of Bank to transact Government business.

14. The Bank shall undertake to accept monies for account of the Secretary of State in Council and the Governor General

in Council *and such Local Governments as may have the custody and management of their own provincial revenues*, and to make payments up to the amount standing to the credit of their accounts respectively, and to carry out their exchange, remittance and other banking operations, including the management of the *public* debt, on such conditions as may be agreed upon.

Bank to have the right to transact Government business.

15. (*1*) The Governor General in Council *and such Local Governments as may have the custody and management of their own provincial revenues* shall undertake to entrust the Bank, on such conditions as may be agreed upon, with all *their* money, remittance, exchange and banking transactions in India and elsewhere and, in particular, to deposit free of interest all *their* cash balances with the Bank:

Provided that nothing in this sub-section shall prevent the Governor General in Council *or any Local Government* from carrying on money transactions at Government treasuries or sub-treasuries at places where the Bank has no branches or agencies, and the Governor General in Council *and Local Governments* may hold at such treasuries and sub-treasuries such balances as *they* may require.

(*2*) The Governor General in Council *and each Local Government* shall undertake to entrust the Bank, on such conditions as may be agreed upon, with the management of the *public* debt and with the issue of any new loans.

Note Issue.

Right to issue bank notes.

16. (*1*) The Bank shall have the sole right to issue bank notes in British India, and may, for a period of one year from the date on which this Chapter comes into force, issue currency notes of the Government of India supplied to it by the Governor General in Council, and the provisions of this Act applicable to bank notes shall, unless a contrary intention appears, apply to all currency notes of the Government of India issued either by the Governor General in Council or by the Bank in like manner as if such currency notes were bank notes, and references in this Act to bank notes shall be construed accordingly.

(*2*) On and from the aforesaid date the Governor General in Council shall not issue any currency notes or any other kind of paper money.

Issue Department.

17 (*1*) The issue of bank notes shall be conducted by the Bank in an Issue Department which shall be separated and kept wholly distinct from the Banking Department, and the assets of the Issue Department shall not be subject to any liability other than the liabilities of the Issue Department as hereinafter defined in section 26.

(*2*) The Issue Department shall not issue bank notes to the Banking Department or to any other person except in exchange for other bank notes or for such coin, bullion or securities as are permitted by this Act to form part of the Reserve.

Denominations of notes.

18. Bank notes shall be of the denominational values of *one-quarter mohur or* five rupees, *one-half mohur or* ten rupees, *one mohur or* twenty rupees, *two-and-a-half mohurs or* fifty rupees, *five mohurs or* a hundred rupees, *twenty-five mohurs or* five hundred rupees, *fifty mohurs or* a thousand rupees, and *five hundred mohurs or* ten thousand rupees, and of such other denominational values, if any, as may be directed by the Governor General in Council.

Form of bank notes.

19. The design, form and material of bank notes shall be such as may be approved by the Governor General in Council.

Legal tender character of notes

20. (*1*) Subject to the provisions of sub-section (*2*), every bank note shall be legal tender at any place in British India in payment or an account for the amount expressed therein, and shall be guaranteed by the Governor General in Council.

(*2*) The Governor General in Council may, by notification in the Gazette of India, declare that, with effect from such date as may be specified in the notification, any series of bank notes of any denomination shall cease to be legal tender save at an office or agency of the Bank.

Re-issue of notes.

21. Any bank note re-issued from any office of the Bank shall be sterilized and disinfected before re-issue, and the Bank shall not re-issue bank notes which are torn, defaced or excessively soiled.

Recovery of notes lost, stolen, mutilated or imperfect.

22. Notwithstanding anything contained in any enactment or rule of law to the contrary, no person shall of right be entitled to recover from the Bank the value of any lost, stolen, mutilated or imperfect bank note :

Provided that the Bank may, with the previous sanction of the Governor General in Council, prescribe the circumstances in, and the conditions and limitation subject to, which the value of such bank notes may be refunded as of grace.

Prohibition of issue of private bills or notes payable to bearer on demand.

Issue of demand bills and notes.

23. No person in British India other than the Bank or, as expressly authorised by this Act, the Governor General in Council, shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person :

Provided that cheques or drafts payable to bearer on demand or otherwise may be drawn on *a person's account with a* banker, shroff or agent.

Penalty.

24. (*1*) Any person contravening the provisions of section 23 shall, on conviction by a Presidency Magistrate or a Magistrate of the first class, be punishable with a fine equal to the

amount of the bill, hundi, note or engagement in respect whereof the offence is committed.

(2) No prosecution under this section shall be instituted except on complaint made by the Bank.

Assets of the Issue Department.

The Reserve.

25. (1) The Reserve shall consist of gold coin, gold bullion, gold securities, rupee coin and rupee securities to such aggregate amount as is not less than the total of the liabilities of the Issue Department as hereinafter defined.

(2) Of the total amount of the Reserve, not less than two-fifths shall consist of gold coin, gold bullion or gold securities :

Provided that the amount of gold coin and gold bullion shall not at any time be less than *thirty crores of* rupees in value and shall not be less than one-fifth of the total amount of the Reserve after the end of the fifth year, or than one-quarter of the total amount of the Reserve after the end of the tenth year, from the date on which this Chapter comes into force, *and that, after the end of the tenth year aforesaid, not more than one-half of the total amount of gold coin, gold bullion and gold securities shall at any time consist of gold securities.*

(3) The remainder of the Reserve shall be held in rupee coin, Government of India rupee securities of any maturity and such bills of exchange and promissory notes drawn and payable in British India as are eligible for purchase by the Bank under sub-clause (*a*) or sub-clause (*b*) of clause (2) of section *11* or under section *12* :

Provided that the amount held in rupee coin shall not exceed—

(*a*) during the three years after the date on which this Chapter comes into force, *ninety-five crores of* rupees,

(*b*) during the next three years, *seventy-five crores of* rupees,

(*c*) during the next four years, *sixty crores of* rupees, and

(*d*) *fifty crores of* rupees thereafter,

or one-tenth of the total amount of the Reserve, whichever amount is greater :

Provided, further, that the amount held in Government of India rupee securities shall not at any time exceed one-fourth of the total amount of the Reserve or five hundred million rupees, whichever amount is less.

(4) For the purposes of this section, gold coin (*other than sovereigns, half-sovereigns and mohurs*) and gold bullion shall be valued at 8·47512 grains of fine gold per rupee, *sovereigns, half-sovereigns and mohurs and* rupee coin shall be valued at *their face* value, and gold and rupee securities shall be valued at the market rate for the time being obtaining.

(5) Of the gold coin and gold bullion held in the Reserve not less than *seventeen-twentieths* shall be held in British India, and all gold coin and gold bullion forming part of the Reserve shall be held in the custody of the Bank or its agencies :

Provided that gold belonging to the Bank which is in any other bank or in any mint or in transit may be reckoned as part of the Reserve.

(6) For the purposes of this section, the gold securities which may be held as part of the Reserve shall be securities of any of the following kinds payable in the currency of any *of such* gold standard countries *as may be specified in this behalf by the Governor General in Council by notification in the Gazette of India, namely* :—

(*a*) balances at the credit of the Issue Department with a bank which is the principal currency authority under the law for the time being in force of such country, *or with any of the Federal Reserve Banks in the United States of America;*

(*b*) securities, maturing within five years, of the Government *of any part of His Majesty's dominions which is a gold standard country or of any other gold standard country specified in this behalf by the Governor General in Council by notification in the Gazette of India*:

Provided that, for a period of two years from the date on which this Chapter comes into force,—

(*i*) any of such *last-mentioned* securities may be securities maturing after five years, and the Bank may, at any time before the expiry of that period, dispose of such securities notwithstanding anything contained in section *11, and*

(*ii*) *sterling securities of the Government of India may be held as part of the Reserve.*

Liabilities of the Issue Department.

26. (*1*) The liabilities of the Issue Department shall be an amount equal to the total of the amount of the currency notes of the Government of India and bank notes for the time being in circulation and of an initial amount of *fifty crores of* rupees for the purpose of providing for rupee redemption, which last-mentioned amount shall be reduced by one rupee for every five rupees delivered to the Governor General in Council under the provisions of section *28*, and shall be increased by one rupee for every five rupees received from him under section *29*.

Liabilities.

(*2*) For the purposes of this section, any currency note of the Government of India or bank note which has not been presented for payment within forty years from the 1st day of April following the date of its issue shall be deemed not to be in circulation, and the value thereof shall, notwithstanding anything contained in subsection (*2*) of section *17*, be paid by the Issue Department to the Governor General in Council or the Banking Department, as the case may be; but any such note, if subsequently presented for payment, shall be paid by the Banking Department, and any such payment in the case of a currency note of the Government of India shall be debited to the Governor General in Council.

Initial Assets and Liabilities.

Transfer of assets and liabilities to the Bank.

27. On the date on which this Chapter comes into force, the Issue Department shall take over from the Governor General in Council the liability for all the currency notes of the Government of India for the time being in circulation, and the Governor General in Council shall transfer to the Issue Department gold coin, gold bullion, gold securities, rupee coin and rupee securities to such aggregate amount as is equal to the total of the amount of the liability so transferred and of a sum of *fifty crores of* rupees. The coin, bullion and securities shall be transferred in such proportion as to comply with the requirements of section 25:

Provided that the total amount of the gold coin, gold bullion and gold securities so transferred shall not be less than one-half of the whole amount transferred.

Supply of coin, and of different forms of legal tender currency.

Delivery to Government of surplus rupee coin.

28. The Bank may deliver to the Governor General in Council all rupee coin held by it in excess of the amount which the Issue Department is permitted to hold as part of the Reserve under section 25, against payment of four rupees in bank notes, gold or gold securities for every five rupees so delivered.

Purchase of rupee coin.

29. When the amount of rupee coin for the time being held in the Reserve does not exceed two hundred and fifty millions, or one-tenth of the total amount of the Reserve, whichever is greater, the Bank may demand delivery of rupee coin from the Governor General in Council, on payment of four rupees in bank notes, gold or gold securities for every five rupees so delivered.

Obligations of Government and Bank in respect of rupee coin.

30. The Governor General in Council shall undertake not to re-issue any rupee coin delivered under section 28 nor to put into circulation any new rupees, except through the Bank and on the Bank's demand, and the Bank shall undertake not to dispose of rupee coin otherwise than for the purposes of circulation or by delivery to the Governor General in Council under that section.

Obligation to supply different forms of currency

31. The Bank shall issue rupee coin on demand in exchange for currency notes of the Government of India, and shall issue currency notes or bank notes on demand in exchange for coin, *which is legal tender under the Indian Coinage Act, 1906*, and it shall, III of 1906 in exchange for currency notes or bank notes of five rupees or upwards, supply currency notes or bank notes of lower value or *mohurs or* rupees or other coins which are legal tender under the Indian Coinage Act, 1906, in such quantities as may, III of 1906. in the opinion of the Bank, be required for circulation; and the Governor General in Council shall, subject to the provisions of section 29,

and of sub-section (1) of section 3A of the Indian Coinage Act, 1906, supply such *mohurs*, rupees or other coins to the Bank on demand. If the Governor General in Council at any time fails to discharge this duty, the Bank shall be released from its obligations to supply such coins to the public. III of 1906

Obligation to sell gold and gold exchange.

Sale of gold.

32. (*1*) The provisions of this section shall have effect from such date, not later than the 1st day of *July*, 1931, as the Governor General in Council may, by notification in the Gazette of India, appoint.

(*2*) The Bank shall sell gold bullion for delivery in Bombay to any person who makes a demand in that behalf at its office at Bombay, Calcutta, Madras *or Rangoon* and pays in legal tender currency the purchase price as determined under the provisions of this section:

Provided that no person shall be entitled to demand an amount of gold bullion containing less than *250* tolas of fine gold.

(*3*) The price of gold bullion for delivery in Bombay shall be twenty-one rupees, three annas and ten pies per tola of fine gold with an addition representing twice the normal cost per tola of transferring gold bullion in bulk from Bombay to *such place in a gold standard country as may be specified in this behalf by the Governor General in Council by notification in the Gazette of India*, including interest on its value during transit:

Provided that no such addition shall be made when the rate at which the currency of the country in which the place *so specified* is situate can be purchased in Bombay for immediate delivery at that place is such that the equivalent of the price at which the principal currency authority of that country is bound by law to give gold in exchange for currency is less than twenty-one rupees, three annas and ten pies per tola of fine gold *by an amount equal to or greater than* the normal cost per tola of transferring gold bullion in bulk from the *specified* place *to Bombay*, including interest on its value during transit,

(*4*) The Governor General in Council shall from time to time determine, in accordance with the provisions of sub-section (*3*), the price at which the Bank shall sell gold bullion for delivery in Bombay, and shall notify the price so determined in the Gazette of India. Such notification shall be conclusive as between the Bank and any other person as to the price which the Bank shall be entitled to charge in respect of any sale of gold bullion.

Sale of gold exchange.

33. (*1*) The Bank shall sell, to any person who makes a demand in that behalf at its office at Bombay, Calcutta, Madras *or Rangoon* and pays the purchase price in legal tender currency, at a rate equivalent to twenty-one rupees, three annas and ten pies per tola of fine gold, the currency of such gold standard country as may be notified in this behalf by the Governor General in Council in the Gazette of India, for immediate delivery in that country:

Provided that no person shall be entitled to demand an amount of currency of less value than that of *250* tolas of fine gold.

(*2*) For the purpose of determining the equivalent rate applicable to the sale of currency under this section, twenty-one rupees, three annas and ten pies shall be deemed to be equivalent to such sum in that currency as is required to purchase one tola of fine gold in that country at the rate at which the principal currency authority of that country is bound by law to give *currency* in exchange for *gold*, after deduction therefrom of an amount representing the normal cost per tola of transferring gold bullion in bulk from Bombay to that country, including interest on its value during transit.

(*3*) The Governor General in Council shall from time to time determine the equivalent rate in accordance with the provisions of sub-section (*2*), and shall notify the rate so determined in the Gazette of India.

Obligation to buy gold.

34. The Bank shall buy, from any person who makes a demand in that behalf at its office in Bombay, Calcutta, Madras *or Rangoon*, gold bullion for delivery in Bombay at the rate of twenty-one rupees, three annas and ten pies per tola of fine gold, if such gold is tendered in the form of bars containing not less than *250* tolas of fine gold :

Obligation of Bank to buy gold

Provided that the Bank shall be entitled to require such gold bullion to be melted, assayed *and refined*, by persons approved by the Bank, at the expense of the person tendering the bullion.

Suspension of Reserve requirements and tax on note issue.

35. (*1*) The Bank may, with the previous sanction of the Governor General in Council, for periods not exceeding thirty days in the first instance, which may, with the like sanction, be extended from time to time by periods not exceeding fifteen days, hold in the Reserve gold coin, gold bullion or gold securities of less aggregate amount than that required by sub-section (*2*) of section *25* and, whilst the holding is so reduced, the proviso to that sub-section shall cease to be operative.

Suspension of Reserve requirements.

(*2*) In respect of any period during which the holding of gold coin, gold bullion and gold securities is reduced under sub-section (*1*), the Bank shall pay to the Governor General in Council a tax upon the amount by which such holding is reduced below the minimum prescribed by sub-section (*2*) of section *25* ; such tax shall be payable at the bank rate for the time being in force with an addition of one per cent. per annum when such holding exceeds thirty-two and-a-half per cent. of the total amount of the Reserve and of a further one-and-a-half per cent. per annum in respect of every further decrease of two-and-a-half per cent. or part of such decrease :

Provided that the tax shall not in any event be payable at a rate less than six per cent. per annum.

Bank exempt from further note tax

36. Save as provided by section 35, the Bank shall not be liable to the payment of any stamp duty or other duty or tax in respect of bank notes issued by it.

Duration of the privilege of note issue.

Powers of Government in respect of note issue and assets of the Bank in certain circumstances.

37. If at any time the Bank fails to comply with any provision of this Chapter or with any other provision of this Act, the Governor General in Council may, by notification in the Gazette of India, declare that the Bank has forfeited the right of note issue, and shall thereupon take over the liabilities of the Issue Department, together with such portion of the assets of the Bank as is required to meet such liabilities, and thereafter the business of the Issue Department shall be carried on in the manner prescribed by this Act by such agency as the Governor General in Council may determine.

Cash reserves to be maintained by banks.

Cash reserves of certain banks to be kept with the Bank.

38. (*1*) *Every scheduled bank shall maintain a balance with the Reserve Bank the amount of which shall at no time be less than* seven and one-half per cent. *of the daily average* of the demand, and two and one-half per cent. *of the daily average* of the time liabilities of such bank in India.

(*2*) *For the purposes of sub-section* (*1*), *the daily average of the amounts of the demand and time liabilities of each scheduled bank shall be computed in respect of each period ending on the fifteenth and on the last day of each month.*

(*3*) Every such bank shall send to the Governor General in Council and to the Bank a monthly return signed by two responsible officers of such bank, showing—

(*a*) the amounts of its demand and time liabilities respectively in India,

(*b*) the total amount held in India in currency notes of the Government of India and bank notes,

(*c*) the amounts held in India in rupee coin and subsidiary coin respectively,

(*d*) the amounts of advances made and of bills discounted in India respectively, and

(*e*) the balance held at the Bank,

at the close of the month to which the return relates.

(*4*) Every such return shall be sent not later than fourteen days after the close of the month to which it relates, and shall state whether the bank has during that month maintained with the Reserve Bank the minimum balance required by sub-section (*1*).

(*5*) Any bank failing to comply with the provisions of sub-section (*3*) or sub-section (*4*) shall be liable, on application made by or on behalf of the Governor General in Council to the principal Civil Court having jurisdiction in a place where an office of the bank is situated, to a penalty of one hundred rupees for each day during which the failure continues.

(6) When it appears from any such monthly return or from a report of the Board that any *scheduled* bank has failed to maintain the minimum balance required by sub-section (*1*), the Governor General in Council may call for such further return, or make such inspection of the books and accounts of *that* bank, as may be necessary to ascertain the amount of the deficiency, *if any*, and the period during which it has continued; and *a* bank so in default shall be liable, on application made by or on behalf of the Governor General in Council to the principal Civil Court having jurisdiction in a place where an office of the bank is situated, to a penalty at a rate per annum which shall be three per cent. above the bank rate on the amount of the deficiency for each day during which the default has continued, and shall be raised to five per cent. above the bank rate after the first seven days of the deficiency.

(7) *The Governor General in Council shall, by notification in the Gazette of India, direct the inclusion in the First Schedule of any company, not already so included, which carries on the business of banking in British India and which—*

(*a*) *is a company as defined in clause* (*2*) *of section 2 of the Indian Companies Act, 1913, or a corporation or company incorporated by or under any law in force in any place outside British India, and* VII of 1913.

(*b*) *has a paid-up capital and reserves of an aggregate value of not less than three lakhs of rupees;*

and shall, by a like notification, direct the exclusion from that Schedule of any scheduled bank the aggregate value of whose paid-up capital and reserves at any time becomes less than three lakhs of rupees.

Agreement with the Imperial Bank of India.

39. The Bank shall enter into an agreement with the Imperial Bank of India which shall be subject to the approval of the Governor General in Council and shall be expressed to come into force on the date on which this Chapter comes into force and to remain in force for twenty-five years, and shall further contain the provisions set forth in the Second Schedule.

Agreement with the Imperial Bank

CHAPTER IV.

General Provisions.

Reserve Fund and allocation of surplus.

40. After making provision for bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds, and such other contingencies as are usually provided for by bankers, one-half of the *net annual profits of the Bank* shall be allocated to a Reserve Fund, until such Reserve Fund is equal to *two-and-one-half*

Allocation of surplus.

crores of rupees, and the remaining one-half shall be paid to the Governor General in Council. Thereafter, until the Reserve Fund is equal to *five crores of rupees*, one-tenth of the *net annual profits* shall be allocated to the Reserve Fund, and the balance shall be paid to the Governor General in Council. When the Reserve Fund is equal to *five crores of rupees, the whole of the net annual profits* shall be paid to the Governor General in Council.

Provided that, until the Reserve Fund is equal to *five crores of rupees, fifty lakhs of* rupees of the *net annual profits*, or the whole of *such profits* if *they are* less than that amount, shall be allocated to the Reserve Fund:

Provided, further, that the Board may, with the sanction of the Governor General in Council, if the Reserve Fund is equal to five crores of rupees, allocate a sum not exceeding one-twentieth of the net annual profits in any year to the repayment, in whole or in part, of any of its capital subscribed by the Governor General in Council, in which case an amount equal to the amount of the capital so repaid shall be added to the Reserve Fund.

Bank rate.

Publication of bank rate.

41. The Bank shall make public from time to time the minimum rate at which it is prepared to buy or rediscount bills of exchange or other commercial paper eligible for purchase under this Act.

Audit.

Auditors.

42. (*1*) *The auditors of the Bank shall not be less than two in number, shall be appointed annually by the Board, and shall receive such remuneration as the Board may determine.*

(*2*) *Any casual vacancy during a year in the office of any auditor shall be filled by the Board.*

Appointment of special auditors by Government.

43. Without prejudice to anything contained in section 42, the Governor General in Council may at any time appoint such auditors as he thinks fit to examine and report upon the accounts of the Bank.

Powers and duties of auditors.

44. (*1*) Every auditor shall be supplied with a copy of the annual balance-sheet, and it shall be his duty to examine the same, together with the accounts and vouchers relating thereto; and every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books, accounts and other documents of the Bank, and may, at the expense of the Bank if appointed by it or at the expense of the Governor General in Council if appointed by him, employ accountants or other persons to assist him in investigating such accounts, and may, in relation to such accounts, examine any Director or officer of the Bank.

(*2*) The auditors shall make a report to the *Board and* to the Governor General in Council

or, in the case of auditors appointed under section 43, to the Governor General in Council, upon the annual balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and, in case they have called for any explanation or information from the Board, whether it has been given and whether it is satisfactory.

Returns.

Returns

45. (*1*) The Bank shall prepare and transmit to the Governor General in Council a weekly account of the Issue Department and of the Banking Department in the Form set out in the Third Schedule or in such other Form as the Governor General in Council may, by notification in the Gazette of India, prescribe. The Governor General in Council shall cause these accounts to be published weekly in the Gazette of India.

(*2*) The Bank shall also, within two months from the date on which the annual accounts of the Bank are closed, transmit to the Governor General in Council a copy of the annual account signed by the Governor, Deputy Governor and the Chief Accounting Officer of the Bank, and certified by the auditors, and the Governor General in Council shall cause such accounts to be published in the Gazette of India.

Liquidation.

Provision regarding application of Act VII of 1913 and liquidation.

46. (*1*) Nothing in the Indian Companies Act, 1913, shall apply to the Bank, and the Bank shall not be placed in voluntary or compulsory liquidation save with the sanction of the Governor General in Council and in such manner as he may direct. VII of 1913.

(*2*) *Directions under sub-section* (*1*) *may provide for the disposal of the assets of the Bank*

Regulations.

Power of the Board to make regulations.

47. (*1*) The Board may, with the previous sanction of the Governor General in Council, make regulations consistent with this Act to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Act.

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

(*a*) the manner in which the business of the Board shall be transacted, and the procedure to be followed at meetings thereof ;

(*b*) the establishment of Local Boards and the delegation to such Boards of powers and functions ;

(*c*) the constitution and management of staff and superannuation funds for the officers and servants of the Bank ;

(*d*) the manner and form in which contracts binding on the Bank may be executed;

(*e*) the provision of an official seal of the Bank and the manner and effect of its use;

(*f*) the manner and form in which the balance-sheet of the Bank shall be drawn up, and in which the accounts shall be maintained;

(*g*) the circumstances in which, and the conditions and limitations subject to which, the value of any lost, stolen, mutilated or imperfect currency note of the Government of India or bank note may be refunded; and

(*h*) generally, for the efficient conduct of the business of the Bank.

Amendments and Repeal.

48. In the Indian Coinage Act, 1906, *the following amendments shall be made, namely:—* III of 1906.

Amendment of Act III of 1906

(*1*) *After section 3 the following section shall be inserted, namely:—*

"*3A.* (*1*) *A gold coin, to be called a mohur, shall be coined at the Mint in such quantity as the Governor General in Council may direct.*

The Mohur.

(*2*) *The standard weight of the mohur shall be 188·336 grains troy, and its standard fineness shall be nine-tenths of fine gold and one-tenth of alloy:*

Provided that, in the making of the coin, a remedy shall be allowed not exceeding two-thousandths in weight and two-thousandths in fineness."

(*2*) *In clause* (*a*) *of sub-section* (*1*) *of section 10, after the words "referred to in" the words "sub-section* (*1*) *of section 3A and" shall be inserted.*

(*3*) *For section 11 the following sections shall be substituted, namely:—*

"**11.** Gold coins, coined at His Majesty's Royal Mint in England or at any Mint established in pursuance of a proclamation of His Majesty as a branch of His Majesty's Royal Mint, shall be a legal tender in British India in payment or on account at the rate of *thirteen and one-third rupees for one sovereign*:

Sovereigns and half-sovereigns a legal tender.

Provided that such coins have not been called in by any Proclamation made in pursuance of the Coinage Act, 1870, or have not lost weight so as to be of less weight than that for the time being prescribed for like coins by or under the said Statute as the least current weight. 33 & 34 Vict., c. 10.

11A. A mohur shall be a legal tender in payment or on account:

Mohurs a legal tender.

Provided that the mohur—

(*a*) *has not lost in weight so as to be of less weight than 187·153 grains, and*

(*b*) *has not been defaced.*"

(*4*) *In sub-section* (*1*) *of section 12, after the words "on account" the words "at the rate of twenty rupees for one mohur" shall be inserted.*

(5) *In section 16, for the words "where any silver coin" the words "where any gold or silver coin" shall be substituted.*

(6) *In section 20, for the word "silver", wherever it occurs, the words "gold or" shall be substituted.*

(7) *In sub-section (2) of section 21—*

(a) *in clause (a) after the words "allowed by" the words "sub-section (2) of section 3A and" shall be inserted; and*

(b) the word "and" *shall be added* at the end of clause (*d*), and *after that clause the following clause shall be added, namely:—*

"(e) *provide for the acceptance at prescribed rates by officers authorised in this behalf of the gold coins described in section 11 where such coins have lost weight so as to be of less weight than that for the time being prescribed for like coins by or under the Coinage Act, 1870, as the least current weight.*" 33 & 34 Vict., c. 10.

49. The Indian Paper Currency Act, 1923, and the Currency Act, 1927, are hereby repealed. X of 1923. IV of 1927.

Repeals.

THE FIRST SCHEDULE.

[*See section 2 (l).*]

SCHEDULE OF BANKS.

Ajodhia Bank, Fyzabad.
Allahabad Bank.
Bangalore Bank.
Bank of Baroda.
Benares Bank.
Bari Doab Bank, Lahore.
Bhawanipore Banking Corporation, Calcutta.
Bombay Merchants' Bank, Bombay.
Byopar Sahayak Bank, Meerut.
Bank of Behar.
Coimbatore Town Bank.
Canara Bank.
Central Bank of India.
Chota Nagpur Banking Association.
Chartered Bank of India, Australia and China.
Dawsons Bank, Pyapon.
Eastern Bank.
Grindlay and Company.
Hongkong and Shanghai Banking Corporation.
Bank of India, Bombay.
Imperial Bank of India.
Imperial Bank of Persia.
Indian Bank.
Indian Industrial Bank.
Industrial Bank of Western India.
Jalpaigori Banking and Trading Corporation.
Karnani Industrial Bank.
Karachi Bank, Karachi.
Lyallpur Bank.
Lloyds Bank.
Mercantile Bank of India.
Bank of Morvi.
Bank of Mysore.
Muffasil Bank, Gorakhpur.
Mysore Industrial Bank.
Nedungadi Bank, Calicut.
Namboodiri Bank, Pallippuram.
National Bank of India.
Oudh Commercial Bank.
Punjab National Bank.
Punjab and Sind Bank, Amritsar.
Punjab Co-operative Bank.
Punjab and Kashmir Bank, Rawalpindi.
P. and O. Banking Corporation.
Shilotri Bank, Bombay.
Simla Banking and Industrial Company.
South India Bank, Tinnevelly.
Thomas Cook and Sons.
Union Bank of India.
U. Rai Gyaw Thoo and Co., Akyab.
Vellore Commercial Bank.
American Express Company Incorporated.
Banco Nacional Ultramarino.
Comptoir National d'Escompte de Paris.
International Banking Corporation.
Nederland Indische Handels Banks.
Nederlandsche Handle-Matschappej.
Sumitomo Bank.
Bank of Taiwan.
Yokohama Specie Bank.

THE SECOND SCHEDULE.

(*See section 39.*)

Provisions to be contained in the agreement between the Reserve Bank of India and the Imperial Bank of India.

1. The Imperial Bank of India shall be the sole agent of the Reserve Bank of India at all places in British India where there is a branch of the Imperial Bank of India and no branch *of the Banking Department* of the Reserve Bank of India.

2. In consideration of the performance by the Imperial Bank of India on behalf of the Reserve Bank of India of the functions which the Imperial Bank of India was performing on behalf of the Governor General in Council at the places referred to in clause 1 before the coming into force of the Reserve Bank of India Act, 1927, the Reserve Bank of India shall pay to the Imperial Bank of India a commission calculated on the total of the receipts and disbursements dealt with annually on account of Government by the Imperial Bank of India on behalf of the Reserve Bank of India. Such commission shall be one-sixteenth of one per cent. on the first 250 crores of such total and one-thirty-second of one per cent. on the remainder.

3. Subject to the condition that the Imperial Bank of India shall keep open branches not less in number than those existing at the time of the coming into force of the Reserve Bank of India Act, 1927, the Reserve Bank of India shall allow the following balances to the Imperial Bank of India at the interest rates hereinafter specified, namely :—

(*a*) during the first five years *from that time*—3 crores free of interest ;

(*b*) during the *next* five years—2 crores free of interest and, at the option of the Imperial Bank of India, an amount not exceeding 1 crore at 2 per cent. per annum ;

(*c*) during the *next* five years—1 crore free of interest and, at the option of the Imperial Bank of India, an amount not exceeding 2 crores at 2 per cent. per annum ; and

(*d*) during the *next five* years—at the option of the Imperial Bank of India, an amount not exceeding 3 crores at 2 per cent. per annum.

4. The Imperial Bank of India shall not, without the approval of the Reserve Bank of India, open any branch in substitution for a branch existing at the time this agreement comes into force.

THE THIRD SCHEDULE.

(See section 45.)

RESERVE BANK OF INDIA.

An Account pursuant to the Gold Standard and Reserve Bank of India Act, 1927, for the week ending on the day of

Issue Department.

Liabilities.	Rs.	*Assets.*	Rs.
Bank Notes held in the Banking Department		Rupee coin	
Bank Notes in circulation		Government of India rupee securities	
Total Bank Notes issued		Internal Bills of Exchange and other commercial paper	
Government of India Notes in circulation		Gold securities	
Rupee redemption		Gold coin or bullion—	
		(*a*) *held in India*	
		(*b*) *held outside India*	

Ratio of gold and gold securities to liabilities, per cent.

Dated the day of 19 .

Banking Department.

Liabilities.	Rs.	*Assets.*	Rs.
Capital paid up		Notes	
Reserve Fund		Rupee coin	
Deposits—		Subsidiary coin	
(*a*) Government		Bills discounted—	
(*b*) Banks		(*a*) Internal	
(*c*) Others		(*b*) External	
Bills payable		(*c*) Government of India Treasury Bills	
Other liabilities		Balances held abroad	
		Loans and advances to the Government	
		Other Loans and Advances	
		Investments	
		Other Assets	

Dated the day of 19 .

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

Report of the Joint Committee on the Bill to establish a gold standard for British India, and constitute a Reserve Bank of India, with the Bill as amended.

H246LD—1,000—18-5-27—GIPS

LEGISLATIVE ASSEMBLY.

Notice of Amendments.

THE GOLD STANDARD AND RESERVE BANK OF INDIA BILL.

To be moved at the meetings of the Legislative Assembly to be held on Monday, the 29th August, 1927, and the following days, after the motion that tha Bill, as reported by the Joint Committee, be taken into consideration.

1. By Mr. Vidya Sagar Pandya :—

That the Bill, as reported by the Joint Committee, be re-circulated for the purpose of obtaining further opinions thereon.

2. By Mr. M. S. Sesha Ayyangar :—

Title.

For the title of the Bill the following be substituted :—

" A Bill to maintain the currency of British India on a parity with gold and to constitute a Reserve Bank for India."

3. By Mr. N. C. Kelkar :—

In the title of the Bill, after the words " gold standard ", insert the words " gold currency ".

4. By Mr. M. S. Sesha Ayyangar :—

Preamble.

For the preamble of the Bill the following be substituted :—

" Whereas it is expedient to provide for the maintenance of the currency of British India on a parity with gold, to constitute a Reserve Bank of India, to take over the management of the currency from the Governor General in Council and to carry on the business of banking and generally to make provisions for matter incidental thereto, it is hereby enacted as follows :—"

5. By Mr. N. C. Kelkar :—

In the preamble to the Bill, after the words " gold standard " insert the word " currency ".

6. By Mr. M. S. Sesha Ayyangar :—

Clause 1.

In sub-clause (1) of clause 1 after the word " Standard " the word " Currency " be inserted.

7. By Mr. N. C. Kelkar :—

In clause 1, sub-clause (3), for the words and figures " not later than the first day of July 1929 ", substitute the words " after the termination of the period of the present agreement with the Imperial Bank of India "

8. By the Honourable Sir Basil Blackett :—

That in sub-clause (3) of clause 1 for the figures " 1929 ", the figures " 1930 " be substituted.

Clause 2.

9. By the Honourable Sir Basil Blackett :—

That in clause 2—

(*i*) the definition of " bank note " be inserted after the definition of " the Banking Department ", and that in the same definition for the words " by a bank " the words " by the bank " be substituted ;

(*ii*) immediately before the definition of " gold standard country " the following definition be inserted, namely :—

" ' general meeting ' means a meeting of the registered shareholders of the Bank " ; and

(*iii*) the sub-clauses of the clause be re-lettered accordingly.

10. By Mr. M. S. Sesha Ayyangar :—

That sub-clause (*f*) of clause 2 be omitted.

11. By the Honourable Sir Basil Blackett :—

Clause 4.

That for clause 4 and the heading thereto, the following heading and clause be substituted, namely : —

" Share capital.

Share capital.

4. (1) The original share capital of the Bank shall be five crores of rupees, divided into shares of one hundred rupees each of which shall be fully paid up.

(2) If the full amount of the share capital is not subscribed by the public, the Governor General in Council shall take up the remainder of the shares at par.

(3) The Board may, with the previous sanction of the Governor General in Council, increase the share capital of the Bank in such manner and to such extent as it may determine.

(4) Every such increase shall be fully paid up, and the price at which further shares shall be issued shall be fixed by the Board, with the previous sanction of the Governor General in Council.

(5) The Board may, with the previous sanction of the Governor General in Council, reduce the share capital of the Bank to such an extent and in such manner as may be determined by the Bank in general meeting."

(For amendments to the above amendment see Nos. 1, 2 and 3 printed on separate list.)

12. By Mr. Jamnadas M. Mehta :—

To sub-clause (1) of clause 4 the following words be added at the end, *viz.* :—

" and shall be called up from time to time as may be thought necessary or advisable by the Board of Directors of the Bank."

13. By the Honourable Sir Basil Blackett :—

Clause 5. That in clause 5 for the word " branches ", in both places where it occurs, the words " branch offices " be substituted.

14. By Mr. W. S. Lamb :—

In clause 5 of the Bill the word " Rangoon " be omitted.

15. By Haji Abdoola Haroon :—

In clause 5 after the word " Rangoon " the word " Karachi " be inserted.

16. By Mr. M. S. Sesha Ayyangar :—

That in clause 5, the words " or, with the previous sanction of the Governor General in Council, elsewhere " be omitted.

17. By the Honourable Sir Basil Blackett :—

Clause 6. That in clause 6 for the words " under this Act " the following be substituted, namely :—

" and are not by this Act expressly directed or required to be done by the Bank in general meeting." ;

18. By the Honourable Sir Basil Blackett :—

Clause 7. That in clause 7, after sub-clause (*a*), the following sub-clause be inserted, namely :—

" (*b*) is a member of the Indian or a local Legislature, or " ;

and sub-clauses (*b*), (*c*) and (*d*) be re-lettered (*c*), (*d*) and (*e*), respectively, and for the letter " (*d*) " in the *Explanation* the letter " (*e*) " be substituted.

(For amendment to the above amendment see No. 3 printed on separate list.)

19. By Mr. N. C. Kelkar :—

In clause 7—

(*a*) In sub-clause (*c*), omit the word " or " ;

(*b*) Omit sub-clause (*d*) and the *Explanation.*

20. By Pandit Nilakantha Das :—

In clause 7 omit sub-clause (*d*) and the *Explanation.*

21. By Pandit Thakur Das Bhargava :—

In clause 7 omit sub-clause (*d*) and the *Explanation.*

22. By Diwan Chaman Lall :—
Mr. N. M. Joshi :—

Sub-clause (*d*) of clause 7 be omitted.

23. By the Honourable Sir Basil Blackett :—

Clause 8. That in clause 8 in clause (*a*) of sub-clause (1), the words " of whom one shall be an Indian and " be omitted.

24. By Sir Victor Sassoon :—

In clause 8, sub-clause (1) (*a*) the words " of whom one shall be an Indian and " be omitted.

25. By Mr. M. S. Sesha Ayyangar :—

That in sub-clause (1) (*a*) of clause 8 after the words " of whom one " the words " at least " be inserted.

26. By Sir Victor Sassoon :—

In clause 8, sub-clause (1) (*a*) after the words " the Board " the words " within a maximum to be fixed by the Governor General in Council, " be inserted.

27. By the Honourable Sir Basil Blackett :—

That in clause 8—

for clause (*b*) of sub-clause (1) the following be substituted, namely :—

" (*b*) nine Directors elected by the shareholders, each of whom shall be the registered holder in his own right of not less than one hundred unencumbered shares of the Bank :

provided that, for the purpose of the constitution of the first Board, of these nine Directors two shall be elected by the Associated Chambers of Commerce, two by the Federation of the Indian Chambers of Commerce and five shall be nominated by the Governor General in Council ; and such Directors shall hold office until the first annual general meeting " ;

(For amendments to the above amendment, see Nos. 4 and 5, printed on separate list.)

28. By Sir Victor Sassoon :—

In clause 8, for sub-clause (1) (*b*) the following be substituted :—

" Three Directors representing agriculture for different provinces, nominated by the Governor General in Council."

29. By the Honourable Sir Basil Blackett :—

In clause 8 for clause (*c*) of sub-clause (1) the following be substituted, namely :—

" (*c*) two Directors, to be elected, respectively, by the Associated Chambers of Commerce and the Federation of the Indian Chambers of Commerce." ;

(For amendment to the above amendment, see No. 6, printed on separate list.)

30. By Pandit Nilakantha Das :—

In clause (*c*) of sub-clause (1) of clause 8 for the word " four " the word " two " be substituted and for the word " two " wherever it occurs the word " one " be substituted.

31. By Pandit Thakur Das Bhargava :—

In clause (*c*) of sub-clause (1) of clause 8 for the word " four " the word " two " be substituted and for the word " two " wherever it occurs the word " one " be substituted.

32. By Sir Victor Sassoon :—

In clause 8, sub-clause (1) (*c*) for the word " four " the word " six " be substituted, and for the word " two " wherever it occurs the word " three " be substituted.

33. By Pandit Nilakantha Das :—

In sub-clause (1) of clause 8 the following new clause be inserted after clause (*c*) and subsequent clauses be renumbered accordingly :— " one Director to be elected by the Trade Unions registered under the Indian Trade Unions Act ".

34. By Diwan Chaman Lall :—
Mr. N. M. Joshi :—

In sub-clause (1) of clause 8, after clause (*c*) the following new clause be inserted :—

" (*d*) One director to be elected by Trade Unions registered under the Indian Trade Unions Act."

35. By Pandit Thakurdas Bhargava :—

In clause (*d*) of sub-clause (1) of clause 8 for the word " one " the word " two " be substituted.

36. By the Honourable Sir Basil Blackett :—

In clause 8—

(*i*) in clause (*d*) of sub-clause (1) after the word "banks" the words "to represent agricultural interests" be added ;

(*ii*) for clause (*e*) of the same sub-clause the following be substituted, namely :—

"(*e*) three Directors nominated by the Governor General in Council ;"

37. By Sir Victor Sassoon :—

In clause 8, sub-clause (1) (*e*) be omitted.

38. By Pandit Nilakantha Das :—

In clause (*e*) of sub-clause (1) of clause 8 all the words occurring after the word "Legislature" be omitted.

39. By Mr. N. M. Joshi :— / Diwan Chaman Lall :—

In sub-clause (1) of clause 8, in clause (*e*) omit all the words occurring after the word "Legislature".

40. By Pandit Thakurdas Bhargava :—

In clause (*e*) of sub-clause (1) of clause 8 for the words "Indian Legislature" the words "Legislative Assembly" be substituted.

41. By Pandit Thakurdas Bhargava :—

After clause (*e*) of sub-clause (1) of clause 8 the following new clause be inserted :—

"(*f*) One Director to be elected by the elected members of the Council of State".

42. By the Honourable Sir Basil Blackett :—

In clause 8, clause (*f*) of sub-clause (1) be omitted, and clause (*g*) be re-lettered as clause (*f*).

43. By Pandit Nilakantha Das :—

In clause (*f*) of sub-clause (1) of clause 8 omit all the words occurring after the word "provinces".

44. By Diwan Chaman Lall :— / Mr. N. M. Joshi :—

In sub-clause (1) of clause 8, in clause (*f*) omit all the words occurring after the word "provinces".

45. By the Honourable Sir Basil Blackett :—

After sub-clause (1) of clause 8, the following sub-clause be inserted, namely :—

"(2) If the Governor or Deputy Governor is by infirmity or otherwise rendered incapable of executing his duties or is absent on leave or otherwise in circumstances not involving the vacation of his appointment, the Governor General in Council may appoint another person to officiate for him ; such person may be an officer of the Bank notwithstanding anything contained in clause (*d*) of section 7" ;

and sub-clauses (2), (3) and (4) of this clause be re-numbered (3), (4) and (5), respectively.

46. By Sir Victor Sassoon :—

After sub-clause (1) of clause 8 the following sub-clause be inserted :—

"(2) If the Governor or Deputy Governor is by infirmity or otherwise rendered incapable of executing his duties or is absent on leave or otherwise in circumstances not inviting the vacation of his appointment, the Governor General in Council may appoint another person to officiate for him. Such person may be an officer of the Bank notwithstanding anything contained in clause (*d*) of section 7" ;

And sub-clauses (2) and (3) of this clause be re-numbered (3) and (4).

47. By the Honourable Sir Basil Blackett :—

In clause 8, for sub-clause (3) the following be substituted, namely :—

"(3) The Directors elected under clauses (*b*), (*c*) and (*d*) of sub-section (1) shall hold office for a period of five years, and the Directors nominated under clause (*e*) shall hold office for a period of three years, but any Director shall be eligible for re-nomination or re-election :

Provided that the term of office of the first Directors elected under clauses (*c*) and (*d*) shall be three years ".

48. By Sir Victor Sassoon :—

In sub-clause (3) of clause 8 of the Bill for all the words after the word " Directors " the words " shall hold office for five years " be substituted.

49. By Sir Victor Sassoon :—

Sub-clause (4) of clause 8 be omitted.

50. By the Honourable Sir Basil Blackett :—

In sub-clause (4) of clause 8, for the letter " (*g*) " the letter " (*f*) " be substituted.

51. By the Honourable Sir Basil Blackett :—

In clause 8, after sub-clause (4), the following sub-clause be inserted, namely :—

" (5) Any casual vacancy in the office of a Director elected under clause (*b*) of sub-section (1) shall be filled by the Board, but every such appointment shall be subject to confirmation at the next general meeting ",

and sub-clauses (5) to (7) be re-numbered as sub-clauses (7) to (9), respectively.

52. By Sir Victor Sassoon :—

Sub-clause (6) of clause 8 be omitted.

53. By the Honourable Sir Basil Blackett :—

In clause 8—

in sub-clause (6), for the words " under this section " the words " under the proviso to clause (*b*) and under clauses (*c*) and (*d*) of sub-section (1) " be substituted ; and

54. By Sir Victor Sassoon :—

Sub-clause (7) of clause 8 be omitted.

55. By the Honourable Sir Basil Blackett :—

In clause 8—

in sub-clause (7), for the figure " 6 " the figure " 8 " be substituted.

56. By the Honourable Sir Basil Blackett :—

That for clause 9 the following clause be substituted, namely :— *Clause 9.*

" 9 The Governor or Deputy Governor or any Director elected under clause (*c*) or clause (*d*) of sub-section (1) of section 8, or nominated under clause (*e*) of that sub-section, may be removed from office by the Governor General in Council, before the expiration of his period of office if a resolution is passed in this behalf by the Board by a majority consisting of not less than ten Directors ; and any Director elected under clause (*b*) of that sub-section or appointed by the Board under sub-section (6) of section 8 may be so removed by special resolution passed at a general meeting by a majority consisting of not less than one-half of the total number of votes held by all the shareholders. "

Removal of Governor, Deputy Governor or Directors.

57. By Sir Victor Sassoon :—

For clause 9 the following be substituted :—

" The Governor or Deputy Governor may be removed from office by the Governor General in Council before the expiration of period of office if a resolution is passed in this behalf by the Board by a majority consisting of not less than five Directors ; and any Director may be removed by the Governor General in Council if a resolution is passed in this behalf by a majority of the Board with a minimum of ten members present and voting. "

58. By the Honourable Sir Basil Blackett :—

That after clause 10 the following clause be inserted as clause 11, and that the remaining clauses of the Bill be re-numbered and consequential references be amended accordingly, namely :— *New Clause 11.*

"11. (1) A general meeting (in this Act referred to as the annual general meeting) shall be held annually at Bombay within six weeks from the date on which the annual accounts of the Bank are closed, and a general meeting may be convened by the Board at any other time.

General meetings.

(2) At a general meeting every shareholder shall have one vote for each of the first five shares of which he has been the registered holder for not less than six months, an additional vote for each further five such shares up to twenty-five votes, and an additional vote for each further twenty-five shares up to a total maximum of one hundred votes."

(For amendments to the above amendment see Nos. 7 and 8 printed on separate list.)

59. By Mr. Jamnadas M. Mehta :—

Clause 11. For the proviso to sub-clause (2) (*b*) of clause 11 the following be substituted :—

"provided that the total face value of bills so purchased or rediscounted shall not at any time exceed one-fifth of the total liabilities of the Bank in respect of deposits."

60. By Mr. M. S. Sesha Ayyangar :—

That sub-clause (3) of clause 11 be omitted.

61. By Mr. Jamnadas M. Mehta :—

In sub-clause (3) of clause 11 :—

(*a*) for the words "such Gold Standard countries as may be specified in this behalf by the Governor-General in Council by notification in the *Gazette of India*" the words "the Kingdom of Great Britain and Northern Ireland or of the United States of America," be substituted ;

(*b*) for the words "in any such country" the words "in these two countries" be substituted ; and

(*c*) for the words "in such countries" the words "in these two countries" be substituted.

62. By Mr. M. S. Sesha Ayyangar :—

That sub-clause (4) (*d*) of clause 11 be omitted.

63. By Mr. Jamnadas M. Mehta :—

In sub-clause (7) of clause 11 for all the words occurring after the words "Government of" the words "Great Britain and Northern Ireland or of the United States of America" be substituted.

64. By Mr. M. S. Sesha Ayyangar :—

That in sub-clause (7) of clause 11 for all the words occurring after the word "Government" the words "of the United Kingdom of Great Britain and Northern Ireland" be substituted.

65. By the Honourable Sir Basil Blackett :—

That in clause 11, the following amendments be made, namely :—

(*i*) in sub-clause (8) for the word "capital," wherever it occurs, the words "share capital" be substituted ; and

(*ii*) in the proviso to sub-clause (14) for the words "five crores of rupees or half the aggregate amount of the capital of the Bank and of the Reserve Fund for the time being whichever is greater", the words "the amount of the share capital of the Bank" be substituted.

66. By Mr. Jamnadas M. Mehta :—

In sub-clause (13) of clause 11 for the words "any other bank which is the principal currency authority of a Gold Standard country under the law for the time being in force in that country" the words "the Bank of England" be substituted.

67. By the Honourable Sir Basil Blackett :—

Clause 12. That in clause 12 the words "not less than two-thirds of the Directors present at a meeting of" be omitted.

68. By the Honourable Sir Basil Blackett :—

Clause 13. That in clause 13—

(*i*) for the words and figures "sections 11 and 12" the words and figures "sections 11, 12 and 39" be substituted ; and

(*ii*) in sub-clause (2) after the word "purchase" the words "its own shares or" be inserted.

69. By Sir Victor Sassoon :—

In sub-clause (2) of clause 13 after the word " purchase " the words " its own shares or " be inserted.

70. By Mr. M. S. Sesha Ayyangar :—

The following proviso be added to clause 14 :— *Clause 14.*

" Provided that the reserves of the Note Issue Department shall not be drawn upon for this purpose."

71. By Mr. M. S. Sesha Ayyangar :—

For clause 16 the following be substituted :— *Clause 16.*

" 16. The Bank shall take over the management of the Currency from the Governor General in Council and shall have sole charge of the issue of all further currency notes of the Government as Agents of the Governor General in Council in this behalf."

72. By the Honourable Sir Basil Blackett :—

That in sub-clause (1) of clause 16 for the words " bank notes ", where they first occur, the words " paper money " be substituted.

73. By the Honourable Sir Basil Blackett :—

That in clause 18 the words " one-quarter mohur or ", " one-half mohur or ", " one mohur or twenty rupees ", " two and a-half mohurs or," " five mohurs or ", " twenty-five mohurs or ", " fifty mohurs or " and " five hundred mohurs or " be omitted. *Clause 18.*

74. By Mr. N. C. Kelkar :—

In clause 18 omit the words " and five hundred mohurs or ten thousand rupees ".

75. By Pandit Thakurdas Bhargava :—

Add the following at the end of clause 18 :—

" Provided that for ten years the Governor-General in Council shall not direct the issue of notes of more than the denominational value of five hundred mohurs or ten thousand rupees or less than the denominational value of one quarter mohur or five rupees."

76. By Mr. N. C. Kelkar :—

After clause 18 the following new clause be inserted :—

" 18A. The Bank shall issue, up to an amount to be determined by the Board of Directors, Bank notes of denominational values mentioned in section 18, and expressed therein to be repaid in gold at the end of a fixed term of maturity, not exceeding five years up to the denominational value of twenty-five mohurs, or ten years, up to the denominational value of fifty mohurs. "

77. By Mr. M. S. Sesha Ayyangar :—

In sub-clause (1) of clause 20, the words " and shall be guaranteed by the Governor-General in Council " be omitted. *Clause 20.*

78. By Pandit Thakurdas Bhargava :—

For clause 22 the following be substituted :— *Clause 22.*

" 22. Notwithstanding anything contained in any enactment or rule of law to the contrary the bank shall be bound to refund the value of lost, stolen or mutilated bank notes or currency notes of the Government of India to the persons found entitled to such bank notes or currency notes provided the claim is preferred by the person entitled within a period of three years of such loss, theft or mutilation "

79. By the Honourable Sir Basil Blackett :—

That in clause 22 :—

(*i*) after the words " be entitled to recover from ", the words " the Governor-General in Council or " be inserted ;

(*ii*) after the words " mutilated or imperfect " the words " currency note of the Government of India or " be inserted ; and

(*iii*) in the proviso after the words " the value of such " the words " currency notes or " be inserted.

80. By Mr. M. S. Sesha Ayyangar :—

To clause 22 the words " as well as of right " be added in the end.

81. By Pandit Thakurdas Bhargava :—

Clause 23. That clauses 23 and 24 be omitted and subsequent clauses be renumbered accordingly.

Or if this amendment fails.

For the proviso to clause 23 the following be substituted :—

" Provided that cheques, drafts, hundies, bills of exchange payable to bearer on demand or otherwise may be drawn on a person's account with a banker, shroff, agent or constituted. "

82. By Sir Purshotamdas Thakurdas :—

In the proviso to clause 23 of the Bill after the word " Cheques " the word " Hundis " be inserted.

83. By Mr. Jamnadas M. Mehta :—

Clause 25. In clause 25 for sub-clauses (2) to (6) the following be substituted, *viz.* :—

" (2) Of the total amount of Reserve fifty crores shall be Government of India Rupee Securities of any maturity. This shall be called the Fixed Fiduciary portion.

(3) The Sterling Securities that may be held in the Gold Standard and Paper Currency Reserves at the date on which this Chapter comes into force shall be included in the Reserve and form part of the Reserve while they may have to be so held.

(4) The remainder shall be in Rupee coin or Gold coin and bullion.

(5) For the purpose of this section Gold Coin (other than Sovereigns, half Sovereigns and Mohurs) and Gold Bullion shall be valued at 7.53344 grs. of the fine Gold per Rupee Sovereigns, Half-Sovereigns and Mohurs and Rupee coin shall be valued at their face value, Rupee Securities at their face value, and Sterling Securities at their purchase price.

(6) Of the Gold Coin or Gold Bullion held in the Reserve not less than seventeen-twentieths shall be held in British India and in the custody of the Bank or its agencies.

Provided that Gold belonging to the Bank which is in the Bank of England or in any of the Federal Reserve Bank of the United States or in any Mint or in transit may be reckoned as part of the Reserve.".

84. By Mr. M. S. Sesha Ayyangar :—

For sub-clauses (2) to (6) of clause 25 the following be substituted :—

" (2) Of the total amount of the Reserve, fifty crores of rupees shall be Government of India Rupees Securities of any maturity.

(3) That sterling securities that may be held in the Indian Paper Currency Reserve and the Gold Standard Reserve at the date of the coming into operation of this Act shall form part of the reserve while they may have to be so held.

(4) The remainder shall be held in Rupee coin or in Gold Coin or Gold Bullion.

(5) For the purposes of this section Gold Coin or Gold Bullion shall be valued at 7.53344 grains of fine gold per rupee, Rupee coin shall be valued at its face value, Rupee Securities at par, Sterling Securities at their equivalent in gold sovereigns and each sovereign shall be deemed to be equivalent to fifteen rupees.

(6) All coin and Gold Bullion forming part of the Reserve shall be held in British India and in the custody of the Bank."

85. By the Honourable Sir Basil Blackett :—

That in clause 25 in the proviso to sub-clause (2), the words beginning with " and that, after the end of the tenth year " and ending with " consist of gold securities " be omitted.

86. By Mr. Jamnadas M. Mehta :—

In clause 25 sub-clause (3) the first proviso be omitted ;

87. By the Honourable Sir Basil Blackett :—

That in clause 25 in the second proviso to sub-clause (3) for the words " five hundred million " the words " fifty crores of " be substituted ;

88. By the Honourable Sir Basil Blackett :—

That in clause 25, for sub-clause (4) the following sub-clause be substituted, namely :—

"(4) For the purposes of this section, gold coin and gold bullion shall be valued at 8.47512 grains of fine gold per rupee, rupee coin shall be valued at its face value, and gold and rupee securities shall be valued at the market rate for the time being obtaining" ;

89. By Mr. Jamnadas M. Mehta :—

In clause 25, sub-clause (4) for the figures "8.47512" the figures "7.53344" be substituted ; and for the words "at the market rate for the time being obtaining" the words "at the purchase price" be substituted ;

90. By the Honourable Sir Basil Blackett :—

That in clause 25, in the proviso to sub-clause (5) after the word "mint" the words "or treasury" be inserted ; and

91. By Mr. Jamnadas M. Mehta :—

In clause 25, for sub-clause (6) the following be substituted—

"(6) For the purposes of this section the Gold Securities that may be held as part of the Reserve shall be—

(i) Sterling Securities of the Government of India of any maturity.

(ii) Securities maturing within 5 years of the Government of Great Britain and Northern Ireland or of the United States of America :

Provided that for a period of two years from the date on which this Chapter comes into force any of the last mentioned securities may be securities maturing after 5 years and the Bank may at any time before the expiry of that period dispose of such securities notwithstanding anything contained in section 11."

92. By the Honourable Sir Basil Blackett :—

That in clause 25, clause (*b*) of sub-clause (6) be re-lettered clause (*c*), and the following be inserted as clause (*b*), namely :—

"(*b*) bills of exchange bearing two or more good signatures and drawn on and payable at a place in any such country and having a maturity not exceeding ninety days" ;

93. By Mr. Sesha Ayyangar :—

Clause 26.

In sub-clause (1) of clause 26 for all the words occurring after the words "Government of India" the words "for the time being in circulation" be substituted.

94. By Mr. Jamnadas M. Mehta :—

In sub-clause (1) of clause 26 all the words occurring after the words "for the time being in circulation" be omitted.

95. By Mr. M. S. Sesha Ayyangar :—

Clause 27.

In clause 27 for all the words occurring after the words "Governor General in Council" the words "the management of the Currency Department of the Government of India and take charge of all its assets and liabilities" be substituted.

96. By Mr. Jamnadas M. Mehta :—

In clause 27 the words "and of a sum of fifty crores of rupees" be omitted.

97. By Mr. Jamnadas M. Mehta :—

Clause 28.

In clause 28 for the words "four rupees in bank notes, gold or gold securities for every five rupees so delivered" the words "the same number of rupees in bank notes, gold or gold securities" be substituted.

98. By Mr. Jamnadas Mehta :—

Clause 29.

In clause 29 for the words "four rupees in bank notes, gold or gold securities for every five rupees so delivered" the words "the same number of rupees in bank notes gold or gold securities" be substituted.

99. By Mr. Jamnadas M. Mehta :—

Clause 30. In clause 30 for all the words occurring after the word " reissue " and up to the word " demand " the following be substituted :—

" melt down and sell or in any way dispose of any silver coin or bullion that may be holding at the date of passing of this Act or that may come into his possession hereafter under the provisions of section 28 except for use in minting subsidiary coinage or in order to meet the requirements of the Bank under section 29."

100. By Mr. Jamnadas M. Mehta :—

In clause 30 the words " nor to put into circulation any new rupees " be omitted.

101. By Mr. N. C. Kelkar :—

Clause 31. In clause 31 after the words " The Bank shall issue " insert the following words, *viz.* :—

" Gold coin, mentioned in section 48 in exchange for fine gold at the rate of 169.5024 grains per gold Mohur, *plus* such seigniorage charge as may be determined by the Governor General in Council."

102. By Pandit Thakurdas Bhargava :—

In clause 31 the words " of five rupees or upwards " be omitted.

103. By Mr. N. C. Kelkar :—

In clause 31 for the words " of five rupees or upwards " substitute the words " of ten rupees, supply notes of smaller denomination or rupees at the option of the holder and for notes of higher denomination than ten rupees ".

104. By the Honourable Sir Basil Blackett :—

That in clause the words " or mohurs ", the words " and of sub-section (*1*) of section 3A of the Indian Coinage Act, 1906 " and the word " mohurs " be omitted.

105. By the Honourable Sir Basil Blackett :—

Clause 32. That in sub-clause (1) of clause 32, for the figures " 1931 " the figures " 1932 " be substituted.

106. By Mr. W. S. Lamb :—

In sub-clause (2) of clause 32 the words " or Rangoon " be omitted.

107. By Pandit Thakurdas Bhargava :—

In sub-clause (2) of clause 32 for the words " as determined under the provisions of this section " the words " at the rate of twentyone rupees three annas and ten pies per tola " be substituted.

108. By Mr. M. S. Sesha Ayyangar :—

In sub-clause (2) of clause 32 for the figures " 250 " the figures " 40 " be substituted.

109. By Pandit Thakurdas Bhargava :—

In clause 32 (*a*) for the figures " 250 " the figures " 100 " be substituted.

110. By Pandit Thakurdas Bhargava :—

To sub-clause (2) of clause 32 the following be added :—

" Such gold bullion shall be sold in the form of bars and the buyer shall be entitled to require such gold bullion to be melted assayed and refined by persons approved by such buyer at the expense of the bank."

111. By Mr. M. S. Sesha Ayyangar :—

Sub-clause (3) of clause 32 be omitted.

112. By Pandit Thakurdas Bhargava :—

That sub-clause (3) of clause 32 be omitted.

113. By Mr. Jamnadas M. Mehta :—

In clause 32 (3), for the words " twenty-one rupees three annas and ten pies " wherever they occur the words " twenty-three rupees fourteen annas and four pies " be substituted.

114. By Mr. N. C. Kelkar :—

In clause 32, sub-clause (3) omit the word " twice ".

115. By Mr. Jamnadas M. Mehta :—

In sub-clause (3) of clause 32 for the words " such place in a gold standard country as may be specified in this behalf by the Governor General in Council by notification in the Gazette of India " the word " London " be substituted, and consequential changes be made in the proviso.

116. By Pandit Thakurdas Bhargava :—

That sub-clause (4) of clause 32, be omitted.

117. By Mr. M. S. Sesha Ayyangar :—

Clause 33 be omitted. *Clause 33.*

118. By Mr. W. S. Lamb :—

In sub-clause (1) of clause 33 the words " or Rangoon " be omitted.

119. By Mr. Jamnadas M. Mehta :—

In sub-clauses (1) and (2) of clause 33 for the words " twenty-one rupees three annas and ten pies " wherever they occur the words " twenty-three rupees fourteen annas and four pies " be substituted.

120. By Mr. Jamnadas M. Mehta :—

In sub-clause (1) of clause 33 for the words " the currency of such gold standard country as may be notified in this behalf by the Governor General in Council in the Gazette of India " the words " the currency of Great Britain and Northern Ireland or of the United States of America " be substituted.

121. By Mr. Jamnadas M. Mehta :—

In clause 34 for the words " twenty-one rupees three annas and ten pies " the words " twenty-three rupees fourteen annas and four pies " be substituted. *Clause 34.*

122. By Mr. M. S. Sesha Ayyangar :—

In clause 34 for the figures " 250 " the figures " 40 " be substituted.

123. By Pandit Thakurdas Bhargava :—

In clause 34 for the figures " 250 " the figures " 100 " be substituted.

124. By Mr. Jamnadas M. Mehta :—

In clause 35—

(1) In sub-clause (1) for all the words occurring after the words " gold securities " the words " rupee coin and rupee securities of less aggregate amount than that required by section 25 " be substituted ; *Clause 35.*

(2) For sub-clause (2) the following be substituted :—

" (2) In respect of any period during which the holder of gold coin, gold bullion and gold securities rupees coin and rupee securities is less than that provided for by section 25 the Bank shall pay to the Governor General in Council a tax upon the amount of such deficiency at the Bank rate for the time being in force with an additional of one per cent. per annum so long as deficiency does not exceed five crores and a further one per cent. per annum for every further five crores or fraction thereof of such deficiency.

Provided that the tax shall not in any event be payable at a rate of less than six per cent. per annum."

125. By Mr. M. S. Sesha Ayyangar :—

In sub-clause (2) of clause 35 for all the words occurring after the words " payable at " the words " not less than eight per cent. per annum " be substituted.

126. By Mr. M. S. Sesha Ayyangar :—

Clause 37 be omitted. *Clause 37.*

127. By Mr. Jamnadas M. Mehta :—

(1) For sub-clause (1) of clause 38 the following be substituted :— *Clause 38.*

" (1) Every Schedule Bank shall maintain a current account with the Reserve Bank wherever the Reserve Bank has an office of its own and keep with it such balances as may not be required to be kept in its own till " ;

(2) Sub-clause (2) of clause 38 be omitted and the following sub-clauses be re-numbered accordingly ;

or if the above amendments fail

(1) In sub-clause (1) of clause 38—

(*a*) after the words "with the Reserve Bank," the words "or with the Imperial Bank as Agent of the Reserve Bank," be inserted ;

(*b*) for the words "seven and one-half" and "two and one-half" the words "five" and "one and one-half" respectively be substituted ;

(*c*) the following proviso be added—

"Provided, however, that if any such Bank has an office at a place where neither the Reserve Bank nor the Imperial Bank has an office, the cash held at such office of a Schedule Bank shall be considered as part of the Cash Balance that it is to hold under this sub-section."

(2) In sub-clause (2) of clause 38 the following words be added at the end "and the percentages mentioned in sub-section (1) shall be computed on the average of the period immediately preceding the date to which such percentages are intended to refer".

128. By Mr. M. S. Sesha Ayyangar :—

For sub-clauses (1) and (2) of clause 38 the following be substituted :—

"Every Scheduled Bank shall maintain a current account with the Bank".

129. By the Honourable Sir Basil Blackett :—

That in clause 38—

(*i*) in sub-clause (*1*), for the words "seven and one-half" the word "ten" and for the words "two and one-half" the word "three" be substituted respectively, and after the words "of such bank in India" the following words be added, namely :—

"Not more than one-half of such minimum balance may be in the form of such securities of the Government of India as may be approved by the Board" ;

130. By Mr. N. C. Kelkar :—

In clause 38 sub-clause (1) for the words "seven and one-half per cent.", substitute the words "five per cent.".

131. By Mr. Jamnadas M. Mehta :—

(1) To sub-clause (3) of clause 38 the following new clauses be added :—

"(*f*) the balances held with other banks than the Reserve Bank,

(*g*) the money at call and at short notice, if any, and

(*h*) the amount of investments in public securities."

(2) In sub-clause (4) of clause 38 all the words occurring after the word "it relates" be omitted.

132. By Mr. M. S. Sesha Ayyangar :—

In sub-clause (4) of clause 38 all the words occurring after the word "relate" be omitted.

133. By Mr. Jamnadas M. Mehta :—

Sub-clause (6) of clause 38 be omitted.

134. By Mr. M. S. Sesha Ayyangar :—

Sub-clause (6) of clause 38 be omitted.

135. By the Honourable Sir Basil Blackett :—

In clause 38 in sub-clause (7) the following be added after the words "at any time becomes less than three lakhs of rupees", namely :—

"or goes into liquidation or otherwise ceases to carry on banking business."

136. By Mr. N. C. Kelkar :—

Clause 39. In clause 39 for the word "twenty-five" substitute the word "ten."

137. By the Honourable Sir Basil Blackett :—

That for clause 40 the following clause be substituted, namely :—

Clause 40.

Allocation of surplus.

"'40. After making provision for bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds, and such other contingencies as are usually provided for by bankers, and after payment out of the net annual profits of the Bank of a cumulative dividend at the rate of six per cent. per annum on the share capital, one-half of the surplus shall be allocated to the Reserve Fund until such Reserve Fund is equal to one-half of the share capital, and the remaining one-half shall be paid to the Governor General in Council. Thereafter, until the Reserve Fund is equal to the share capital, one-tenth of the surplus shall be allocated to the Reserve Fund and the balance shall be paid to the Governor General in Council. When the Reserve Fund is equal to the share capital, the whole of the surplus shall be paid to the Governor General in Council :

Provided that, until the Reserve Fund is equal to the share capital, fifty lakhs of rupees of the surplus of the whole surplus, if it is less than that amount, shall be allocated to the Reserve Fund. "

138. By Mr. Jamnadas M. Mehta :—

For clause 40 the following be substituted :—

" 40 (1) The Bank shall make up separate accounts every year in respect of the Note-Issue Department and the Banking Department.

(2) All the expenses properly chargeable against the Note-issue Department shall be debited against the earnings of that Department, and the surplus, if any, shall be paid over to the Governor General in Council.

(3) With regard to the earnings of the Banking Department due provision shall be made therefrom for bad and doubtful debts depreciation of assets contributions to staff and superannuation funds and such other contingencies as are usually provided for by bankers and out of the surplus one-half shall be allocated to a reserve fund equal to 2½ crores of rupees and the remaining one-half shall be paid to the Governor General in Council. Thereafter, until the reserve fund is equal to five crores of rupees, one-tenth of the net annual profits shall be allocated to the reserve fund, and the balance shall be paid to the Governor General in Council. When the reserve fund is equal to five crores of ruppes, the whole of the net annual profits shall be paid to the Governor General in Council.

Provided that, until the reserve fund is equal to five crores of rupees, fifty lacs of rupees of the net annual profits, or the whole of such profits if they are less than that amount, shall be allocated to the reserve fund :

Provided further, that the Board may, with the sanction of the Governor General in Council, if the reserve fund is equal to five crores of rupees, allocate a sum not exceeding one-twentieth of the net annual profits in any year to the repayment, in whole or in part, of any of its capital subscribed by the Governor General in Council, in which case an amount equal to the amount of the capital so repaid shall be added to the reserve fund. "

139. By Mr. M. S. Sesha Ayyangar :—

In clause 40 after the word " Bank " the words " in the banking departments " be inserted.

140. By Mr. M. S. Sesha Ayyangar :—

To clause 40 the following new sub-clause be added :—

" (2) The profits of the Bank in the Note Issue Department shall be credited to the general revenues of India ".

141. By the Honourable Sir Basil Blackett :—

Clause 42. That for clause 42 the following clause be substituted, namely :—

"42. (1) Not less than two auditors shall be elected and their remuneration fixed at the annual general meeting. The auditors may be shareholders, but no Director or other officer of the Bank shall be eligible during his continuance in office. Any auditor shall be eligible for re-election on quitting office.

Auditors.

(2) The first auditors of the Bank may be appointed by the Board before the first annual general meeting and, if so appointed, shall hold office only until that meeting. All auditors elected under this section shall severally be, and continue to act as, auditors until the first annual general meeting after their respective elections :

Provided that any casual vacancy in the office of any auditor elected under this section may be filled by the Board."

142. By Mr. M. S. Sesha Ayyangar :—

In clause 42 for the word "Board" wherever it occurs the words "Governor General in Council" be substituted.

143. By Mr. M. S. Sesha Ayyangar :—

Clause 43. Clause 43 be deleted.

144. By Mr. Jamnadas M. Mehta :—

Clause 44. In sub-clause (1) of clause 44 after the words "balance sheet" the words "of the banking department and the earnings and expenditure account of the note issue department" be inserted.

145. By Mr. M. S. Sesha Ayyangar :—

In sub-clause (1) of clause 44 the words "if appointed by it or at the expense of the Governor General in Council if appointed by him," be omitted.

146. By the Honourable Sir Basil Blackett :—

That for sub-clause (2) of clause 44, the following sub-clause be substituted, namely :—

"(2) The auditors shall make a report to the shareholders or to the Governor General in Council, as the case may be, upon the annual balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and, in case they have called for any explanation or information from the Board, whether it has been given and whether it is satisfactory. Any such report made to the shareholders shall be read, together with the report of the Board, at the annual general meeting."

147. By Mr. M. S. Sesha Ayyangar :—

In sub-clause (2) of clause 44 the words "or in the case of auditors appointed under section 43 to the Governor General in Council" be omitted.

148. By the Honourable Sir Basil Blackett :—

Clause 45. That to clause 45 the following sub-clause be added, namely :—

"(3) The Bank shall also, within two months from the date on which the annual accounts of the Bank are closed, transmit to the Governor General in Council a statement showing the name, address and occupation of, and the number of shares held by, each shareholder of the Bank".

149. By Mr. Jamnadas M. Mehta :—

To clause 45 the following new clause be added :—

"(3) The Bank shall also prepare every year a report on the operations of the note issue department on the lines of the report heretofore issued by the Controller of Currency and publish the same for general information".

150. By the Honourable Sir Basil Blackett :—

Clause 46. That for sub-clause (2) of clause 46, the following sub-clause be substituted, namely :—

"(2) In such event the Reserve Fund and surplus assets, if any, of the Bank shall be divided between the Governor General in

Council and the shareholders in such proportion as the Governor General in Council may determine to be fair and equitable."

151. By the Honourable Sir Basil Blackett :—

That in sub-clause (2) of clause 47 the following clauses be inserted as clauses (*a*), (*b*), (*c*) and (*d*), and the subsequent clauses be re-lettered accordingly, namely :— *Clause 47.*

"(*a*) the maintenance of the share register, the manner in which and the conditions subject to which shares may be held and transferred and, generally, all matters relating to the rights and duties of shareholders ;

(*b*) the manner in which general meetings shall be convened and the procedure to be followed thereat ;

(*c*) the manner in which elections of Directors by the shareholders shall be held under clause (*b*) of sub-section (1) of section 8 ;

(*d*) the manner in which notices may be served on behalf of the Bank upon shareholders or other persons."

152. By Pandit Thakurdas Bhargava :—

In sub-clause (2) of clause 47, clause (*g*) be omitted and consequential changes be made.

153. By Mr. Jamnadas M. Mehta :—

After clause 47 the following new clause be inserted :—

"47A. Notwithstanding anything that may be contained in the Indian Coinage Act, 1906, no rupee coins shall be coined at the Mint after this Act comes into force".

154. By the Honourable Sir Basil Blackett :—

That for clause 48 the following clause be substituted, namely :— *Clause 48.*

"48. In the Indian Coinage Act, 1906, for section 11 the following section shall be substituted, namely :— Amendment of Act III of 1906.

'11. Gold coins, coined at His Majesty's Royal Mint in England or at any mint established in pursuance of a proclamation of His Majesty as a branch of His Majesty's Royal Mint, shall not be legal tender in British India in payment or on account, but such coins shall be received by the Reserve Bank of India at its offices and agencies in India at the bullion value of such coins calculated at the rate of 8.47512 grains troy of fine gold per rupee.'" Demonetisation of sovereign and half-sovereign.

155. By Mr. N. C. Kelkar :—

In clause 48, sub-clause (1), for sub-section (1) of the proposed section 3A the following be substituted :—

"A gold coin to be called a mohur shall be coined at the Mint, and issued to the Bank in such quantity as the Bank may require".

156. By Mr. M. S. Sesha Ayyangar :—

In sub-clause (1) of clause 48 after the word "Mint" the words "for circulation" be inserted.

157. By Mr. Jamnadas M. Mehta :—

In clause 48—

(1) In sub-clause (1) for the figures "188.336" the figures "167.40978" be substituted.

(2) In sub-clause (3) for the words "thirteen and one-third" the word "fifteen" be substituted, and for the figures "187.153" the figures "166.358" be substituted.

158. By Mr. M. S. Sesha Ayyangar :—

In sub-clause (3) of clause 48 for the words "thirteen and one-third rupees" the words "fifteen rupees" be substituted.

First schedule. **159. By the Honourable Sir Basil Blackett :—**

That in the First Schedule, the following amendments be made, namely :—

(*i*) after the name " Bari Doab Bank, Lahore " the name " Bhargava Commercial Bank " be inserted ;

(*ii*) the names " Indian Industrial Bank " and " Vellore Commercial Bank " be omitted, and

(*iii*) for the name " International Banking Corporation " the name " National City Bank of New York " be substituted.

160. By the Honourable Sir Basil Blackett :—

"That in the First Schedule the following further amendment be made, *viz.*, after the name " Oudh Commercial Bank " the name " The Peoples Bank of Northern India " be inserted.

161. By Mr. M. S. Sesha Ayyangar :—

Third schedule. In the Third Schedule to the Bill, the words " (*b*) External " be omitted.

SIMLA : W. T. M. WRIGHT,

The 27th August 1927. *Secretary of the Legislative Assembly.*

L66LA—650—27-8-27—GIPS

LEGISLATIVE ASSEMBLY.

NOTICE OF AMENDMENT.

THE GOLD STANDARD AND RESERVE BANK OF INDIA BILL.

To be moved at the meetings of the Legislative Assembly to be held on Monday the 29th August, 1927, and the following days after the motion that the Bill, as reported by the Joint Committee, be taken into consideration

By the Honourable Sir Basil Blackett :-

That for clause 2(h) the following be substituted :-

" 'provincial co-operative bank' means any society which is registered or deemed to be registered under the Co-operative Societies Act, 1912 or any other law for the time being in force in British India relating to co-operative societies and the sole business and object of which is the financing of the other societies in a province which are or are deemed to be so registered. "

Simla,
The 29th August, 1927.

W.T.M. WRIGHT,
Secretary of the Legislative Assembly.

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not so subscribed, the Governor General in Council shall take up the remainder of the shares at par and shall subsequently dispose of the same within three years by sale to such persons as are entitled under this sub-section to subscribe to the original issue".

2. By Rai Sahib Harbilas Sarda :-

That to sub-clause (4) of clause 4 as proposed to be amended by the Honourable Sir Basil Blackett the following be added, namely :-

"The provisions of sub-section (2) shall, save in so far as they relate to the price of shares, apply in the case of all shares issued under sub-section (3)".

W.T.M.WRIGHT,
Secretary of the Legislative Assembly.

Simla,
The 29th August, 1927.

LEGISLATIVE ASSEMBLY.

NOTICE OF AMENDMENTS.

Amendments to the amendments proposed by the Honourable Sir Basil Blackett to the Gold Standard and Reserve Bank of India Bill.

To be moved at the meetings of the Legislative Assembly to be held on Monday the 29th August, 1927, and the following days after the motion that the Bill as reported by the Joint Committee be taken into consideration.

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1. By Rai Sahib Harbilas Sarda :-

That for sub-clause (2) of clause 4 as proposed to be amended by the Honourable Sir Basil Blackett the following be substituted :-

"(2) The shares shall be offered for subscription at par and to such persons only as are domiciled and are ordinarily resident in India, and, if the full amount is not so subscribed, the Governor General in Council shall take up the remainder of the shares at par and shall subsequently dispose of the same within three years by sale to such persons as are entitled under this sub-section to subscribe to the original issue".

2. By Rai Sahib Harbilas Sarda :-

That to sub-clause (4) of clause 4 as proposed to be amended by the Honourable Sir Basil Blackett the following be added, namely :-

"The provisions of sub-section (2) shall, save in so far as they relate to the price of shares, apply in the case of all shares issued under sub-section (3)".

W.T.M.WRIGHT,

Secretary of the Legislative Assembly.

Simla,

The 29th August, 1927.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

We, the undersigned, members of the Joint Committee to which the Bill further to amend the Imperial Bank of India Act, 1920, for certain purposes was referred, have considered the Bill and the papers noted below, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

(1) Letter from the Managing Governors, Imperial Bank of India, No. 1977, dated the 27th April, 1927,

(2) Letters from the Managing Governors, Imperial Bank of India, No. 2623, dated the 1st June, 1927, No. 3315, dated the 8th July, 1927, and No. 3451, dated the 13th July, 1927.

2. The amendments which we have made are almost all amendments which have been suggested by the Central Board of the Imperial Bank of India. We proceed to refer to the more important of them.

Clause 2.—We have inserted the definition provided by this clause at the instance of the Imperial Bank although it is not perhaps very necessary from the drafting point of view.

Clause 4 (originally clause 3).—The Bank correctly pointed out that clause (*c*) of sub-clause (*1*) of this clause as originally framed omitted to provide for business other than Government business; we have effected the necessary amendment by the omission of certain words.

Clause 9 (originally clause 8).—Under the Act as it stands at present, Directors representing newly-established Local Boards are entitled to be present at meetings of the Board but not to vote. The Central Board of the Bank consider this restriction unnecessary, and we have accordingly removed it by the omission from sub-section (*2*) of the proposed new section 28 of the words "and any Governors appointed under clause (*v*)."

Clause 11 (originally clause 10).—The Central Board have pointed out that under sub-clause (*1*) of this clause, which inserted a new sub-clause (*ia*) in clause (*a*) of the First Part of the First Schedule, the Bank would be enabled under regulation 56 in the Second Schedule to invest monies set aside as reserves in the shares of any limited liability company. We agree that this is undesirable. We have accordingly transferred the reference to shares and debentures of companies with limited liability to a new sub-clause (*iia*).

We have added a sub-clause after sub-clause (*7*) to give specific power to the Bank to hold and generally to deal in property which the Bank may have to buy in for the purpose of preserving their security for a loan or advance.

We have also provided in sub-clause (*14*) [originally sub-clause (*13*)], specific power for the Bank to subsidise the pension funds of the old Presidency Banks which it is necessary for it to do in order to carry out its obligations under section 6 of the Act.

We have added a fresh sub-clause to this clause to make it clear that the negotiable securities referred to in clause (*4*) of Part II of the First Schedule do not include any negotiable security which is a trust security.

Clause 12 (originally clause 11).—At the instance of the Central Board, we have given power to the Bank to refuse to register any transfer of shares to a minor or person of unsound mind or to a firm.

Clause 13 of the Bill as introduced allowed the shareholders to increase or reduce the capital of the Bank by special resolution and without the previous sanction of the Governor General in Council which, under regulation 19 of the Second Schedule, is at present requisite. This power in the case of companies subject to the Indian Companies Act, 1913, is hedged round with important restrictions which are set forth at length in sections 55 to 66 of that Act. In the case of such companies confirmation by the Court is necessary. We think it sufficient in the present case to retain regulation 19 as it already stands, as the Governor General in Council will then be in a position to lay down the conditions subject to which the share capital may be reduced.

We have rejected a suggestion by the Central Board that the Bank should be given discretion to refuse to recognise the holder of a succession certificate as the person having title to shares mentioned in the certificate.

Clause 15.—The Central Board point out that, in regulation 24 of the Second Schedule as it stands at present, no provision is made for fixing the place at which a special meeting is to be held. We have accordingly redrafted regulation 24 on the lines suggested by them.

Clause 16.—The Central Board point out that the present requirements of regulation 36 involve the sending of a large number of original powers of attorney from local head offices of the Bank to the place where a general meeting of the shareholders is to be held. We have accordingly adopted their suggestion that the certificate of the secretary of the local head office where any such power has been deposited and registered shall be receivable in place of the original power of attorney.

Clause 23.—We have inserted this clause, again at the instance of the Central Board, to give the Board power to grant gratuities and compassionate allowances to widows and dependants of deceased officers and servants of the Bank, a power which they do not at present possess.

Clause 25 (originally clause 22).—We have decided, in view of the fact that the Imperial Bank of India is now being converted into a commercial bank, that there is no reason why the very important requirements of sections, 132 and 136 of the Indian Companies' Act, 1913, should not be observed by it. We understand that the Central Board have no objections to a provision on the lines of the one which we have made in this clause, but we consider that such a provision is essential in any case.

Clause 27.—We have inserted, at the instance of the Central Board, a provision on the lines of section 67 of the Presidency Banks Act, 1876, to enable the Bank to be voluntarily wound up.

Clause 28.—We have agreed to a recommendation of the Central Board providing that shareholders who have supplied to the Bank no address in British India to which notices shall be sent shall not be entitled to receive the same.

The only other amendments of consequence which we have made are amendments designed to enable the Deputy Managing Governor to perform the functions of the Managing Governor under regulations 23 (2), 42, 49 (1) and 51 in the Second Schedule.

3. The Bill was published in the Gazette of India Extraordinary, dated the 17th January, 1927.

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

BASIL P. BLACKETT.
CHARANJIT SINGH.
A. C. McWATTERS.
UMAR HAYAT.
A. F. L. BRAYNE.
P. C. D. CHARI.
J. W. A. BELL.
M. SUHRAWARDY.
KUMARSANKAR RAY CHAUDHURY.*
PHIROZE SETHNA.
MANMOHANDAS RAMJI.
GOVIND DAS.
V. RAMADAS PANTULU.
RAM SARAN DAS.
JAMNADAS M. MEHTA.
N. C. KELKAR.
KIKABHAI PREMCHAND.
PURSHOTAMDAS THAKURDAS.
MADAN MOHAN MALAVIYA.
FAZAL I. RAHIMTOOLA.
A. RANGASWAMI IYENGAR.
HUGH G. COCKE.
V. K. ARAVAMUDHA AYANGAR.
GHAZANFAR ALI.
R. K. SHANMUKHAM CHETTY.

The 18th August, 1927.

* Subject to minute of dissent.

L.231LD—1000-18-8-27 GIPS

MINUTE OF DISSENT.

I submit that in section 32 of the Imperial Bank of India Act, 1920, the word "and" should be inserted between the figures "188" and "189" and the word and figures "and 289" appearing after the figures "189" should be omitted, so as to bring the Imperial Bank into line with other banks. Instead of that amendments have been made in the Joint Committee making certain sections only of the Indian Companies Act, 1913, applicable to the Imperial Bank in a manner which seems to be incomplete. I accordingly sign this report subject to this note of dissent.

KUMARSANKAR RAY CHAUDHURY,

Member, Council of State.

The 8th August 1927.

M231LD—13—18-8 27= CIPS

[AS AMENDED BY THE JOINT COMMITTEE.]

[Words printed in italics indicate the amendments suggested by the Committee.]

A

BILL

Further to amend the Imperial Bank of India Act, 1920, for certain purposes.

WHEREAS by reason of the constitution of the Reserve Bank of India it is expedient further to amend the Imperial Bank of India Act, 1920, in order to modify the control of the Governor General in Council over the management of the Bank, to remove certain restrictions on the transaction of business by the Bank, and to provide for an agreement between the Bank and the Reserve Bank of India; It is hereby enacted as follows :— XLVII of 1920.

Short title and commencement.

1. (*1*) This Act may be called the Imperial Bank of India (Amendment) Act, 1927.

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

Amendment of section 2, Act XLVII of 1920.

2. *After clause* (*i*) *of section 2 of the Imperial Bank of India Act, 1920* (*hereinafter referred to as the said Act*), *the following clause shall be inserted, namely* :— XLVII of 1920.

(*ii*) "*secretary*" *and* "*deputy secretary*" *mean, respectively, the secretary and treasurer and the deputy secretary and treasurer of the Bank.*

Repeal of section 9 Act XLVII of 1920.

3. Section 9 of the said Act is hereby repealed.

Amendment of section 10, Act XLVII of 1920.

4. (*1*) In sub-section (*1*) of section 10 of the said Act,—

(*a*) for the words "the Secretary of State for India in Council" the words "the Reserve Bank of India" shall be substituted;

(*b*) in clause (*i*), the words "to act as banker for, and" shall be omitted, and after the word "securities" the words "as agent for the Reserve Bank of India" shall be inserted; and

(*c*) in clause (*ii*), for the words "the Government" the words "the Reserve Bank of India" shall be substituted.

(*2*) In sub-section (*2*) of the same section, clause (*a*) and the letter and brackets "(*b*)" shall be omitted.

Amendment of section 12, Act XLVII of 1920.

5. In clause (*a*) of section 12 of the said Act, after the words "at such places" the words "whether in India or elsewhere" shall be inserted.

Amendment of section 13, Act XLVII of 1920.

6. In sub-section (*1*) of section 13 of the said Act, after the words ' in India ' the words " or elsewhere ' shall be inserted, and the *Explanation* shall be omitted.

Amendment of section 23, Act XLVII of 1920.

7. In section 23 of the said Act, the words " with the previous sanction of the Governor General in Council " and the words " The Bank may also, subject to the provisions of this Act as to the business to be transacted there, establish an office in London " shall be omitted.

Amendment of section 25, Act XLVII of 1920

8. In section 25 of the said Act the words " with the previous sanction of the Governor General in Council " shall be omitted

Substitution of new section for section 28, Act XLVII of 1920

9. For section 28 of the said Act the following section shall be substituted, namely —

Constitution of Central Board.

" 28. (*1*) The Central Board shall consist of the following Governors, namely :—

(*i*) the presidents and vice-presidents of the Local Boards established by this Act ,

(*ii*) a Managing Governor who shall be appointed by the Central Board for a period *not exceeding* five years on such terms as the Central Board may direct, and may be continued in his appointment by the Central Board for such further periods not exceeding five years in each case as the Centra Board thinks fit ;

(*iii*) a Deputy Managing Governor who shall be appointed by the Central Board ;

(*iv*) the secretaries of the Local Boards established by this Act ; and

(*v*) if any Local Board is hereafter established under this Act, such number of persons to represent it as the Central Board may prescribe.

(*2*) The Governors specified in clauses (*iii*) and (*iv*) of sub-section (*1*) shall be at liberty to attend all meetings of the Central Board and to take part in its deliberations, but shall not be entitled to vote on any question arising at any meeting :

Provided that the Deputy Managing Governor shall be entitled to vote in the absence of the Managing Governor."

Repeal of section 30, Act XLVII of 1920.

10. Section 30 of the said Act is hereby repealed.

Amendment of Schedule I Act XLVII of 1920

11. (*1*) In Part I of Schedule I to the said Act, the following amendments shall be made, namely :—

(*1*) in sub-clause (*iii*) of clause (*a*), after the words " a district board " the words " or a municipal board or committee " shall be inserted ;

(2) *after sub-clause (iii) of the same clause the following sub-clause shall be inserted, namely :—*

" (*iiia*) *subject to any general or special directions of the Central Board, fully paid shares and debentures of companies with limited liability whether registered in India or elsewhere* " ;

(3) for sub-clause (*iv*) of the same clause the following sub-clause shall be substituted, namely :—

" (*iv*) goods which, or the documents of title to which, are deposited with, or pledged, hypothecated, assigned or transferred to, the Bank as security for such advances, loans or credits " ;

(4) in sub-clause (*vi*) of the same clause, the words " fully paid shares and debentures of companies with limited liability, or " shall be omitted ;

(5) in clause (*b*), for the words " assigned to " the words " or pledged, hypothecated, assigned or transferred to " shall be substituted ;

(6) in clause (*d*), the words beginning with the words " payable in India, or in Ceylon " and ending with the words " may approve in that behalf " shall be omitted ;

(7) in clause (*f*), the words " made payable in India, or in Ceylon " shall be omitted ;

(8) *in clause (j) after the word " claims " the following shall be added, namely :—*

" *and the acquisition and holding of, and generally the dealing with, any right, title or interest in any property, moveable or immoveable, which may be the Bank's security for any loan or advance or may be connected with any such security* " ;

(9) in clause (*l*), for the words " the acting as administrator, executor or trustee for the purpose of winding up estates " the words " the administration of estates for any purpose whether as an executor, trustee or otherwise " shall be substituted ;

(10) in sub-clause (*vii*) of the same clause, the words " at the risk of the principal " shall be omitted ;

(11) in clause (*m*), the words beginning with the words " for the use of " and ending with the words " personal needs " shall be omitted ;

(12) in clause (*n*), the words " for the purpose of meeting such bills or letters of credit " shall be omitted ;

(13) in clause (*o*), the words " in India " shall be omitted ;

(*14*) *for* clause (*p*) *the following clause shall be substituted, namely*.—

"(*p*) *the subsidizing from time to time of the pension funds of the Presidency Banks*";

(*15*) in clause (*q*), after the words "kinds of business" the words "including foreign exchange business" shall be inserted.

(*2*) *In clause* (*4*) *of Part II of the same Schedule, after the words "negotiable security" the following words and brackets shall be inserted, namely*:—

"(*not being a security in which a trustee may invest trust money under section 20 of the Indian Trusts Act, 1882*)." II of 1882.

12. In regulation 10 in Schedule II to the said Act (*which* Schedule is hereinafter referred to as the said Schedule),—

Amendment of regulation 10, Schedule II, Act XLVII of 1920.

(*a*) the words "not being fully paid shares" shall be omitted, *and*

(*b*) *after the words "does not approve" the following shall be inserted, namely*:—

"*or to any person who is a minor or has been found by a Court of competent jurisdiction to be of unsound mind or to or in the name of any firm*."

13. In regulation 11 in the said Schedule,—

Amendment of regulation 11, Schedule II, Act XLVII of 1920.

(*a*) after the word "share", where it first occurs, the words "or the holder of a succession certificate issued under Part X of the Indian Succession Act, 1925, in respect of the share" shall be inserted; XXXIX of 1925. and

(*b*) after the words "deceased survivor" the words "or any person who is the holder of a succession certificate in respect of such survivor's interest in the share" shall be inserted.

14. In regulation 23 in the said Schedule, in sub-regulation (*2*), for the words "a Managing Governor" the words "the Managing Governor *or Deputy Managing Governor*" shall be substituted.

Amendment of regulation 23, Schedule II, Act XLVII of 1920.

15. *For regulation 24 in the said Schedule the following regulation shall be substituted, namely*:—

Substitution of new regulation for regulation 24, Schedule II, Act XLVII of 1920.

"(*1*) *The Central Board shall convene a special meeting on the requisition of any three Governors or of not less than one hundred shareholders holding shares of the aggregate amount of not less than five hundred thousand rupees, upon which all calls or other sums due have been paid, if such requisition is signed by the requisitionists and addressed to the Managing Governor or Deputy Managing Governor and contains a statement of the object of the proposed meeting.*

Special meetings.

(2) *The requisition may consist of several documents in like form, each signed by one or more of the requisitionists.*

(3) *Sixty days' previous notice of any such meeting shall be given by the Central Board under the hand of not less than three Governors, and such notice shall state the purpose for which the meeting is convened and the time and place of such meeting, and shall be advertised in the Gazette of India and in not less than three daily newspapers, of which one shall be a newspaper published in the vernacular.*"

Amendment of regulation 36, Schedule II, Act XLVII of 1920

16. *In regulation 36 in the said Schedule, after the words "power or authority," the following words shall be inserted, namely :—*

"*or, in the case of a power of attorney previously deposited and registered with any local head office, a certificate of the secretary of such local head office as to such deposit and registration*"

Amendment of regulation 38, Schedule II, Act XLVII of 1920.

17. In regulation 38 in the said Schedule, for the words "Managing Governors" the words "the Managing Governor *or Deputy Managing Governor* " shall be substituted.

Amendment of regulation 39, Schedule II, Act XLVII of 1920.

18. In regulation 39 of the said Schedule,—

(*a*) in *the proviso to* sub-regulation (*1*), the words "or is nominated or appointed by the Governor General in Council" shall be omitted ;

(*b*) in sub-regulation (*2*), the words beginning with the words "Provided that" and ending with the word and figures "section 28 ;" shall be omitted ; and

(*c*) in sub-regulation (*3*), the words "or of the Central Board and a Local Board" shall be omitted.

Amendment of regulation 40, Schedule II, Act XLVII of 1920.

19. In regulation 40 in the said Schedule, the words and brackets "(other than a Governor nominated or appointed by the Governor General in Council)" shall be omitted.

Amendment of regulation 42, Schedule II, Act XLVII of 1920.

20. In regulation 42 in the said Schedule, for the words "a Managing Governor," wherever they occur, the words "the Managing Governor *or Deputy Managing Governor* " shall be substituted ; *and in sub-regulation (1) for the words "at every local head office established by this Act" the words "at each of the local head offices established at Calcutta, Bombay and Madras" shall be substituted.*

Amendment of regulation 44, Schedule II, Act XLVII of 1920.

21. For sub-regulation (*1*) of regulation 44 in the said Schedule the following shall be substituted, namely :—

"(*1*) At the first meeting of the Local Board which takes place after the first meeting of the Central Board in each year, the Local Board shall elect from among

its members a president and a vice-president who shall continue in their respective offices until the first meeting of the Local Board after the first meeting of the Central Board in the following year, and, whenever the office of president or vice-president becomes vacant, the Local Board shall at its next meeting elect a successor who shall hold office for the unexpired portion of the period for which his predecessor was appointed :

Provided that no person shall be elected to be president or vice-president more than twice in succession."

22. In regulation 49 in the said Schedule,—

Amendment of regulation 49, Schedule II, Act XLVII of 1920.

(*a*) in sub-regulation (*1*), for the words "a Managing Governor" the words "the Managing Governor *or Deputy Managing Governor* " shall be substituted ;

(*b*) in sub-regulation (*5*), after the word "secretary" the words "or deputy secretary" shall be inserted.

23. *In clause* (*b*) *of regulation 50 in the said Schedule, after the word "servants" the following shall be inserted, namely :—*

Amendment of regulation 50, Schedule II, Act XLVII of 1920.

"*and to grant gratuities or other financial assistance, either temporary or permanent, to widows, children or other dependants of deceased officers or servants.*"

24 In regulation 51 in the said Schedule, for the word "Governors" the words "Governor *and Deputy Managing Governor* ", and for the word "officers" the word "employees," shall be substituted.

Amendment of regulation 51, Schedule II, Act XLVII of 1920.

25. In regulation 54 in the said Schedule, *for* sub-regulation (*3*) *the following shall be substituted, namely :—*

Amendment of regulation 54, Schedule II, Act XLVII of 1920.

"(*3*) *The statement of the balance shall contain the particulars and shall be in the form required by section 132 of the Indian Companies Act, 1913, and the provisions of that section and of section 136 of the same Act shall apply to the Bank in like manner as they apply to a banking company.*" VII of 1913.

26. In sub-regulation (*2*) of regulation 58 in the said Schedule, for the words in the proviso "a special meeting shall be called for the purpose of supplying the same" the words "the vacancy may be filled by the Central Board" shall be substituted.

Amendment of regulation 58, Schedule II, Act XLVII of 1920.

27. *After regulation 60 in the said Schedule the following regulation shall be inserted, namely :—*

Insertion of new regulation 60A in Schedule II, Act XLVII of 1920.

"*60A. Notwithstanding anything contained in this Act or in section 271 of the Indian Companies Act, 1913, if the shareholders of the Bank pass a special resolution that the Bank be wound up voluntarily under*

Liquidation. VII of 1913.

the provisions of the Indian Companies Act, 1913, VII of 1913. *the Bank shall be wound up in accordance with the provisions of that Act with regard to the voluntary winding up of a company:*

Provided that, for the purposes of this section, no such special resolution shall be deemed to have been passed unless at least one-third of the shareholders holding at least one-half of the paid-up capital of the Bank for the time being be present in person or by proxy and a majority poll by open voting in favour of the said resolution and such resolution is thereafter confirmed by a majority of the shareholders at a subsequent special meeting held at an interval of not less than two months or more than three months from the date of the meeting at which the resolution was first passed."

Substitution of new regulation for regulation 62, Schedule II, Act XLVII of 1920.

28. *For regulation 62 in the said Schedule the following regulation shall be substituted, namely:—*

" 62. A shareholder who has no registered address in British India and has not supplied to the Bank an address for the giving of notices to him shall not be entitled to any notice, notwithstanding anything contained in this Act."

Absence of registered address.

Temporary saving of existing Central Board.

29. Notwithstanding any amendment made in the said Act by this Act in regard to the manner in which the Central Board shall be constituted, the Central Board existing at the commencement of this Act shall, until it has been re-established in accordance with the said Act as amended by this Act, continue to transact business and shall have all the powers of the Central Board under the said Act as so amended.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

Report of the Joint Committee on the Bill further to amend the Imperial Bank of India Act, 1920, for certain purposes, with the Bill as amended.

M231LD—18-8-27—1,000—GIPS

[To be introduced in the Legislative Assembly.]

A

BILL

Further to amend the Inland Bonded Warehouses Act, 1896, for certain purposes.

WHEREAS it is expedient further to amend the Inland Bonded Warehouses Act, 1896, for the purposes hereinafter appearing; It is hereby enacted as follows :— VIII of 1896.

Short title.

1. This Act may be called the Inland Bonded Warehouses (Amendment) Act, 192 .

Amendment of section 4, Act VIII of 1896.

2. (*1*) In sub-section (*1*) of section 4 of the Inland Bonded Warehouses Act, 1896 (hereinafter referred to as the said Act), VIII of 1896.

(*a*) the words " with the previous sanction of the Local Government " shall be omitted ; and

(*b*) the following proviso shall be added, namely :—

" Provided that, where a warehouse is to be wholly or partly in the charge of officers serving under a Local Government, it shall not be appointed or licensed as an inland bonded warehouse until the Local Government has signified its assent to such appointment or license."

(*2*) In sub-section (*2*) of the same section, the following words shall be added at the end, namely :—

" and, if the owner so desires, as if goods, in respect of which the procedure laid down in sections 90, 91 and 92 of the said Act has been complied with, were goods already warehoused at a warehousing port within the meaning of section 105 of the said Act."

Amendment of sections 5 and 7, Act VIII of 1896.

3. In sections 5 and 7 of the said Act, for the words " Local Government " the words " Chief Customs-authority " shall be substituted.

M313LD.

STATEMENT OF OBJECTS AND REASONS.

It is the practice to allow goods intended for warehousing at an inland bonded warehouse to be removed there from the wharf or ship's side direct. It has been pointed out that under the law as it stands, strictly interpreted, no goods ought to be removed to an inland bonded warehouse unless they had previously been deposited in a warehouse at a customs-port ; to enforce this would be a useless and expensive formality. It is, therefore, proposed that the existing practice should be regularised.

2. Some inland bonded warehouses are managed by officers of the Local Governments, others by officers directly subordinate to the Central Board of Revenue. With respect to the latter class, it is proposed, in pursuance of the principle of the Central Board of Revenue Act, 1924, that the Local Governments should be divested of authority, their authority in other cases being maintained by the provision that the Chief Customs-authority (*i.e.*, the Central Board of Revenue) must obtain the assent of the Local Government before appointing or licensing any inland bonded warehouse.

BASIL P. BLACKETT.

The 7th Sept., 1927.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

BILL

Further to amend the Inland Bonded Warehouses Act, 1896, for certain purposes; and Annexure.

(The Honourable Sir Basil P. Blackett.)

M313LD—650—12-9-27—GIPS

[To be introduced in the Council of State.]

BILL

Further to amend the Indian Divorce Act for a certain purpose.

WHEREAS it is expedient further to amend the Indian Divorce Act for the purpose hereinafter appearing; It is hereby enacted as follows:— IV of 1869.

Short title.

1. This Act may be called the Indian Divorce (Second Amendment) Act, 192 .

Amendment of section 2, Act IV of 1869.

2. In the second paragraph of section 2 of the Indian Divorce Act, after the word 'petitioner' where it first appears, the words 'or respondent' shall be inserted. IV of 1869.

STATEMENT OF OBJECTS AND REASONS.

Under the Indian Divorce Act (IV of 1869), no relief is provided except in cases in which the petitioner professes the Christian religion. As a valid marriage can be contracted by a Christian with a non-Christian under the Indian Christian Marriage Act, 1872 (XV of 1872), relief is at present possible only to the Christian party to such a marriage. The Bill proposes to amend Act IV of 1869 so as to allow a non-Christian party also to apply for relief.

The 26th August, 1927.

H. G. HAIG.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

Further to amend the Indian Divorce Act ; and Annexure.

The Governor General has been pleased to accord the sanction required by clause (*b*) of section 67 (2) of the Government of India Act.

W. T. M. WRIGHT,
Secretary of the Council of State.

(*The Honourable Mr. H. G. Haig.*)

M272LD—650—29-8-27—GIPS

(As passed by the Council of State.)

[To be introduced in the Council of State.]

A

BILL

Further to amend the Assam Labour and Emigration Act, 1901, for certain purposes.

WHEREAS it is expedient further to amend the Assam Labour and Emigration Act, 1901, for certain purposes hereinafter appearing; It is hereby enacted as follows :— VI of 1901.

Short title.

1. This Act may be called the Assam Labour and Emigration (Amendment) Act, 1927.

Amendment of section 116E, Act VI of 1901.

2. For sub-section (2) of section 116E of the Assam Labour and Emigration Act, 1901 (hereinafter referred to as the said Act), the following sub-section shall be substituted, namely :— VI of 1901.

"(2) Such cess shall be payable on every person deputed by an employer to engage or assist persons to emigrate and on every person assisted to emigrate to a labour district:

Provided that the rates at which the cess is levied shall not exceed the following rates, namely :—

Five rupees a year on each person so deputed; and

Five rupees on each person assisted to emigrate."

Validation of recoveries prior to commencement of this Act

3. Where any sum has been paid as cess under section 116E of the said Act before the commencement of this Act, notwithstanding that it was not so payable, and such sum would have been payable if this Act had been in force at the time of the payment, such sum shall be deemed to have been legally due as cess, and no claim shall lie in any Court for its refund.

STATEMENT OF OBJECTS AND REASONS.

The expenditure of the Assam Labour Board, which is responsible for supervising assisted emigration to Assam, is met almost entirely from a cess on employers in Assam levied under section 116E of the Assam Labour and Emigration Act, 1901. The existing sub-section (*2*) of that section reads as follows :—

> "Such cess shall be payable on every garden-sardar deputed by his employer to engage labourers and on every person recruited or engaged as a labourer or assisted to emigrate under Chapter IV or section 91 :
>
> Provided that the rates at which the cess is levied shall not exceed the following, namely :—
>
> Five rupees a year on each garden-sardar so deputed, and
>
> Five rupees on each person so recruited, engaged, or assisted to emigrate."

A labourer is defined in the Act as meaning any person bound by a labour contract ; but, owing to the withdrawal by executive notification of certain provisions of the Act, no persons working in Assam are now bound by labour contracts. In consequence of this change, it is no longer possible to levy a cess upon garden-sardars although the recruitment of labour is still conducted by their agency. The Bill is intended to make it possible to levy a cess on garden-sardars and on assisted emigrants as heretofore and to validate the collection of the cesses already paid or imposed.

A. C. McWATTERS.

The 9th August, 1927.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

Further to amend the Assam Labour and Emigration Act, 1901, for certain purposes; and Annexure.

The Governor General has been pleased to accord the sanction required by clause (*a*) of section 67 (2) of the Government of India Act.

W. T. M. WRIGHT,

Secretary of the Council of State.

(*The Honourable Mr. A. C. McWatters.*)

M230LD—650—16-8-27—GIPS.

LEGISLATIVE DEPARTMENT.

We, the undersigned members of the Select Committee appointed to examine and report on the motions for the amendments of the Standing Orders moved by Mr. A Rangaswami Iyengar and Mr. Duraiswamy Aiyangar, have the honour to submit this our report.

The Committee sat on three occasions, namely, the 19th February, the 22nd February, and the 5th March. There being some overlapping between the amendments proposed by Mr. Rangaswami Iyengar and those proposed by Mr. Duraiswamy Aiyangar, the two sets of amendments were considered jointly and are dealt with in one report.

Standing Order 4.—The proposal of Mr. Duraiswamy to keep all notices alive after prorogation was abandoned in favour of that of Mr. Rangaswami to restrict the amendment of this Standing Order to notices of Bills, on the ground that the accumulation of notices of questions and Resolutions would be burdensome and could serve no useful purpose. The only restriction to be placed on the survival of notices of Bills is where a Bill requires sanction and the sanction having been given for a limited period has expired. The proposal to give precedence in the following Session to Bills of which notice has been given in a past Session, even though they have not been introduced, was abandoned.

Standing Order 6.—Having regard to the provisions of sub-section (*3*) of section 63D of the Government of India Act, in accordance with which any meeting of either Chamber of the Indian Legislature may be adjourned by the person presiding, it was agreed that the words " and ordinarily terminate at 4 P.M." should be omitted, and it was decided by a majority to substitute the President for the Governor-General as the authority for varying from 11 A.M., the hour of the beginning of any sitting of the Assembly.

Standing Order 7.—Mr. Rangaswami's proposal was to add three new sub-orders. Of these the last was dropped as superfluous. It was agreed by the majority that, subject to the provisions of rule 6, there should be power in the President both to direct that non-official business shall be taken on the conclusion of official business on any day when such official business has concluded before 4 P. M., and also to direct that the Assembly shall sit for the disposal of non-official business on days not appropriated for the disposal of official business, and not allotted by the Governor General for the disposal of non-official business. The amendment has been redrafted with a view to providing for the manner in which the President should settle the agenda for the purpose of determining the order of priority.

Standing Orders 8, 9, 14, 16, 24.—The proposals of Mr. Rangaswami and Mr. Duraiswamy to amend these Standing Orders were withdrawn.

Standing Order 29.—The majority of the Committee were in favour of allowing the members of the Assembly to discuss, and, if necessary, to criticise the official action of the Governor General and of Governors, provided that such discussion was not allowed to lapse into improper personal criticism. The amendment has been redrafted to make this clear.

Standing Order 32.—The majority of the Committee were opposed to Mr. Duraiswamy's first amendment to this Standing Order, on the ground that it would unduly restrict the power of the President in settling the course of the debate.

The proposal to amend sub-order (*3*) of this Standing Order, which deals with the right of reply, was accepted by the majority in a slightly different form. The effect of the sub-order as amended is to vest in the President the discretion to decide whether the Member of Government shall be allowed to have the last word on a non-official motion.

Standing Order 39.—Mr. Duraiswamy's amendment was rejected by the majority as being inconsistent with rule 20A of the Indian Legislative Rules as regards the motion for consideration and generally as being inconsistent with the principle that the Member in charge of a Bill should not be required to accelerate the progress of the Bill against his own wishes.

Standing Order 53.—The majority of the Committee were opposed to this amendment as superfluous, being of opinion that the ordinary procedure in respect of amendments applies in this case also.

Standing Order 54.—The amendment was rejected by the majority of the Committee as being inconsistent with Standing Orders 7, 7A, and 7B.

Standing Order 61.—Mr. Duraiswamy's amendment was dropped as superfluous.

Standing Order 70.—The amendment was accepted, the view taken being that a disallowance of a Resolution might be due merely to the fact that the Resolution failed in the matter of form or under rule 22 for reasons which were of a temporary nature. In either case there is no justification for barring the moving of a Resolution raising substantially the same question within the same Session merely by reason of the fact that a Resolution on that question has been disallowed

Standing Order 72.—It was agreed that the proposal was in conformity with the present practice and that the language in the Standing Order as it stands is ambiguous. The form of words proposed by the Mover has been slightly altered.

New Standing Order 73A.—Mr. Rangaswami's proposal to provide a priod of notice for motions moved in accordance with rule 24A of the

Legislative Rules was withdrawn on the ground that the consent of the President and of the Member of Government concerned furnish adequate safeguards in lieu of notice.

Standing Order 74.—The proposal of Mr. Rangaswami and also of Mr. Duraiswamy to provide for the moving of an address to the Governor General in respect of any address or message received from the Governor General was approved by the majority.

New Standing Order 74A.—The first part of Mr. Duraiswamy's amendment was accepted. It was understood that orders of the Governor General disallowing Resolutions or granting or refusing sanction to non-official Bills or the amendments of non-officials to official Bills did not come within the head of communications from the Governor General to the Assembly.

New Standing Orders.—The first proposal of Mr. Duraiswamy to add to the Standing Orders was rejected by the Committee as being outside the scope of the Standing Orders in that it provides for laying a duty on the Executive Government outside the Chamber.

The second proposal of Mr. Duraiswamy to add a Standing Order providing for the regulation of the order in which the demands for grants ought to be discussed was dropped as it was considered preferable that the order in which the grants would be discussed should be settled by mutual understanding.

A copy of the Standing Orders as proposed to be amended by us is appended.

V. J. PATEL.

MD. YAKUB.

H. TONKINSON.*

M. KEANE.*

M. RUTHNASWAMY.*

A. RANGASWAMI IYENGAR.

L. GRAHAM.*

C. DURAISWAMY AIYANGAR.

M. S. ANEY.

The 24th March, 1927.

*Subject to minute of dissent.

AMENDMENTS TO STANDING ORDERS.

1. In Standing Order 4, for the words "(*1*) All pending notices shall lapse, and fresh notices must be given for the next Session", the following shall be substituted, namely:—

"(*1*) All pending notices, other than notices of intention to move for leave to introduce a Bill, shall lapse and fresh notice must be given for the next Session:

Provided that fresh notice shall be necessary of intention to move for leave to introduce any Bill in respect of which sanction has been granted under the Government of India Act if the sanction has ceased to be operative."

2. For Standing Order 6 the following shall be substituted, namely:—

"6. Meetings of the Assembly shall (subject to the direction of the President) ordinarily commence at 11 A.M."

3. Standing Order 7 shall be re-numbered as sub-order (*1*) of Standing Order 7, and after that sub-order the following sub-orders shall be added, namely:—

"(*2*) The President may direct that, in addition to sitting on the days allotted for the transaction of Government and non-official business, the Assembly shall sit on any other day for the transaction of non-official business set down for, but not disposed of, on the days allotted therefor by the Governor General; and on such days the business shall, unless the President otherwise directs, be transacted in the order in which it was set down on the days allotted for it by the Governor General, business originally set down for an earlier day having priority over business originally set down for a later day.

(*3*) The President may direct that, on any day on which Government business terminates earlier than 4 P.M., non-official business may be transacted in such order as he may direct:

Provided that nothing in sub-order (*2*) or sub-order (*3*) shall be deemed to permit the transaction of non-official business on a day not allotted therefor by the Governor General if the Governor General in Council withholds his consent thereto under rule 6."

4. To sub-order (*2*) of Standing Order 29 the following *Explanation* shall be added, namely —

"*Explanation.*—A member shall not, by reason only of his criticising the official or public acts of the Governor General or of any Governor, be deemed to reflect upon the conduct of the Governor General or such Governor within the meaning of this Standing Order."

5. In sub-order (*3*) of Standing Order 32, for the words "shall have the right of speaking" the following shall be substituted, namely:—

"may, with the permission of the President, speak."

6. In sub-order (*2*) of Standing Order 70, the words "has been disallowed under the rules or these Standing Orders or" shall be omitted.

7. In Standing Order 72, for the words "is to be considered" the words "is under consideration" shall be substituted.

8. For Standing Order 74 the following shall be substituted, namely:—

"74. Communications from the Assembly to the Governor General on his address or message shall be made by formal address through the President after motion made and carried in the Assembly."

Communications to the Governor General.

9. After Standing Order 74 the following new Standing Order shall be added, namely:—

"74A. Communications from the Governor General to the Assembly are made by written message through the President."

Communications from Governor General.

MINUTES OF DISSENT.

We have signed the report subject to the following remarks on certain of the amendments in respect of which we find ourselves in a minority.

Standing Order 6.—We object to any amendment of the order in so far as it relates to the power of fixing the hour for the opening of the meeting, because there must always be times, as for example, the time for the presentation of the Budget, when the public interests may require a variation of the hour of beginning the sitting. We do not consider it proper to place on the President the burden of reaching a decision on this point.

Standing Order 7.—Although both the new sub-orders purport to save the operation of rule 6 of the Indian Legislative Rules they are in substance inconsistent with the provisions of that rule, which contemplates only two classes of days, namely, days allotted for non-official business by the Governor General, and days on which no business other than Government business may be transacted except with the consent of the Governor General. Sub-order (*2*) creates a third class of day, that is to say, days allotted for the transaction of non-official business not by the Governor General but by the President. The proviso which governs sub-orders (*2*) and (*3*) is in our opinion inconsistent with the provisions of rule 6, because it allows of non-official business being transacted on a Government day unless the Governor General in Council refuses his consent, whereas the rule forbids the transaction of non-official business on a Government day unless the Governor General in Council gives consent. In other words, the proviso throws on the Governor General in Council the obligation to refuse consent, while the rule throws on the person wishing to bring up non-official business the obligation to obtain consent of the Governor General in Council. In effect the Standing Order seeks to amend the Legislative Rule and thus goes beyond the scope of the Standing Orders. We should add in regard to sub-order (*3*) that one of us thinks that a convention might well be established permitting the transaction of pending non-official business if Government business terminates early in the day.

Standing Order 29.—We cannot agree that, in the present state of the constitution where extraordinary powers are vested in the Governor General and in Governors personally, the actions of the Governor General or of a Governor apart from his Council should be open to criticism on the floor of the House.

Standing Order 32.—We are not aware that the right of reply under the present orders has ever been abused, and we think that the President has ample power to prevent a Member of Government from introducing new matter in his final speech. Having regard to the restricted representation of Government in the House as now constituted, it is generally necessary for the Member in charge to speak early in the debate, and it is equally necessary that he should have the right of speaking again at the close of the debate. We do not think it proper to place on the President the burden of deciding whether, in any particular case, he should allow a reply.

Standing Order 74.—The amendment pre-supposes the right to raise a debate on the address as though the speeches of His Excellency from time to time delivered in the Legislative Assembly were on the same footing as the King's speech made at the opening of Parliament. The Governor General's right to address the Assembly is derived from section 63B of the Government of India Act, and any speech delivered by him in the exercise of that right is in no way a counterpart of the King's speech.

M. KEANE.
H. TONKINSON.
L. GRAHAM.

I have signed the report with the following reservations :—

Standing Order 6.—I think the hour of meeting of the Assembly should be fixed in a Standing Order of the House and any occasional variation should be decided upon by the House.

Standing Order 29.—I agree with the Minority that the official acts of the Governor General and Governors of Provinces cannot be criticised by the Assembly. Their acts are done by virtue of powers conferred on them by the constitution. It is a good convention which protects the conduct of one branch of the Legislature against the reflections of other branches. And as the Governor General and Governors are representatives of the King at the same time, it would in actual practice be difficult to separate their representative from their political personality.

Standing Order 74.—I agree that an address on the subject-matter of the Governor General's address should be allowed, provided the subject matter of the address could form the subject matter of Resolutions that could be moved in the Assembly.

M. RUTHNASWAMY.

M151LD—200—27-8-27—GIPS

LEGISLATIVE ASSEMBLY.

NOTICE OF AMENDMENTS.

I. RESOLUTION BY THE HONOURABLE SIR GEORGE RAINY REGARDING THE RATIFICATION OF THE DRAFT CONVENTIONS CONCERNING (1) SEAMEN'S ARTICLES OF AGREEMENT, AND (2) THE REPATRIATION OF SEAMEN.

By Mr. N. M. Joshi :-

1. That the words "the question of the ratification" be omitted.

2. That for the words beginning from "should be considered at a later date" to the end of the Resolution, the words "be ratified" be substituted.

II. RESOLUTION BY THE HONOURABLE SIR GEORGE RAINY REGARDING THE RECOMMENDATIONS CONCERNING (1) THE REPATRIATION OF MASTERS AND APPRENTICES AND (2) CONDITIONS OF WORK OF SEAMEN.

By Mr. N. M. Joshi :-

1. That for the words "no action" the words "necessary action" be substituted.

2. That all the words beginning from "until the amendments necessary" to the end of the Resolution, be omitted.

W. T. M. Wright,

Secretary of the Legislative Assembly.

Simla,

The 8th September 1927.

LEGISLATIVE ASSEMBLY.

Notice of Amendment.

To be moved at the meeting of the Legislative Assembly to be held on Wednesday, the 14th September, 1927.

RESOLUTION BY THE HONOURABLE MR.J.CRERAR REGARDING THE APPOINTMENT OF A COMMITTEE TO EXAMINE AND REPORT ON THE SYSTEM OF CENSORSHIP OF CINEMATOGRAPH FILMS IN INDIA.

By Mr.C.Duraiswami Ayyangar :-

That for the original Resolution the following be substituted :-

"This Assembly recommends to the Governor General in Council that he be pleased to appoint a Committee consisting of a majority of non-official Indians with an Indian as the President of the Committee -

(a) to examine and report on the system of censorship of cinematograph films in India,

(b) to examine and report on the kind of films now exhibited in the various theatres,

(c) to suggest legislative measures to be adopted for preventing and penalising the exhibition of films having demoralising effect,

(d) to consider and report on the desirability of preventing religion being dragged into the films of cinematograph."

W.T.M.WRIGHT,

Secretary of the Legislative Assembly.

Simla,

The 13th September,1927.

[To be introduced in the Legislative Assembly.]

A

BILL

Further to amend the Inland Bonded Warehouses Act, 1896, for certain purposes.

WHEREAS it is expedient further to amend the Inland Bonded Warehouses Act, 1896, for the purposes hereinafter appearing; It is hereby enacted as follows :— VIII of 1896.

Short title.

1. This Act may be called the Inland Bonded Warehouses (Amendment) Act, 192 .

Amendment of section 4, Act VIII of 1896.

2. (*1*) In sub-section (*1*) of section 4 of the Inland Bonded Warehouses Act, 1896 (hereinafter referred to as the said Act), VIII of 1896.

(*a*) the words " with the previous sanction of the Local Government " shall be omitted ; and

(*b*) the following proviso shall be added, namely :—

" Provided that, where a warehouse is to be wholly or partly in the charge of officers serving under a Local Government, it shall not be appointed or licensed as an inland bonded warehouse until the Local Government has signified its assent to such appointment or license."

(*2*) In sub-section (*2*) of the same section, the following words shall be added at the end, namely :—

" and, if the owner so desires, as if goods, in respect of which the procedure laid down in sections 90, 91 and 92 of the said Act has been complied with, were goods already warehoused at a warehousing port within the meaning of section 105 of the said Act."

Amendment of sections 5 and 7, Act VIII of 1896.

3. In sections 5 and 7 of the said Act, for the words " Local Government " the words " Chief Customs-authority " shall be substituted.

M313LD.

STATEMENT OF OBJECTS AND REASONS.

It is the practice to allow goods intended for warehousing at an inland bonded warehouse to be removed there from the wharf or ship's side direct. It has been pointed out that under the law as it stands, strictly interpreted, no goods ought to be removed to an inland bonded warehouse unless they had previously been deposited in a warehouse at a customs-port; to enforce this would be a useless and expensive formality. It is, therefore, proposed that the existing practice should be regularised.

2. Some inland bonded warehouses are managed by officers of the Local Governments, others by officers directly subordinate to the Central Board of Revenue. With respect to the latter class, it is proposed, in pursuance of the principle of the Central Board of Revenue Act, 1924, that the Local Governments should be divested of authority, their authority in other cases being maintained by the provision that the Chief Customs-authority (*i.e.*, the Central Board of Revenue) must obtain the assent of the Local Government before appointing or licensing any inland bonded warehouse.

BASIL P. BLACKETT.

The 7th Sept., 1927.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

Further to amend the Inland Bonded Warehouses Act, 1896, for certain purposes ; and Annexure.

(*The Honourable Sir Basil P. Blackett.*)

M313LD—650—12-9-27—GIPS

[To be introduced in the Council of State.]

A

BILL

Further to amend the Indian Divorce Act for a certain purpose.

WHEREAS it is expedient further to amend the Indian Divorce Act for the purpose hereinafter appearing; It is hereby enacted as follows:— IV of 1869.

Short title.

1. This Act may be called the Indian Divorce (Second Amendment) Act, 192 .

Amendment of section 2, Act IV of 1869.

2. In the second paragraph of section 2 of the Indian Divorce Act, after the word 'petitioner' where it first appears, the words 'or respondent' shall be inserted. IV of 1869.

STATEMENT OF OBJECTS AND REASONS.

Under the Indian Divorce Act (IV of 1869), no relief is provided except in cases in which the petitioner professes the Christian religion. As a valid marriage can be contracted by a Christian with a non-Christian under the Indian Christian Marriage Act, 1872 (XV of 1872), relief is at present possible only to the Christian party to such a marriage. The Bill proposes to amend Act IV of 1869 so as to allow a non-Christian party also to apply for relief.

The 26th August, 1927.

H. G. HAIG.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

Further to amend the Indian Divorce Act; and Annexure.

The Governor General has been pleased to accord the sanction required by clause (*b*) of section 67 (2) of the Government of India Act.

W. T. M. WRIGHT,
Secretary of the Council of State.

(*The Honourable Mr. H. G. Haig.*)

M272LD—650—29-8-27—GIPS

[To be introduced in the Council of State.]

A

BILL

Further to amend the Assam Labour and Emigration Act, 1901, for certain purposes.

WHEREAS it is expedient further to amend the Assam Labour and Emigration Act, 1901, for certain purposes hereinafter appearing; It is hereby enacted as follows :— VI of 1901.

Short title.

1. This Act may be called the Assam Labour and Emigration (Amendment) Act, 1927.

Amendment of section 116E, Act VI of 1901.

2. For sub-section (2) of section 116E of the Assam Labour and Emigration Act, 1901 VI of 1901. (hereinafter referred to as the said Act), the following sub-section shall be substituted, namely :—

"(2) Such cess shall be payable on every person deputed by an employer to engage or assist persons to emigrate and on every person assisted to emigrate to a labour district :

Provided that the rates at which the cess is levied shall not exceed the following rates, namely :—

Five rupees a year on each person so deputed ; and

Five rupees on each person assisted to emigrate."

Validation of recoveries prior to commencement of this Act.

3. Where any sum has been paid as cess under section 116E of the said Act before the commencement of this Act, notwithstanding that it was not so payable, and such sum would have been payable if this Act had been in force at the time of the payment, such sum shall be deemed to have been legally due as cess, and no claim shall lie in any Court for its refund.

STATEMENT OF OBJECTS AND REASONS.

The expenditure of the Assam Labour Board, which is responsible for supervising assisted emigration to Assam, is met almost entirely from a cess on employers in Assam levied under section 116E of the Assam Labour and Emigration Act, 1901. The existing sub-section (*2*) of that section reads as follows :—

> " Such cess shall be payable on every garden-sardar deputed by his employer to engage labourers and on every person recruited or engaged as a labourer or assisted to emigrate under Chapter IV or section 91 :
>
> Provided that the rates at which the cess is levied shall not exceed the following, namely :—
>
> Five rupees a year on each garden-sardar so deputed, and
>
> Five rupees on each person so recruited, engaged, or assisted to emigrate."

A labourer is defined in the Act as meaning any person bound by a labour contract ; but, owing to the withdrawal by executive notification of certain provisions of the Act, no persons working in Assam are now bound by labour contracts. In consequence of this change, it is no longer possible to levy a cess upon garden-sardars although the recruitment of labour is still conducted by their agency. The Bill is intended to make it possible to levy a cess on garden-sardars and on assisted emigrants as heretofore and to validate the collection of the cesses already paid or imposed.

A. C. McWATTERS.

The 9th August, 1927.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

BILL

Further to amend the Assam Labour and Emigration Act, 1901, for certain purposes; and Annexure.

The Governor General has been pleased to accord the sanction required by clause (*a*) of section 67 (2) of the Government of India Act.

W. T. M. WRIGHT,

Secretary of the Council of State.

(*The Honourable Mr. A. C. McWatters.*)

M230LD—650—16-8-27—GIPS.

[To be introduced in the Council of State.]

A

BILL

Further to amend the Aden Civil and Criminal Justice Act, 1864, in order to make further provision for the jurisdiction thereunder of the High Court of Judicature at Bombay.

WHEREAS it is expedient further to amend the Aden Civil and Criminal Justice Act, 1864, in order to make further provision for the jurisdiction thereunder of the High Court of Judicature at Bombay; It is hereby enacted as follows :— II of 1864.

Short title.

1. This Act may be called the Aden Civil and Criminal Justice (High Court Jurisdiction Amendment) Act, 192 .

Amendment of section 8, Act II of 1864.

2. In the first paragraph of section 8 of the Aden Civil and Criminal Justice Act, 1864 (hereinafter referred to as the said Act), after the word "suit", where it occurs for the first time, the words "or the hearing of an appeal in any suit" shall be inserted. II of 1864.

Insertion of new section 22 B in Act II of 1864.

3. After section 22A of the said Act the following section shall be inserted, namely :—

Appeals from Sessions Courts.

"22 B. An appeal shall lie to the High Court of Bombay against the judgment or order of the Resident or of an Additional Sessions Judge, where such an appeal is allowed by the Code of Criminal Procedure, 1898 : V of 1898.

Provided that there shall be no appeal by a convicted person against a sentence of imprisonment not exceeding six months only, or of fine not exceeding five hundred rupees only."

Substitution of new section for section 29, Act II of 1864.

4. For section 29 of the said Act the following section shall be substituted, namely :—

Appeal when allowed.

"29. (*1*) No appeal shall lie from a judgment or order of a Criminal Court except as provided in this Act.

Appeal against acquittal.

(*2*) An appeal against an acquittal may be made as provided in the Code of Criminal Procedure, 1898. V of 1898.

Power to refer a point of law to High Court.

(*3*) It shall be at the discretion of the Resident to reserve, for the opinion of the High Court, any point of law arising in the course of any criminal proceedings whatever pending before him."

STATEMENTS OF OBJECTS AND REASONS.

The object of the Bill is to supplement the Aden Civil and Criminal Justice (Amendment) Act, 1927, which has been enacted by the Bombay Legislature to amend the Aden Civil and Criminal Justice Act of 1864. It is now necessary further to amend the latter Act by providing therein for appeals in certain cases to lie to the High Court of Bombay. Such further amendment, which was *ultra vires* of the Bombay Legislature, is nevertheless a necessary complement to the former Act, which has been passed by them in contemplation of the legislation now proposed.

J. P. THOMPSON.

The 10th September, 1927.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

Further to amend the Aden Civil and Criminal Justice Act, 1864, in order to make further provision for the jurisdiction thereunder of the High Court of Judicature at Bombay; and Annexure.

(*The Honourable Sir J. P. Thompson.*)

M315LD—650—12-9-27—GIPS

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

We, the undersigned, Members of the Select Committee to which the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, for a certain purpose was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. We have given long and careful consideration to the provisions of the Bill word by word and propose to explain our conclusions separately under each clause.

Clause 2.—The proposed new section 295A is by far the most important provision contained in the Bill and we have examined it in the light of such criticisms as have been expressed since the Bill was introduced whether by Members of the Legislature or of the general public and we now proceed to set forth our conclusions in detail.

In the first place, we are of opinion that the simple use of the word "intentionally" does not sufficiently bring out what we consider is the essence of the offence, namely, that the insult to religion or the outrage to religious feelings must be the sole, or primary, or at least the deliberate and conscious intention. We have accordingly decided to adopt the phraseology of section 298 which requires deliberate intention in order to constitute the offence with which it deals.

Secondly, we think that to penalise even an intentional outrage or attempted outrage upon the religious feelings of any class would be casting the net too wide for the cases with particular reference to which the Bill has been introduced. At the same time, we realize that the reference to the outraging of religious feelings was inserted to provide for the case of an insult to the founder of a religion or a person held sacred by the followers of a particular religion where such an outrage does not amount to an insult of the religion. It has in one instance been held that an insult to the founder of a religion is not necessarily an insult to the religion although it may outrage the religious feelings of the followers of that religion. We have therefore provided that the new section shall only apply in cases where a religion is insulted with the deliberate intention of outraging the religious feelings of its followers; and, to make it clear that an attack on a founder is not omitted from the scope of the section, we have specifically made punishable an insult to the "religious beliefs" of the followers of any religion.

Further, we were impressed by an argument to the effect that an insult to a religion or to the religious beliefs of the followers of a religion might be inflicted in good faith by a writer with the object of facilitating some measure of social reform by administering such a shock to the followers of the religion as would ensure notice being taken of any criticism so made. We have therefore amplified the words "with deliberate intention" by inserting reference to malice, and we think that the section which we have now evolved will be both comprehensive and at the same time of not too wide an application.

Finally, we have limited the scope of the original section by the omission of the words "or by signs" and the words "or otherwise". Indeed, we find difficulty in imagining cases to which the latter words would be applicable, and we think the words "or by signs" are not necessary for the purpose of the particular class of offences with which it is intended to deal.

Clause 3.—The amendments which we have made in sub-clause (*i*) of this clause are consequential upon those which we have made in clause 2.

As regards sub-clause (*ii*), we are of opinion that a provision requiring the sanction of Government to the institution of a prosecution under this section is necessary in order to avoid factitious or vindictive proceedings which would not be likely to result in a conviction.

In sub-clause (*iii*), we have provided that cases under the new section shall be triable exclusively by Courts of Session, or, in Presidency-towns, by Presidency Magistrates. By so doing, we avoid the possibility of a trial followed by an appeal to the Court of Session and an application for revision to the High Court. At the same time, we think that the Court of Session should have direct cognizance of cases many of which are likely to raise difficult points of law or of fact and law combined. We desire to observe that by the reference to a Court of Session we mean a Court of Session sitting with assessors.

We have also made the offence bailable.

3. The Bill was published in the Gazette of India dated the 27th August, 1927.

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

J. CRERAR.*

S. SRINIVASA IYENGAR.

A. RANGASWAMI IYENGAR.*

M. A. JINNAH.*

MD. ISMAIL KHAN.

ABDUL HAYE.*

ARTHUR MOORE.*

A. H. GHUZNAVI.

N. C. KELKAR.*

M. R. JAYAKAR.

J. COATMAN.

K. C. ROY.*

ABDUL QAIYUM.*

DENYS BRAY.

ZULFIQAR ALI KHAN.*

M. M. MALAVIYA.

N. C. CHUNDER.*

SIMLA;
The 14th September, 1927.

*Subject to minute of dissent.

In so far as the purpose of the Bill is to deter people from scurrilous attacks upon religion or vulgar calumnies upon sacred characters we have every sympathy with it, but we do not think that it will achieve this purpose. We think that the Bill as revised by the Select Committee is much less objectionable than the original draft, but even in its present form we consider it a regrettable concession to intolerance. As we understand it, the inculcation of peace is an essential principle of all the great religions practised in India, and all departures from this principle are only manifestations of religious fanaticism. If this be so—and obviously any other form of religion would be anti-social and dangerous—then it follows that what the original Bill described as religious feeling are really irreligious feelings. This measure may tend to increase fanaticism because it creates a new offence. Pressure may also conceivably be put upon the authorities to use it against social reformers or those who wish to assist the evolution of the popular understanding of religions so as to bring this understanding into closer conformity with the spirit of the original teachings.

We consider that the existing law is adequate to deal with all writings calculated to lead to a breach of the peace or resulting in such a breach, or in interference with personal or religious liberty, or personal or ecclesiastical property. The recent judgment in the Risala-Vartman case confirms us in this view.

A. RANGASWAMI IYENGAR.

ARTHUR MOORE.

K. C. ROY.

N. C. CHUNDER.

N. C. KELKAR.

I think the offence ought to be made non-bailable.

M. A. JINNAH.

I agree with Mr. Jinnah that the offence ought to be made non-bailable.

ABDUL HAYE.

I endorse what is written above.

ZULFIQAR ALI KHAN.

I agree with Mr. Jinnah on this point.

J. CRERAR.

Apart from what I have said in the Joint Dissenting Minute, I have to offer the following observations about one or two provisions in the Bill as passed by the Select Committee.

The words "with deliberate and malicious intention" indeed provide a fair amount of protection to a person accused under this section, as burden of proof is thereby put on the prosecution in this respect. But I think it would be still better, if an exception were added to section 2, indicating that it would not be an offence under this section to criticise the principles, doctrines or tenets or observances of any religion, with a view to investigate truth, or improve the condition of human society, or to promote social and religious reform. Such an exception may seem superfluous, but would make things quite clear, and be a good guide to the Judge.

I do not agree that the right to initiate prosecution for this particular offence should be given exclusively to Government. Even supposing that the creation of a new offence, as in this Bill, was necessary, it is likely to cause mischief, if Government alone were made the Judges of when action may be taken or not taken. Besides being a thankless task to Government, their spirit of impartiality will be put to a severe test which it sometimes cannot stand in a matter like this. More over some sections of society who are less clamorous and turbulent are likely to be denied the use of the remedy under this Bill, and their virtue may be penalised, though they would be equally entitled to judicial relief with any other section of the Society.

N. C. KELKAR.

13th September, 1927.

[AS AMENDED BY THE SELECT COMMITTEE.]

(Words printed in italics indicate the amendments suggested by the Committee.)

A

BILL

Further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, for a certain purpose.

WHEREAS it is expedient further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, for the purpose hereinafter appearing; It is hereby enacted as follows:— XLV of 1860. V of 1898.

1. This Act may be called the Criminal Law Amendment Act, 1927.

Short title.

2 After section 295 of the Indian Penal Code, the following section shall be inserted, namely:— XLV of 1860.

Insertion of new section 295A in Act XLV of 1860.

"295A. Whoever, *with deliberate and malicious intention of outraging the religious feelings of any class of His Majesty's subjects*, by words, either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious *beliefs* of *that* class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Deliberate and malicious acts intended to outrage religious feelings of any class, *by insulting its religion or religious beliefs.*

3. In the Code of Criminal Procedure, 1898, the following amendments shall be made, namely:— V of 1898.

Amendment of Act V of 1898.

(*i*) in sub-section (*1*) of section 99A, after the words "His Majesty's subjects" the words "or which is *deliberately and maliciously* intended to *outrage the religious feelings of any such class by insulting* the religion or the religious *beliefs* of *that* class" shall be inserted, and after the figures and letter "153A" the words, figures and letter "or section 295A" shall be inserted;

(*ii*) in section 196, after the word, figures and letter "section 294A" the words, figures and letter "or section 295A" shall be inserted;

(*iii*) in the Second Schedule, after the entry relating to section 295 of the Indian Penal Code, the following entry shall be inserted, namely:— XLV of 1860.

"295A	*Maliciously* insulting the religion or the religious *beliefs* of any class.	Shall not arrest without warrant.	Warrant	Bailable	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	*Court of Session or* Presidency Magistrate,

and

(*iv*) in the same Schedule, for the entries in the third, fourth, fifth, sixth and eighth columns relating to section 296 of the Indian Penal Code, the following entries shall be substituted, respectively, namely:— XLV of 1860.

"May arrest without warrant	Summons	Bailable	Not compoundable.	Presidency Magistrate or Magistrate of the first or second class."

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

Report of the Select Committee on the Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898, for a certain purpose, with the Bill as amended.

H325LD—500—14-9-27 —G1PS

LEGISLATIVE ASSEMBLY.

Notice of Amendment:

To be moved at the meeting of the Legi Assembly to be held on Wednesday, the 14th September, 1927.

RESOLUTION BY THE HONOURABLE MR.J.CRERAR REGARDING THE APPOINTMENT OF A COMMITTEE TO EXAMINE AND REPORT ON THE SYSTEM OF CENSORSHIP OF CINEMATOGRAPH FILMS IN INDIA.

By Mr.C.Duraiswami Ayyangar :-

That for the original Resolution the following be substituted :-

"This Assembly recommends to the Governor General in Council that he be pleased to appoint a Committee consisting of a majority of non-official Indians with an Indian as the President of the Committee -

(a) to examine and report on the system of censorship of cinematograph films in India,

(b) to examine and report on the kind of films now exhibited in the various theatres,

(c) to suggest legislative measures to be adopted for preventing and penalising the exhibition of films having demoralising effect,

(d) to consider and report on the desirability of preventing religion being dragged into the films of cinematograph."

W.T.M.WRIGHT,

Secretary of the Legislative Assembly.

Simla,

The 13th September,1927.

LEGISLATIVE ASSEMBLY.

NOTICE OF AMENDMENTS.

To be moved at the meeting of the Legislative Assembly to be held on Friday, the 16th September 1927.

Amendment to Mr. C. Duraiswami Aiyangar's amendment to the Resolution by Mr. J. Crerar regarding Cinematograph films.

By Mr. M. S. Aney :-

(1) That after the words "President of the Committee" the words "to be elected by the Assembly" be inserted.

(2) That after clause (d) the following new clause be added :-

"(e) to consider and report on the means and methods to develop the Indian Film Industry".

W.T.M. Wright,

Secretary of the Legislative Assembly.

Simla,

The 15th September 1927.

[To be introduced in the Legislative Assembly.]

A

BILL

Further to amend the Transfer of Property Act, 1882, for certain purposes.

WHEREAS it is expedient further to amend the Transfer of Property Act, 1882, for the purposes hereinafter appearing; It is hereby enacted as follows :— IV of 1882.

Short title and commencement.

1. (*1*) This Act may be called the Transfer of Property (Amendment) Act, 192 .

(*2*) It shall come into force on the first day of January, 1929.

Amendment of section 1, Act IV of 1882.

2. In section 1 of the Transfer of Property Act, 1882 (hereinafter referred to as the said Act), for the words and figures " paragraphs 2 and 3 ", in both places where they occur, the word and figure " paragraph 2 " shall be substituted. IV of 1882.

Amendment of section 2, Act IV of 1882.

3. In section 2 of the said Act, the word " Hindu ", and the words " or Buddhist " shall be omitted.

Amendment of section 3, Act IV of 1882.

4. In section 3 of the said Act, for the last paragraph, containing the definition of " notice ", the following shall be substituted, namely :—

" a person is said to have " notice " of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immoveable property has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration.

Explanation II.—Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acting in the course of the business transacted on his behalf has notice of that fact within the meaning of this provision."

Amendment of section 4, Act IV of 1882.

5. In section 4 of the said Act, for the words and figures " paragraphs 2 and 3 " the word and figure " paragraph 2 " shall be substituted, and for the figures " 1877 " the figures " 1908 " shall be substituted.

Amendment of section 6, Act IV of 1882.

6. In section 6 of the said Act, after clause (*d*) the following clause shall be inserted, namely :—

"(*dd*) A right to future maintenance in whatsoever manner arising or secured or determined cannot be transferred".

Amendment of section 11, Act IV of 1882.

7. For the second paragraph of section 11 of the said Act beginning with the words "Nothing in this section" and ending with the words "in a particular manner" the following shall be substituted, namely :—

"Where any such direction has been made in respect of one piece of immoveable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof."

Amendment of section 15, Act IV of 1882.

8. In section 15 of the said Act, for the words "as regards the whole class" the following words shall be substituted, namely :—

"in regard to those persons only and not in regard to the whole class".

Substitution of new sections for sections 16, 17 and 18, Act IV of 1882.

9. For sections 16, 17 and 18 of the said Act, the following sections shall be substituted, namely :—

Transfer to take effect on failure of prior interest.

"16. Where by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Direction for accumulation.

17. (*1*) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than—

(*a*) the life of the transferor, or

(*b*) a period of eighteen years from the date of the transfer,

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and income thereof shall be disposed of as if the period during which the accumulation has been directed to be made has elapsed.

(*2*) This section shall not affect any direction for accumulation for the purpose of—

(*i*) the payment of the debts of the transferor or any other person taking any interest under the transfer, or

(*ii*) the provision of portions for children or remoter issue of the transferor or of

any other person taking any interest under the transfer, or

(*iii*) the preservation or maintenance of the property transferred;

and such direction may be made accordingly.

Transfer in perpetuity for benefit of public.

18. The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind."

10. In section 39 of the said Act,—

Amendment of section 39, Act IV of 1882.

(*a*) the words "with the intention of defeating such right" shall be omitted, and for the words "of such intention" the word "thereof" shall be substituted; and

(*b*) in the *Illustration* the words "in good faith," shall be omitted.

11. In section 40 of the said Act, for the words "of the latter property or to compel its enjoyment in a particular manner," the words "in a particular manner of the latter property," shall be substituted.

Amendment of section 40, Act IV of 1882.

12. In section 43 of the said Act,—

Amendment of section 43, Act IV of 1882.

(*a*) after the word "person" the words "fraudulently or" shall be inserted, and

(*b*) after the words "the contract of transfer subsists.", the following paragraph shall be inserted, namely:—

"When a suit is brought by the transferee to enforce his right under the transfer, the transferee shall not be entitled to claim any interest which the transferor may acquire in such property subsequent to the passing of a decree in such suit, from which no appeal lies, and not thereafter".

13. (*1*) In section 52 of the said Act,—

Amendment of section 52, Act IV of 1882.

(*a*) for the words "active prosecution" the word "pendency" shall be substituted;

(*b*) for the words "a contentious" the word "any" shall be substituted; and

(*c*) after the words "suit or proceeding" where they occur for the first time, the words "which is not collusive and" shall be inserted.

(*2*) To the same section the following *Explanation* shall be added, namely:—

"*Explanation.*—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the

plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been finally disposed of by a decree or order from which no appeal lies, and final satisfaction of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period prescribed for the execution thereof by any law for the time being in force."

Substitution of new section for section 53, Act IV of 1882.

14. For section 53 of the said Act the following section shall be substituted, namely :—

Fraudulent transfer.

"53. (*1*) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(*2*) Every transfer of immoveable property made gratuitously with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section no transfer gratuitously made shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made."

Insertion of new section 53A in Act IV of 1882

15. After section 53 of the said Act the following section shall be inserted, namely :—

Part performance.

"53 A. Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf, from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract though required to be registered has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner

prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right arising out of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof".

16. In section 54 of the said Act,—

Amendment of section 54, Act IV of 1882.

(*a*) the word "tangible," wherever it occurs, shall be omitted;

(*b*) for the words "of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing," the words "or of any interest therein" shall be substituted; and

(*c*) the words "In the case of tangible immoveable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property" shall be omitted.

17. In section 55 of the said Act,—

Amendment of section 55, Act IV of 1882.

(*a*) in sub-clause (*a*) of clause (1) after the word "property" the words "or in the seller's title thereto" shall be inserted;

(*b*) in sub-clause (*b*) of clause (4), after the word "buyer", where it occurs for the second time, the words "or any person claiming under him with notice of the sale" shall be inserted; and after the words "on such amount or part." the words "from the date on which possession has been delivered" shall be added; and

(*c*) in sub-clause (*b*) of clause (6) the words "with notice of the payment" shall be omitted.

18. For section 56 of the said Act the following section shall be substituted, namely:—

Substitution of new section for section 56, Act IV of 1882.

"56. If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties."

Marshalling by subsequent purchaser.

19. In section 58 of the said Act,—

Amendment of section 58, Act IV of 1882.

(*a*) in clause (*a*), the words and brackets "(if any)" shall be omitted;

(*b*) to clause (*c*) the following proviso shall be added, namely:—

"Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.";

(*c*) in clause (*d*)—

(*i*) after the words "Where the mortgagor delivers possession", the words "or expressly or by implication binds himself to deliver possession" shall be inserted; and

(*ii*) for the words "and to appropriate them", the words "or any part of such rents and profits and to appropriate the same" shall be substituted; and

(*d*) after clause (*e*) the following clause shall be added, namely:—

"(*f*) A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage within the meaning of this section, is called an anomalous mortgage."

20. In section 59 of the said Act,—

Amendment of section 59, Act IV of 1882.

(*a*) the words "Where the principal money secured is one hundred rupees or upwards,", and

(*b*) the second paragraph beginning with the words "Where the principal money" and ending with the words "by delivery of the property."

shall be omitted.

21. After section 59 of the said Act the following section shall be inserted, namely:—

Insertion of new section 59A in Act IV of 1882.

"59A. Unless otherwise expressly provided, references in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively."

References to mortgagors and mortgagees to include persons deriving title from them.

22. In section 60 of the said Act,—

Amendment of section 60, Act IV of 1882.

(*a*) for the word "payable" the word "due" shall be substituted;

(*b*) for the words "the mortgage-deed, if any, to the mortgagor" the following words shall be substituted, namely:—

"to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee";

(*c*) the words and brackets "(where the mortgage has been effected by a registered instrument)" shall be omitted; and

(*d*) after the words "remaining due on the mortgage, except", the word "only" shall be inserted.

Substitution of new section for section 61, Act IV of 1882.

23. For section 61 of the said Act and the illustration thereto the following section shall be substituted, namely:—

Right to redeem separately or simultaneously.

"61. A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together."

Amendment of section 62, Act IV of 1882.

24. In section 62 of the said Act,—

(*a*) after the words "In the case of", for the article "a" the article "an" shall be substituted; and

(*b*) in clause (*b*)—

(*i*) for the words "the interest of the principal money" the words "or any part thereof a part only of the mortgage-money," shall be substituted; and

(*ii*) for the words "the principal money," where they occur for the second time, the words "the balance of the mortgage-money" shall be substituted.

Amendment of section 63, Act IV of 1882.

25. In section 63 of the said Act, for the words "at the same rate of interest" the words "at the rate of interest payable on the principal, and, where no such rate is fixed in the mortgage-deed, at the rate of nine per cent. per annum" shall be substituted.

Insertion of new section 63A in Act IV of 1882.

26. After section 63 of the said Act the following section shall be inserted, namely:—

Improvements to mortgaged property.

"63A. (*1*) Where the mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (*2*), be liable to pay the cost thereof.

(*2*) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was

necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money at the rate of interest payable on the principal, and where no such rate is fixed in the mortgage-deed, at the rate of nine per cent. per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor."

Amendment of section 64, Act IV of 1882.

27. In section 64 of the said Act, the words "for a term of years" shall be omitted.

Amendment of section 65, Act IV of 1882.

28. In section 65 of the said Act,—

(*a*) in clause (*d*) the words "for a term of years" shall be omitted; and

(*b*) the words "Nothing in clause (*c*), or in clause (*d*), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage" shall be omitted.

Insertion of new section 65A in Act IV of 1882.

29. After section 65 of the said Act the following section shall be inserted, namely:—

"65A. (*1*) Subject to the provisions of sub-section (*2*), a mortgagor, while in possession of the mortgaged property, shall have power to make leases thereof, which shall be binding on the mortgagee.

Mortgagor's power to lease.

(*2*) (*a*) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom and usage.

(*b*) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.

(*c*) No such lease shall contain a covenant for renewal.

(*d*) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(*e*) In the case of a lease of agricultural land, such lease shall not be on terms more favourable to the lessee than those of a lease from year to year as set out in section 106.

(*f*) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified.

(3) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed, and as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section."

Amendment of section 67, Act IV of 1882.

30. In section 67 of the said Act,—

(a) for the word "payable" the word "due" shall be substituted; and

(b) for clause (a) the following clause shall be substituted, namely:—

"(a) to authorise any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or an usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale; or".

Insertion of new section 67A in Act IV of 1882.

31. After section 67 of the said Act the following section shall be inserted, namely:—

Mortgagee when bound to bring one suit on several mortgages.

"67A. A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of order under section 67, and who sues to obtain such order on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due."

Substitution of new section for section 68, Act IV of 1882.

32. For section 68 of the said Act the following section shall be substituted, namely:—

Right to sue mortgage-money.

"68. (1) The mortgagee has a right to sue for the mortgage-money in the following cases and no others, namely:—

(a) where the mortgagor binds himself to repay the same;

(b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so;"

(*c*) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;

(*d*) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor.

(*2*) Where a suit is brought under clause (*a*) or clause (*b*) of sub-section (*1*), the suit and all proceedings therein shall be stayed, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property, or what remains of it, unless the mortgagee elects to abandon his security and the mortgage is extinguished by a registered instrument."

33. In section 69 of the said Act,—

Amendment of section 69, Act IV of 1882.

(*a*) the first paragraph beginning with the words "A power conferred by the mortgage-deed" and ending with the words "specify in this behalf" shall be numbered as sub-section (*1*);

(*b*) in the sub-section so numbered,—

(*i*) for the words "A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property, or any part thereof, without the intervention of the Court, is valid in the following cases and in no others, namely :—"

Power of sale when invalid.

the following words shall be substituted, namely :—

Notwithstanding anything contained in the Trustees' and Mortgagees' Powers Act, 1866, a mortgagee, or any person acting on his behalf, shall, subject to the provisions of this section, have power to sell or concur in selling the mortgaged property, or any part thereof, in default of payment of the mortgage-money, without the intervention of the Court, in the following cases and in no others, namely :—"

Sale without intervention of Court.

XXVIII of 1866.

(*ii*) in clauses (*b*) and (*c*), after the word "where" where it occurs, the words "a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed, and" shall be inserted; and

(*iii*) in clause (*c*), for the word "is" the words "was, on the date of the

execution of the mortgage-deed," shall be substituted and after the words "any other town" the words "or area" shall be inserted.

(c) the word 'But' in the beginning of the second paragraph shall be omitted, and the said paragraph ending with the words "after becoming due" shall be numbered as sub-section (2), and clauses (1) and (2) of the said paragraph shall be lettered as (a) and (b), respectively;

(d) the third paragraph beginning with the words 'When a sale has been made" and ending with the words "exercising the power" shall be numbered as sub-section (3);

(e) the fourth paragraph beginning with the words "The money which is received" and ending with the words "of the sale thereof" shall be numbered as sub-section (4);

(f) for the fifth paragraph beginning with the words "Nothing in the former part", and ending with the words "comes into force" the following paragraph shall be substituted and shall be numbered as sub-section (5), namely:—

"(5) Nothing in this section or in section 69A applies to powers conferred before the first day of July, 1882"; and

(g) the last paragraph beginning with the words "The powers and provisions" and ending with the words "local official Gazette" shall be omitted.

Insertion of new section 69A in Act IV of 1882.

34. After section 69 of the said Act the following section shall be inserted, namely:—

"69A. (1) Where a mortgagee has a power of sale under sub-section (1) of section 69, and the right to exercise that power has arisen under sub-section (2) of that section, and in no other case, the mortgagee shall, subject to the provisions of sub-section (2), be entitled to appoint, by writing signed by him or on his behalf, a receiver of the income of the mortgaged property or any part thereof.

Appointment of receiver.

(2) Any person who has been named in the mortgage-deed and is willing and able to act as receiver, may be appointed by the mortgagee.

If no person has been so named, or if all persons named are unable or unwilling to act, or are dead, the mortgagee may appoint any person to whose appointment the mortgagor agrees. Failing such agreement, the mortgagee shall be entitled to apply to the Court for the appointment of a receiver, and any person appointed by the Court shall be deemed to have been duly appointed by the mortgagee.

A receiver may at any time be removed by writing signed by or on behalf of the

mortgagee and the mortgagor, or by the Court on application made by either party and on due cause shown.

A vacancy in the office of receiver may be filled in accordance with the provisions of this sub-section.

(3) A receiver appointed under the powers conferred by this section shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage-deed otherwise provides.

(4) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by suit, execution or otherwise, in the name either of the mortgagor or of the mortgagee to the full extent of the interest which the mortgagor could dispose of, and to give valid receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee in accordance with the provisions of this section.

(5) A person paying money to the receiver shall not be concerned to inquire if the appointment of the receiver was valid or not.

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate not exceeding five per cent. on the gross amount of all money received as is specified in his appointment, and, if no rate is so specified, then at the rate of five per cent. on that gross amount, or at such other rate as the Court thinks fit to allow, on application made by him for that purpose.

(7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured and keep insured against loss or damage by fire, out of the money received by him, the mortgaged property or any part thereof being of an insurable nature.

(8) Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows, namely:—

(*i*) in discharge of all rents, taxes, land revenue, rates and outgoings whatever affecting the mortgaged property;

(*ii*) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver;

(*iii*) in payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage-deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee;

(*iv*) in payment of the interest falling due under the mortgage;

(*v*) in or towards discharge of the principal money, if so directed in writing by the mortgagee;

and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

(*9*) The provisions of sub-section (*1*) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-sections (*3*) to (*8*) inclusive may be varied or extended by the mortgage-deed, and, as so varied or extended, shall, as far as may be, operate in like manner and with all the like incidents, effects and consequences, as if such variations or extensions were contained in the said sub-sections.

(*10*) Application may be made, without the institution of a suit, to the Court for its opinion, advice or direction on any present question respecting the management or administration of the mortgaged property, other than questions of difficulty or importance not proper in the opinion of the Court for summary disposal. A copy of such application shall be served upon, and the hearing thereof attended by, such of the persons interested in the application as the Court may think fit.

The costs of every application under this sub-section shall be in the discretion of the Court.

(*11*) In this section "the Court" means the Court which would have jurisdiction in a suit to enforce the mortgage."

35. In section 71 of the said Act, the words "for a term of years" shall be omitted.

Amendment of section 71, Act IV of 1882.

36. In section 72 of the said Act,—

Amendment of section 72, Act IV of 1882.

(*i*) for the words "When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he" the words "A mortgagee" shall be substituted;

(*ii*) clause (*a*) shall be omitted;

(*iii*) in clause (*b*) for the words "its preservation" the words "the preservation of the mortgaged property" shall be substituted;

(*iv*) after the words "where no such rate is fixed" the words "in the mortgage-deed" shall be inserted;

(*v*) after the words "nine per cent. per annum." the following proviso shall be inserted, namely:—

"Provided that the expenditure of money by the mortgagee under clauses (*b*)

and (*c*) shall not be deemed to be necessary unless the mortgagor has failed to take proper and timely steps to preserve the property or to support the title."; and

(*vi*) for the words "a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate." the following shall be substituted, namely :—

"added to the principal money at the rate of interest payable on the principal money or, where no such rate is fixed in the mortgage-deed, at the rate of nine per cent. per annum".

37. For section 73 of the said Act the following section shall be substituted, namely :—

Substitution of new section for section 73, Act IV of 1882.

"73. (*1*) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of any surplus of the sale-proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

Right to proceeds of revenue sale or compensation on acquisition.

(*2*) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894, or any other enactment for the time being in force providing for the compulsory acquisition of immoveable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation. **1 of 1894.**

(*3*) Such claims shall prevail against all other claims except those of prior encumbrancers, and may be enforced notwithstanding that the principal money on the mortgage is not due."

38. Section 74 and section 75 of the said Act shall be omitted.

Omission of sections 74 and 75, Act IV of 1882.

39. In section 76 of the said Act,—

Amendment of section 76, Act IV of 1882.

(*a*) in clause (*c*) after the words "charges of a public nature" the words "and all rent" shall be inserted;

(*b*) in clause (*h*) after the words "deducting the expenses" the words "properly incurred for the management of the property and the collection of rents and profits and the other expenses" shall be inserted; and the words "on the mortgage-money" shall be omitted; and

(*c*) in clause (*i*) the word "gross" shall be omitted, and after the words "as the case

may be " the following shall be inserted, namely :—

" and shall not be entitled to deduct any amount therefrom on account of any expenses incurred after such date or time in connection with the mortgaged property."

40. Section 80 of the said Act shall be omitted.

Omission of section 80, Act IV of 1882.

41. For section 81 of the said Act the following section shall be substituted, namely :—

Substitution of new section for section 81, Act IV of 1882.

" 81. If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is, in the absence of a contract to the contrary, entitled to have the prior mortgage-debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties."

Marshalling securities.

42. In section 82 of the said Act, —

(*1*) For the first paragraph beginning with the words " Where several properties " and ending with the words " date of the mortgage," the following shall be substituted, namely :—

Amendment of section 82, Act IV of 1882.

" Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date."

(*2*) In the third paragraph of the same section, for the word " second " the word " subsequent " shall be substituted.

43. In section 83 of the said Act,—

Amendment of section 83, Act IV of 1882.

(*a*) for the words " has become payable " the words " payable in respect of any mortgage has become due " shall be substituted ;

(*b*) for the words " if then in his possession or power " the words " and all documents in his possession or power relating to the mortgaged property " shall be substituted ;

(*c*) after the word " mortgage-deed," where it occurs for the second time, the words

"and all such other documents" shall be inserted; and

(*d*) the following paragraph shall be added after the words "such other person as aforesaid," namely:—

"Where the mortgagee is in possession of the mortgaged property, the Court shall before paying to him the amount so deposited, direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to re-transfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished."

Amendment of section 84, Act IV of 1882.

44. In section 84 of the said Act,—

(*a*) after the words "from the date of the tender, or" the words ", in the case of a deposit, when no previous tender of such amount has been made," shall be inserted;

(*b*) for the words ", as the case may be" the following shall be substituted, namely:—

"and the notice required by section 83 has been served on the mortgagee:

Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of such withdrawal"; and

(*c*) after the words "tender of the mortgage-money" the words "and such notice has not been given before the making of the tender or deposit, as the case may be." shall be added.

Substitution of new section for section 91, Act IV of 1882.

45. For section 91 of the said Act the following section shall be substituted, namely:—

Persons who may sue for redemption.

"91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely:—

(*a*) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;

(*b*) any surety for the payment of the mortgage-debt or any part thereof; or

(*c*) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property".

46. After section 91 of the said Act the following sections shall be inserted, namely :—

Insertion of new sections 92, 93 and 94 in Act IV of 1882.

"92. Any of the persons referred to in section 91 other than the mortgagor and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

Subrogation.

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such person shall be so subrogated.

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full.

93. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Prohibition of tacking.

94. Where property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor".

Rights of mesne mortgagee.

For section 95 of the said Act the following section shall be substituted, namely :—

Substitution of new section for section 95, Act IV of 1882.

"95. Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage-money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property".

Right of redeeming co-mortgagor to expenses.

48. In section 98 of the said Act, for the words "a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage, or a combination of the first and third, or the second and third, of such forms", the words "an anomalous mortgage" shall be substituted.

Amendment of section 98, Act IV of 1882.

49. In section 100 of the said Act,—

Amendment of section 100, Act IV of 1882.

(*a*) for the words "as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82 shall, so far as may be, apply to the person having such charge" the words "which apply to a simple mortgage shall, so far as may be, apply to such charge." shall be substituted; and

(*b*) after the words "in the execution of his trust" the following words shall be added, namely:—

"and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for valuable consideration and without notice of the charge."

50. For section 101 of the said Act the following section shall be substituted, namely:—

Substitution of new section for section 101, Act IV of 1882.

"101. Any mortgagee of, or person having a charge upon, immoveable property, or any transferee from such mortgagee or charge-holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no such subsequent mortgagee or charge-holder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto".

No merger in case of subsequent encumbrance.

51. In section 102 of the said Act,—

Amendment of section 102, Act IV of 1882.

(*a*) for the words "Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown" the words "Where no person or agent on whom such notice should be served can be found or is known" shall be substituted;

(*b*) after the words "and any notice served in compliance with such direction shall be deemed sufficient" the following proviso shall be inserted, namely:—

"Provided that, in the case of a notice required by section 83, in the case of a

deposit, the application shall be made to the Court in which the deposit has been made.";

(*c*) for the words "Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown" the words "Where no person or agent to whom such tender should be made can be found or is known" shall be substituted; and

(*d*) for the words "in such Court as last aforesaid" the words "in any Court in which a suit might be brought for redemption of the mortgaged property" shall be substituted.

Amendment of section 103, Act IV of 1882.

52. In section 103 of the said Act,—

(*a*) after the words "such notice may be served", the words "on or by" shall be inserted; and

(*b*) the words beginning with "*ad litem*" and ending with "guardian appointed thereunder" shall be omitted.

Amendment of section 106, Act IV of 1882.

53. In section 106 of the said Act, for the words "tendered or delivered either personally to the party who is intended to be bound by it," the following shall be substituted, namely:—

"either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party".

Substitution of new section for section 107, Act IV of 1882.

54. For section 107 of the said Act the following section shall be substituted, namely:—

"107. A lease of immoveable property, except a lease from month to month, or for any term not exceeding one month can be made only by a registered instrument, and such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Leases how made.

Provided that the Local Government may, with the previous sanction of the Governor General in Council by notification in the local official Gazettes direct that leases of immoveable property of any description specified in the notification may be made by unregistered instrument or by oral agreement."

Amendment of section 108, Act IV of 1882.

55. In section 108 of the said Act,—

(*a*) in clause (*h*)—

(*i*) after the words "the lessee may" the words "even after the determination of the lease" shall be inserted; and

(*ii*) for the words "during the continuance of the lease," the words "whilst he is in possession of the property leased

but not afterwards," shall be substituted; and

(*b*) in clause (*o*) after the words "or damage buildings," the words "belonging to the lessor or" shall be inserted.

56. In clause (*g*) of section 111 of the said Act,— Amendment of section 111, Act IV of 1882.

(*a*) the words "or the lease shall become void" shall be omitted;

(*b*) after the words "title in himself" the following shall be inserted, namely:—

"or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event";

(*c*) for the words "either case" the words "any of these cases" shall be substituted; and

(*d*) after the words "does some act" the words "other than the institution of legal proceedings to enforce forfeiture" shall be inserted.

57. After section 114 of the said Act the following new section shall be inserted, namely:— Insertion of new section 114A in Act IV of 1882.

"114A. Where a lease of immoveable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice— Relief against forfeiture in certain other cases.

(*a*) specifying the particular breach complained of; and

(*b*) if the breach is capable of remedy, requiring the lessee to remedy the breach;

and the lessee fails, within thirty days from the date of the service of the notice to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent."

58. For section 119 of the said Act the following shall be substituted, namely:— Substitution of new section for section 119, Act IV of 1882.

"119. If any party to an exchange or any person claiming through such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person Right of party deprived of things received in exchange.

claiming through him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party."

Amendment of section 128, Act IV of 1882.

59. In section 128 of the said Act, after the words "debts due by" the words "and liabilities of" shall be inserted.

Amendment of section 129, Act IV of 1882.

60. In section 129 of the said Act, the words "or, save as provided by section 123, any rule of Hindu or Buddhist law" shall be omitted.

Amendment of section 130, Act IV of 1882.

61. In section 130 of the said Act,—

(*a*) after the words "The transfer of an actionable claim" the words ", whether with or without consideration", shall be inserted; and

(*b*) the words "and notwithstanding anything contained in section 123", shall be omitted.

Saving clause.

62. Nothing in any of the following provisions of this Act, namely, sections 2, 3, 4, 5, 8, 9, 14, 16, 18, 19, 20, clause (*c*) of section 22, section 26, section 29, clause (*b*) of section 30, sections 31, 32, 33, 34, 45, 51, 54, 56, 57, 58, 60 and 61 shall be deemed in any way to affect—

(*a*) the terms or incidents of any transfer of property made or effected before the first day of January, 1929,

(*b*) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date,

(*c*) any right, title, obligation or liability already acquired, accrued or incurred before such date, or

(*d*) any remedy or proceeding in respect of such right, title, obligation or liability; and nothing in any other provision of this Act shall render invalid or in any way affect anything already done before the first day of January, 1929, in any proceeding pending in a Court on that date; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

STATEMENT OF OBJECTS AND REASONS.

The Bill is sufficiently explained in the Report of the Special Committee printed below.

17th August, 1927, W. T. M. WRIGHT.

REPORT OF THE SPECIAL COMMITTEE,

To

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL.

In accordance with the Legislative Department Resolution No. F. 43|27-G., dated the 25th April 1927 (Appendix A), we, the members of the Committee appointed by the Government of India to examine the provisions of the Bill to amend the Transfer of Property Act (IV of 1882), have the honour to submit the following Report :—

1 The constitution of the Committee was as follows :—

Chairman.

The Honourable Mr. S. R. Das, Law Member to the Council of the Governor General.

Members.

1. Mr. B. L. Mitter, Advocate General, Bengal.
2. Mr. D. F. Mulla, M.A., LL.B., Advocate, High Court, Bombay.
3. Dr. S. N. Sen, M.A., LL.D., Advocate, High Court, Allahabad.

Secretary.

Mr. J. R. Dhurandhur, B.A., LL.B., Assistant Secretary to the Government of Bombay, Legal Department.

Mr. W. T. M. Wright, C.I.E., I.C.S., Secretary to the Government of India, Legislative Department, and Mr. D. G. Mitchell, C.I.E., I.C.S., Joint Secretary and Draftsman to the Government of India attended the meetings of the Committee.

2. The Committee assembled at Simla on the 27th April 1927. The first meeting of the Committee was held on the 5th May, 1927, and it continued its deliberations till the 22nd June 1927 when the last meeting was held. Dr. Sen left Simla on the 15th June 1927. By that time, however, we were able to revise the whole Bill for the amendment of the Transfer of Property Act and the Supplementary Bill. Such further alterations as were found necessary in our drafts after he left have his approval

3. Two Bills were submitted for our consideration, one relating to the amendment of the provisions of the Transfer of Property Act itself and the other a Supplementary Bill dealing with consequential amendments in the following Acts :—

1. The Married Women's Property Act, 1874, section 8.
2. The Code of Civil Procedure, 1908, Order XXXIV.
3. The Indian Registration Act, 1908, sections 17, 48 and 49.
4. The Indian Succession Act, 1925, sections 115 to 117.

The notes on clauses setting forth in detail the reasons for the proposed amendments were also placed before us.

4. Although the Transfer of Property Act was enacted on the 17th February 1882, it was in 1870 that its first draft in the form of rules was prepared by the First Indian Law Commission, consisting of Lord Romilly M. R., Sir Edward Ryan, formerly Chief Justice of Bengal, Lord Sherbrooke, Sir Robert Lush and Sir John McLeod who assisted Lord Macaulay in framing the Indian Penal Code The Bill was again examined in 1879 by the Second Indian Law Commission consisting of Sir Charles Turner, the then Chief Justice of Madras, Sir Raymond West, Judge of the Bombay High Court, and Mr. Whitley Stokes, Law Member of the Governor General's Council. It appears that no less than seven Bills were prepared before the final Bill was passed into law in 1882. We fully recognise that any attempt to amend an Act which was the result of such long and careful consideration at the hands of eminent lawyers and jurists has to be made with the utmost caution. On the other hand, the passage of time has brought recognition to new principles in the law of property, and the conflict of judicial decisions with regard to some of its provisions and defects revealed by experience of its working for nearly half a century has made a revision of the Act necessary.

5. During the period of forty-five years that the Act has been in force a large mass of conflicting decisions have arisen with regard to various provisions As early as 1903 in his letter dated the 21st August 1903, Mr Justice Rampini (afterwards Sir Robert Fulton) while commenting on the Bill introduced for the amendment of section 59 of the Transfer of Property Act suggested to the Government of India the propriety of undertaking a general and thorough revision of the Act. In paragraphs 3 and 4 of his letter he observed as follows :—

" The Transfer of Property Act was passed nearly 25 years ago, and was the first Act of the Legislature to embody the provisions of the Bengal Regulations of

1798 and 1806 and of the Bombay Regulations of 1827. It is usual to revise the Codes of the Indian Legislature after periods of about 20 years, and it is the more necessary to do so in the case of the Transfer of Property Act because—

(1) it is the first Act dealing with a branch of law it relates to, and

(2) during the past 25 years a large mass of conflicting case-law on the subject has grown up which it is advisable now either to embody in the Act or to set aside.

"Dr. Rash Behari Ghosh has observed in the preface to the 3rd edition of his work on 'The Law of Mortgage in India' that 'there is scarcely a single section in the Chapter on the mortgages in the Transfer of Property Act on which conflicting rulings cannot be found. I would go even further and say that not only in respect of the Chapter on mortgages but in respect of almost all the Chapters of the Act there is a conflict of opinion between several High Courts".

6. Since the passing of the Transfer of Property Act in 1882, its provisions have been amended on twelve occasions.* But it does not appear that the general revision of the Act was undertaken or any new principle of importance or substance introduced.

7. Most of the provisions of Act IV of 1882 had been based on the decisions of the Courts of Equity in England before 1881, which had already been followed by Indian courts. The Conveyancing Act, 1881, (44 & 45 Vict., c. 41) was passed in the previous year, but with the exception of a few provisions, such as sections 57, 61 and 69 of the Transfer of Property Act, the provisions of that Act were not used in drafting Act IV of 1882. Since 1882 the Conveyancing Act has been revised in England several times and the whole law of property is now consolidated and codified in the new Property Act, 1925, (15 & 16 Geo. V, c. 20).

8. In examining the two Bills which were submitted for our consideration we have scrutinised the provisions of the Transfer of Property Act section by section in order to ascertain if any of the sections not included in the Bills required amendment in view of the amendments proposed in the Bills or in the light of judicial decisions or other circumstances. With regard to the provisions which are based on the principles of English law or the decisions of English courts, we have carefully examined the provisions of the English Property Act to see whether any change is necessary on the lines of the provisions of that Statute. Where it was found that the existing provisions of the Act or the new provisions proposed to be introduced in the Bills could be drafted on the lines of the English Act, we have tried to do so. In our opinion this will facilitate the interpretation of those provisions as the courts will have the benefit of English decisions.

9. It was brought to our notice that the following points in connection with the two Bills remitted to our consideration had been circulated to Local Governments for opinion :—

(1) The application of the Transfer of Property Act to territories to which it has not yet been applied, *e.g.*, Burma, Sind and the Punjab.

(2) The omission of the provision in section 2 exempting or saving the rules of Hindu, Muhammadan and Buddhist laws from the operation of the provisions of Chapter II of the Transfer of Property Act.

(3) The provision making registration amount to notice of documents registered.

(4) Compulsory registration of all sales, mortgages and leases

(5) The provision requiring leases to be executed by both parties.

(6) The application of Chapter VII of the Transfer of Property Act, relating to gifts, to cases governed by the Hindu, Muhammadan and Buddhist law.

The opinions received were placed before us and we have carefully considered the amendments in their light.

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*1. Act III of 1885, amending sections 1, 4, 6 (*i*) and 9.
2. Act XV of 1895, saving Crown grants.
3. Act II of 1900, amending sections 3, 6 (*c*) and (*h*) and Chapter VIII.
4. Act VI of 1904, amending sections 1, 59, 105, and 117.
5. Act V of 1908, repealing sections 85 to 90, 92, 94, 96 and 97 and re-enacting them in Order XXXIV of the Code of Civil Procedure.
6. Act II of 1915 amending sections 59 and 69.
7. Act XXVI of 1917, validating certain transactions made in Agra and Oudh and saving them from the provisions of section 59.
8. Act XXXVIII of 1920, amending sections 1 and 117.
9. Act XXXVIII of 1925, amending section 130.
10. Act XXVII of 1926, amending section 3 and inserting the definition of "attestation" as further amended by Act X of 1927.
11. Act X of 1927, amending section 8.
12. Madras Act III of 1922, modifying the whole Act so as to give effect to the provisions of the Madras City Tenants' Protection Act, 1922.

10. In the Bills submitted to us the policy which appears to have been followed was that no amendment should be attempted which would merely effect an improvement in wording, but that new principles of importance which had been judicially recognised since the passing of the Act should be incorporated. In our opinion it is a sound course to follow, particularly in an Act which has been in force for forty-five years and to whose phraseology the general public and the legal profession have become accustomed. Again, it is not safe to alter any wording which has received judicial interpretation, when the interpretation has not led to any inconvenience in practice or miscarriage of justice. We also agree that the Act must be amended to embody new principles. In the amendments which we propose we have also endeavoured to remedy any defect which has led to inconvenience or anomalous results. We have also acted on the principle that it is undesirable to attempt to provide in detail for every possible contingency. No elaboration can be exhaustive, and the only result of over-elaboration would be to cramp the action of the courts and to encourage technicalities. Where there has been a conflict of decisions we have endeavoured to set it at rest.

11. Detailed reasons for all amendments proposed by us are given in the notes on clauses (Appendix B), but we think it desirable to draw special attention to some of the important points of principle which are included in the two Bills.

In the Transfer of Property Act the following important amendments are suggested :—

(*i*) The omission of the words " Hindus and Buddhists " in section 2 whereby the provisions of Chapter II will apply to all cases except those governed by a special rule of Muhammadan Law (clause 3 of the main Bill).

(*ii*) (*a*) the provision making registration amount to notice of a registered document ;

(*b*) the provision making constructive notice to an agent notice to the principal (clause 4 of the main Bill) ;

(*iii*) the validity of transfers in favour of a class, when some members of that class are unable to take (clause 8 of the main Bill) ;

(*iv*) the validity of a direction as to accumulation for a certain period and for certain purposes (clause 9 of the main Bill) ;

(*v*) the statutory recognition of the doctrine of part performance (clause 15 of the main Bill) ;

(*vi*) the compulsory registration of sales and mortgages relating to immoveable property of whatever value, and of all leases except those from month to month or for any term not exceeding one month (clauses 16, 19 and 54 of the main Bill) ;

(*vii*) the abolition of the remedy of foreclosure in the case of all mortgages except a mortgage by conditional sale or an anomalous mortgage providing expressly for foreclosure (clause 30 of the main Bill) ;

(*viii*) the provision compelling a mortgagee to exhaust his remedies against the mortgaged property before enforcing his personal remedy (clause 32 of the main Bill) ;

(*ix*) the amendment of the provisions regarding sale without the intervention of the court (clause 34 of the main Bill) ;

(*x*) the extension of the principle of ' subrogation ' (clause 46 of the main Bill) ;

(*xi*) the modification of the law of ' merger ' (clause 50 of the main Bill) ;

(*xii*) the provision requiring leases to be executed by both parties (clause 54 of the main Bill).

12. In Order XXXIV of the Code of Civil Procedure the important amendments are suggested on the following points :—

(*i*) it is made clear that the right of redemption is not extinguished till a final decree is passed or till a sale held in execution of the mortgage decree is confirmed ;

(*ii*) detailed provisions are included for the award of interest (clauses 4 and 6 of the supplementary Bill).

13. The forms in Appendix D to the First Schedule to the Code of Civil Procedure relating to mortgage decrees are made to conform strictly to the amended rules in Order XXXIV. We have revised the forms and amplified them, and have added some extra forms. We hope these forms will facilitate the drawing up of decrees in Mofussil Courts. In cases where several persons entitled to redeem are parties to a mortgage suit, we propose to abolish the system of allowing successive periods of redemption (clause 8 and Schedule I of the supplementary Bill).

14. In the Indian Registration Act we propose to provide that assignments of decrees, orders and awards relating to immoveable property and compromise decrees which affect immoveable property, should always be registered. We also propose that sections 48 and 49 should be amended to empower courts to admit unregistered documents in evidence in giving effect to the doctrine of part performance (clause 9 of the supplementary Bill).

15. In the Indian Succession Act, 1925, amendments are suggested conforming to the amendments of sections 15 to 18 of the Transfer of Property Act (clause 10 of the supplementary Bill).

16. A provision is added in Chapter II of the Specific Relief Act to give effect to the principle of part performance, embodied in the proposed new section 53A in the Transfer of Property Act (clause 3 of the supplementary Bill).

17. In conclusion, we desire to place on record our great sense of obligation to our colleague, Mr. J. R. Dhurandhur, B.A., LL.B., of the Bombay Judicial Service, who has, throughout the proceedings of the Committee, acted as Secretary and brought to bear upon the work great industry which has been of considerable assistance to us in the preparation of this Report. We also desire to express our acknowledgment to Mr. W. T. M. Wright, C.I.E., I.C.S., and Mr. D. G. Mitchell, C.I.E., I.C.S., of the Legislative Department for the great assistance they have rendered to us in drafting the clauses of the Bills.

S. R. DAS,
Chairman.

SIMLA,
29th July 1927.

B. L. MITTER.

CALCUTTA,
27th July 1927.

D. F. MULLA.

BOMBAY,
26th July 1927.

SURENDRANATH SEN.

ALLAHABAD,
26th July 1927.

SIMLA;
16th August 1927.

J. R. DHURANDHUR,
Secretary.

APPENDIX A.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

Simla, the 25th April, 1927.

RESOLUTION.

No. F.-43/27-G.—The Government of India have had under their consideration for some time past the question of amending the Transfer of Property Act. A preliminary draft Bill has already been prepared. The Bill is of a highly technical nature and before introducing it in the Indian Legislature the Governor General in Council has decided to remit it to a small Committee of experts of such standing that an examination by them will, he feels assured, command the public confidence. The Committee will be constituted as follows :—

President.—The Hon'ble Mr. S. R. Das, Bar.-at-Law, Law Member of the Council of the Governor General.

Members.—The Hon'ble Mr. B. L. Mitter, Bar.-at-Law, Advocate General, Bengal, Mr. D. F. Mulla, M.A., LL.B. and Dr. Surendranath Sen, M.A., LL.D.

Mr. J. R. Dhurandhar, Assistant Secretary to the Government of Bombay, Legal Department, will be Secretary of the Committee which will meet in Simla by the 27th April, 1927. The Government of India hope to introduce the Bill during the next session of the Indian Legislature.

ORDER.—Ordered that a copy be forwarded to the Governments of Bengal and Bombay, the Home and Finance Departments, the Hon'ble the Advocate General, Bengal, D. F. Mulla, Esq., and Dr. S. N. Sen, for information.

Ordered also that it be published in the Gazette of India.

(Sd.) W. T. M. WRIGHT,
Officiating Secretary to the Government of India.

APPENDIX B.

NOTES ON CLAUSES.

[The references in the margin are to (1) clauses of the Transfer of Property (Amendment) Bill and the Transfer of Property (Amendment) Supplementary Bill, and (2) to the sections of the existing Transfer of Property Act and other Acts in which consequential amendments are proposed to be made.]

THE TRANSFER OF PROPERTY (AMENDMENT) BILL.

[THE TRANSFER OF PROPERTY ACT (IV OF 1882).]

Clause 2.
Section 1.

We have proposed that paragraph 3 of section 54 of the Act should be omitted. Consequential amendments have, therefore, been made in sections 1 and 4 of this Act by deleting the reference to paragraph 3.

Clause 3.
Section 2.

Section 2, which is a saving clause, does not provide that Chapter II shall not apply to Hindus, Muhammadans or Buddhists, it merely saves any rule of Hindu, Muhammadan or Buddhist law which is not consistent with its provisions. The Chapter contains general rules regarding transfers. It is obvious that sections 5 to 10 contain rules which are of general application and do not in any way contravene any rule or principle peculiar to the personal laws of Hindus or Buddhists. So also sections 38 to 53 are not peculiar to any particular system of law and are rules of justice, equity and good conscience. Sections 11 to 35 correspond to parallel provisions of the Indian Succession Act, and were introduced in the Transfer of Property Act in order to bring the rules which regulated the transfer of property between living persons into harmony with the rules affecting its devolution upon death. Sections 13 and 20 relate to transfers in favour of unborn persons, and section 14 enacts a modification of the rule against perpetuity. According to strict principles of Hindu law, as laid down by the Privy Council decision in *Tagore* v. *Tagore* (I. A. Sup. Vol. 47), transfers or bequests in favour of unborn persons are wholly void. That principle is, however, now modified by the Hindu Disposition of Property Act (XV of 1916) and by Madras Acts (I of 1914 and VIII of 1921). So far, therefore, as the rules of Hindu law are concerned, the saving clause in section 2 seems unnecessary and we propose that the word "Hindu" be omitted from that section. We also understand that the Government of Burma as well as the Rangoon High Court have no objection to the omission of the word "Buddhist" from the last paragraph in section 2. We, therefore, propose to omit that word also. In view of this and the changes proposed to be made in sections 15 and 16 of this Act and also sections 115 and 116 of the Indian Succession Act, we consider that it is not necessary that the Hindu Disposition of Property Act, 1916, and the Madras Acts of 1914 and 1921, referred to above, need be kept in force. We propose that these Acts be repealed.

Since the rules contained in Chapter 2 are not in all cases in conformity with the personal law of Muhammadans, we have retained the word "Muhammadan."

Clause 4.
Section 3.

'Notice', as defined in section 3, includes both actual and constructive notice. There is a conflict of decisions whether the registration of a document under the Indian Registration Act is of itself constructive notice of the transaction effected by the document. The High Courts of Bombay and Allahabad hold that it is (I. L. R. 6 Bom. 168, 9 Bom. 427, 26 Bom. 538, 16 All. 478). The Madras High Court hold that registration does not amount to notice in any case. In I. L. R. 15 Mad. 268, it was observed that if the Legislature desired to regard registration as notice, it would have said so in express words. In some cases the Calcutta High Court took the same view as the Madras High Court (I. L. R. 23 Cal. 790, 27 Cal. 7). In 2 C. W. N. 750, Sir Lawrence Jenkins observed :—

> "Apart from authority, I should have thought, having regard to the statutes applicable in this country, that the proposition involved is not one of law but of fact, and that as each case arises it should be determined whether in that individual case the omission to search a register, taken together with other facts amounts to such gross negligence as to attract the consequence which results from notice; and it well may be that this test will serve to reconcile the apparent conflict of view that at first sight the cases suggest."

Following that decision in 7 C. W. N. 11, the same High Court held as follows :—

> "Whether registration is or is not notice in itself depends, we think, upon the facts and circumstances of each case, upon the degree of care and caution which an ordinary prudent man would necessarily take for the protection of his own interest by search into the registers kept under the Registration Act."

The question was considered by the Judicial Committee in *Tilakdhari Lal* v. *Khedan Lal* (L. R. 47, I. A. 239). After reviewing all the Indian decisions, their Lordships of the Privy Council approved of the view taken in the Calcutta cases in 2 C. W. N. 750 and 7 C. W. N. 11, and observed :—

> "Their Lordships are impressed with the view that, since registration has for nearly two centuries been held not to operate as constructive notice in this country, and the knowledge of this law, which was then old, must have been present to the Indian Legislature when they framed the different Indian Registration Acts and the definition of notice in the Transfer of Property Act, yet none the less they have omitted to state the principle for which, according to the appellant's contention, it is essential that the register should provide.....For these reasons their Lordships think that notice cannot in all cases be imputed from the mere fact that a document is to be found upon the Indian register of deeds."

The test laid down in 2 C. W. N. 750 and approved by the Privy Council would, as stated by Sir Rash Behary Ghose, inevitably lead to much perjury and litigation. (Ghose on Mortgage, Vol. I, p. 473). At page 252 of the report in Tilakdhari's case, the Judicial Committee also observe that the real purpose of registration is to secure that every person dealing with property, where such dealings require registration, may rely with confidence upon the statements contained in the register as a full and complete account of all transactions by which his title may be affected, unless indeed he has actual notice of some unregistered transaction which may be valid apart from registration.

In America, registration of a conveyance has been deemed to operate as constructive notice to all subsequent purchasers of any estate legal or equitable in the same property. The reason assigned for the application of this doctrine is as follows :—

> "The reasoning upon which this doctrine is founded is the obvious policy of the Registry Acts, the duty of the party purchasing under such circumstances to search for prior encumbrances, the means of which search are within his power, and the danger of letting in parol proof of notice or want of notice of the actual existence of the conveyance. This doctrine certainly has the advantage of certainty and universality of application; and it imposes upon the subsequent purchasers a reasonable degree of diligence only in examining their titles to estates (Story on Equity Jurisprudence, Art. 534, pp. 510 and 511)."

In England also in the counties of Middlesex and Yorkshire, where the system of local deed Registries prevails, section 197 of the Property Act, 1925, provides that registration in a local deed Registry of a memorial of any instrument transferring or creating a legal estate or charge shall be deemed to constitute actual notice of the transfer or the creation of the legal estate or charge to all persons and for all purposes whatsoever as from the date of registration and so long as the registration continues in force. So also under section 198 in the case of instruments which are registered under the Land Charges Act, 1925, it has been provided that registration shall be deemed to constitute actual notice of such instrument to all persons and for all purposes connected with the land affected.

In our opinion, in a country like India, where the system of registration has been generally applied, if registration is to be held as not implying notice, one of the objects for which instruments are required to be registered would be defeated. Moreover, as will be seen below, one of the important changes suggested by us is "compulsory registration". It is, therefore, necessary that express provision should be made in the Act making it clear that

registration of an instrument relating to immoveable property amounts to notice of the instrument from the date of the registration. For this purpose we propose to add Explanation I to the definition of 'Notice' in section 3.

It is not clear how far possession is to be regarded as notice. In some cases it has been held that possession amounts to such notice of title as the person in possession may have (I. L. R. 25 All. 366, 16 Mad. 148). In other cases, Courts have felt difficulty in expressing any opinion on the point (I. L. R. 8 Cal. 597). Possession which operates as notice, however, must be actual possession. It does not seem reasonable that a person entering into a transaction regarding immoveable property should be in a position to ignore the question of possession or should neglect to inquire into the nature of the possession or the title of the person who is in actual possession of such property, if he is not the person with whom he is dealing. We propose to add Explanation II to the definition of 'notice', providing that the person dealing with any immoveable property shall be deemed to have notice of the title of any person who, for the time being, is in actual possession thereof. It may be noted that notice in this case is not extended to possession which is merely of a constructive nature. The explanation is in accordance with Illustration 3 to section 27 (*b*) of the Specific Relief Act.

The last portion of the existing definition of notice which relates to notice through an agent seems to us to be defective. It provides that a person has notice of the fact when information of the fact is given to or obtained by his agent under the circumstances mentioned in section 229 of the Indian Contract Act. The words "given to or obtained by his agent" used in the definition suggest that the rule is restricted to the facts of which the agent has actual knowledge, or, in other words, express notice, (*Vide* observations of Pontifex, J., in I. L. R. 4 Cal. 897). The reference to section 229 of the Indian Contract Act does not extend the scope of the definition. That section merely provides that in order that notice to an agent should be notice to a principal it must be given to, or the information must be obtained by, the agent in the course of business transacted by him for the principal. According to a well-established principle, the general rule is that an agent stands in the place of the principal for the purpose of the business in hand, his acts and knowledge being considered as the acts and knowledge of the principal. As observed by the Judicial Committee in *Rampal Singh* v. *Balbaddar Singh* (29 I. A. 203, 25 All. 1), "it is not a mere question of constructive notice or inference of fact, but a rule of law which imputes the knowledge of the agent to the principal, or (in other words) the agency extends to receiving notice on behalf of his principal of whatever is material to be stated in the course of the proceedings". In *Mohori Bibee* v. *Dhurmodas Ghose* (30 I. A. 114), their Lordships of the Privy Council held that, although the principal was absent from Calcutta and personally did not take part in the

transaction, his agent in Calcutta stood in his place for the purposes of the transaction and the acts and knowledge of the latter were the acts and knowledge of the principal. If notice to the agent, whether actual or constructive is not made notice to the principal, it has been said that "notice would be avoided in every case by employing agents". [*Berwick & Co.* v. *Price* (1905) 1 Ch. 632].

The general rule that the knowledge of the agent is the knowledge of the principal has no doubt certain limitations. It is necessary that the matter for which the agent was employed should be taken into consideration. It is necessary that the agent should be acting in the course of the particular business for which he was employed. (34 I. A. 179). This general principle is now embodied in section 199 of the English Property Act, 1925. We propose therefore, to add Explanation III to the definition.

Clause 5. *Section 4.* As stated in the note to section 1, reference to para. 3 of section 54 is omitted in this section. The reference in this section to the Indian Registration Act of 1877 is changed to the Act of 1908 which is now in force.

Clause 6. *Section 6.* Section 6, which enumerates property of different kinds which cannot be transferred, includes in clause (*d*) an interest in property restricted in its enjoyment to the owner personally. A right to receive maintenance is a personal right, although any particular property or the income thereof may be charged with it. It is in accordance with public policy that these rights which are generally created for the maintenance or personal enjoyment of a qualified owner, *e.g.*, a Hindu female, ought to be inalienable; but in some cases it has been held that if the amount of maintenance is fixed by an agreement or by a decree, it can be assigned. (I. L. R. 5 Bom. 99, 38 Cal. 13). Although an agreement or a decree would make such right definite, it is nevertheless a right created for the personal benefit of the qualified owner and should not be alienable. Section 60 of the Civil Procedure Code which protects such right from the process of a civil court does not make any exception in the case of maintenance fixed by agreement or decree. The above reasoning, however, does not apply to arrears of maintenance which have accrued due. To make the position clear, we suggest that the following clause should be inserted as clause (*dd*), *viz* :—

> "(*dd*) a right to future maintenance in whatsoever manner arising or secured or determined cannot be transferred."

Section 10. We have not suggested any change, but it is a question of policy whether the principle embodied in the section should be extended to Hindus, Muhammadans and Buddhists.

Clauses 7 & 11. *Sections 11 and 40.* Sections 11 and 40 of the Act refer to affirmative and negative covenants in a transfer. Section 11 refers to rights as between a transferor and a transferee, while section 40 relates to the rights of third parties against transferees. The words "to compel its enjoyment", used in

the second paragraph of section 11 and in the first paragraph of section 40, indicate that affirmative covenants for the beneficial enjoyment of one piece of the property of which the other piece has been transferred can in all cases be enforced. This paragraph seems to have been based on the observations of Lord Cottenham in *Tulk* v. *Moxhay*, 2 Ph. 774, a case decided in 1848. But in later English decisions, such as *Haywood* v. *Brunswick Building Society* (8 Q. B. D. 403), the observations in Tulk's case were not approved, and it is now settled that except in certain special cases affirmative covenants cannot be specifically enforced. Thus, in *Austerberry* v. *Corporation of Oldham* (1885) 29 Ch. D. 750, a covenant to spend money on the land was held as not binding on the purchaser of the land, although he had notice of the same. Indian Courts have followed the same principle (27 Bom. L. R. 73). We propose that the second paragraph of section 11 and the first paragraph of section 40 should be so amended as to make it clear that, although an affirmative covenant is not, by itself invalid as between a transferor and transferee (section 11), negative or restrictive covenants only can be specifically enforced against a third person (section 40).

Clause 8.
Section 15.

Section 15 of the Transfer of Property Act deals with a gift to a class. It reproduces with slight verbal alterations the provisions of section 102 of the Indian Succession Act, 1865 (now section 115 of the Indian Succession Act, 1925), which was enacted on the principle of the decision in *Leake* v. *Robinson* (1817) 2 Mer. 363. The principle is thus stated in Theobald on Wills :—

> "Where there is a gift to a class, any members of which may have to be ascertained beyond the limits of perpetuity—for instance, to the children of a living person who shall attain twenty-five—the whole gift is void."

It will be observed that the rule applies only to gifts to a class which offend the rule against perpetuities.

Section 102 of the Indian Succession Act, 1865, enacts that if a bequest is made to a class of persons with regard to some of whom it is inoperative—

> (1) by reason of the rule contained in section 100; as where a limited interest is given to an unborn person, or
>
> (2) by reason of the rule contained in section 101, being the rule against perpetuity,

such bequest shal be wholly void.

Prior to certain special Acts, to be presently noted, Hindu Law did not permit a gift in favour of a person who was not in existence at the date of the gift, or a bequest in favour of a person who was not in existence at the death of the testator [*Tagore* v. *Tagore* (1872) 9 Beng.

L. R. 377, 397, 400, I. A. Sup. Vol. 47], on the ground that a person capable of taking must be in existence at the material date. Difficulties, however, arose where a gift was made to a class of persons of whom some were and some were not in existence at the date of the gift. The leading case on the subject is that of *Rai Bishen Chand* v. *Mussumat Asmaida Koer* (1884) 11 I. A. 164, 6 All. 560, wherein a Hindu made a gift of his property to his grandson S who was then in existence "and his (S's) brothers who may be born thereafter." It was argued on the strength of the rule in *Leake* v. *Robinson* and the analogy of section 102 of the Indian Succession Act, 1865, that as the gift to the unborn grandsons was invalid according to the Hindu law, no benefit could be taken even by the grandson who was in existence at the date of the gift. But this contention was overruled by the Judicial Committee. As to section 102, it was observed that it did not apply to the facts of the case because the gift to the unborn grandsons did not fail by reason of the rules contained in section 100 or section 101, but by reason of the *personal incapacity* of the unborn grandsons to take. In the course of the judgment their Lordships said:

> "It may be that illustration (*b*) to section 102 imports into India an English rule of construction which usually defeats the intention of the testator."

and later on:

> "But their Lordships conceive that it is not necessary to view this transaction as though it were to be determined by rules of construction drawn from English law and applicable to English deeds of gift."

The rule in *Leake* v. *Robinson* was applied by the High Court of Calcutta in several cases, *e.g.*, 8 Beng. L. R. 490, 2 Cal. 262, 4 Cal. 455; but the tide turned after the decision of the Judicial Committee in *Rai Bishen Chand* v. *Mussumat Asmaida Koer*, and the principle of this decision has been followed in a large number of cases in India.

The true scope of the rule in *Leake* v. *Robinson* was pointed out by Sir Lawrence Jenkins in *Radha Prasad* v. *Ranimoni Dasi* (1911) 38 Cal. 188 (affirmed in 41 I. A. 176). Dealing with that rule the learned Judge said at page 199:

> "On behalf of Ranimoni it is contended that as some of the class cannot take, the whole gift is void and in support of this *Leake* v. *Robinson* has been cited. But this contention proceeds on a misapplication of this case and a misconception of the true nature of a gift to a class. In *Leake* v. *Robinson* the gift to the class failed because the class could not be ascertained within the period allowed by the rule against perpetuities. The gift here in nowhere

> offends that rule: its only fault is that the class of legatees includes some who were not in existence at the date of the testator's death and were thus under a *personal incapacity*. And the difference is obvious. In a gift to a class the testator looks to the body as a whole rather than to the members constituting that body [*Kingsbury* v. *Walter* (1901) A. C. 187, 191], and the class is in a sense personified. But if that class cannot be ascertained until a time beyond that permitted by the rule against perpetuity, there is no class to which the gift can legally be made. But if, as here, the fault is not that a class cannot be ascertained within the period permitted by law, but that certain members of the class are incapable of taking different considerations apply."

The whole question of gifts to a class was gone into at considerable length by Wilson, J., in *Ram Lal Sett* v. *Kanai Lal Sett* (1886) 12 Cal. 663. In that case the learned Judge disposed of the cases which had been treated in India as authority for introducing into the construction of Hindu wills the rule in *Leake* v. *Robinson*. He showed that the rule was introduced into India owing to a mistaken analogy and observed as follows :—

> "It is no new doctrine that rules established in English Courts for construing English documents are not as such applicable to transactions between natives of this country. Rules of construction are rules designed to assist in ascertaining intention; and the applicability of many of such rules depends upon the habits of thought and modes of expression prevalent amongst those to whose language they are applied. English rules of construction have grown up side by side with a very special law of property and a very artificial system of conveyancing, and the success of those rules in giving effect to the real intention of those whose language they are used to interpret, depends not more upon their original fitness for that purpose than upon the fact that English documents of a formal kind are ordinarily framed with a knowledge of the very rules of construction which are afterwards applied to them. It is a very serious thing to use such rules in interpreting the instruments of Hindus, who view most transactions from a different point, think differently, and speak differently from Englishmen, and who have never heard of the rules in question."

At the end of the judgment the learned Judge stated that he should be—

> "prepared to hold as the general rule that where there is a gift to a class, some of whom are or may be incapacitated

> from taking, because not born at the date of gift or the death of the testator, as the case may be, and where there is no other objection to the gift, it should enure for the benefit of those members of the class who are capable of taking."

The judgment of Wilson, J., was referred to by their Lordships of the Privy Council in *Bhagabati* v. *Kali Charan* (1911) 38 I. A. 54, at some length, and their Lordships expressed "their entire concurrence in the judgment".

It must also be observed that the rule in *Leake* v. *Robinson* has not escaped criticism even in England. In *Bhagabati* v. *Kali Charan Singh* (1905) 32 Cal. 992 (affirmed in 38 I. A. 54), Maclean, C. J., said :—

> "But even in England the rule in *Leake* v. *Robinson* has been followed not without expressions of reluctance. In *Leake* v. *Robinson* itself Sir William Grant said : 'Perhaps it might have been as well if the Courts had originally held an executory devise transgressing the allowed limits to be void only for the excess, where that excess could be clearly ascertained.' *In re Moseley's Trusts* (1879) 11 Ch. D. 555, the Lord Justices similarly expressed their non-concurrence with the reason of the rule though they were bound to follow it ; and *Pearks* v. *Moseley* (1880) 5 App. Cas. 714, which was in appeal from the decision of the Lord Justices *in re Moseley's Trusts*, Lord Selborne, Lord Penzance and Lord Blackburn sufficiently indicated their inclination against the rule, which, however, was settled in England by a long series of cases and could not be disturbed except by legislation."

The rule that a Hindu could not dispose of his property by gift or sale in favour of an unborn person fettered the free disposition of property. To remove this disability three Acts were passed, namely, (1) Madras Act I of 1914, (2) the Hindu Disposition of Property Act, XV of 1916, and (3) Madras Act VIII of 1921. The Madras Act I of 1914, applies to the Madras Presidency except the Town of Madras ; the Madras Act VIII of 1921, applies to the Town of Madras ; and the Hindu Disposition of Property Act extends to the whole of British India except the province of Madras. The following is a synopsis of the three Acts :—

> (1) It is declared by all the three Acts that a transfer *inter vivos* or disposition by will of any property shall not be invalid by reason only that the transferee or legatee is an unborn person at the date of the transfer or the death of the testator, as the case may be. Since gifts and bequests to unborn persons were declared to be valid, it became necessary to fix a limit of time within which the gift or

bequest should vest. This was effected by applying to such gifts and bequests the provisions respectively of section 14 of the Transfer of Property Act and section 101 of the Indian Succession Act, 1865, which contain the rule against perpetuities.

(2) Further, by the Hindu Disposition of Property Act, the provisions of section 13 of the Transfer of Property Act and section 100 of the Indian Succession Act, 1865, were extended to gifts and bequests to unborn persons, but it was not so done by the Madras Acts.

(3) All the three Acts left section 15 of the Transfer of Property Act and section 102 of the Indian Succession Act, 1865, which relate to gifts and bequests to a class, severely alone.

One important consequence of the above Acts must be noted here. Prior to the passing of the three Acts if a bequest was made by a Hindu in a case governed by the Hindu Wills Act, 1870, in favour, say, of his daughter for her life and after her death to "such of her children who shall attain the age of 21 years", and some of the children were born before and others after the death of the testator, the bequest, though it failed as to those that were not in existence at the death of the testator, did not fail in its entirety but enured for the benefit of those who were in existence at the death of the testator. The reason was that in such a case the bequest to the unborn persons failed not by reason of the rule against perpetuity contained in section 101 of the Indian Succession Act, but by reason of their *personal incapacity* to take. But the bar of personal disability was removed by the three Acts with the result that a bequest to the unborn children in the case put above would now fail by reason of the rule against perpetuities contained in section 101, the gift being to such "children who shall attain the age of 21 years," and the gift would, therefore, fail in regard to the whole class. Before the passing of the three Acts an unborn person could not take at all, and there would, therefore, be no scope for the operation of the rule against perpetuities. Since the enactment of the three Acts, an unborn person can take, but if he is to take on his attaining the age of 21 years, the bequest offends the rule against perpetuities, and it, therefore, fails by reason of the rule contained in section 101, with the result that section 102 applies and renders the bequest void in regard to the whole class. And this is, in fact, what happened in *Soundara Rajan* v. *Natarajan* (1925) 52 I. A. 310. Thus, while before the three Acts were passed, a bequest to a class of persons some of whom were not in existence at the death of the testator did not fail in regard to the whole class, these Acts have brought about a result which, it is conceived, was hardly contemplated when the Acts were passed.

In view of what is stated above, it is proposed to alter section 15 of the Transfer of Property Act as follows :—

"15. If, on a transfer of property, an interest is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails *in regard to those persons only and not in regard to the whole class.*"

Transfer to class some of whom come under sections 13 and 14.

It is also proposed to alter section 115 of the Indian Succession Act as follows :—

"If a bequest is made to a class of persons with regard to some of whom it is inoperative by reason of the provisions of section 113 or section 114, such bequest shall be *void in regard to those persons only and not in regard to the whole class.*"

Bequest to a class some of whom may come under rules in section 113 and 114.

For the reasons stated above, we suggest that the three Acts, namely, Madras Act I of 1914, Hindu Disposition of Property Act XV of 1916, and Madras Act VIII of 1921, should be repealed.

As section 15 of the Act when amended as above will no longer provide for the case of a failure of a transfer, reference to that section in section 16 is unnecessary and should be omitted. It is, however, necessary to provide for a case when the transfer may fail as to all the members of the class by reason of the rules contained in sections 13 and 14. Such a case would arise where a gift over is intended to take effect after a prior gift in favour of a body or a class of person but the prior gift fails. In such a case, if the prior gift in favour of the class of persons fails by reason of the provisions of sections 13 and 14, the gift over also fails. In order to make this point clear, section 16 should be amended as follows :— Clause 9. *Section 16.*

"16. Where by reason of any of the rules contained in sections 13 and 14 an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails."

The restrictions contained in sections 14 and 16, and also the restrictions as to accumulations, should not apply to charities, and we propose that the section dealing with accumulations should come immediately after section 16 and be numbered 17, and the section dealing with charities, which is now numbered 17, should be numbered 18. In India a direction for accumulation has been held valid in the case of Hindu and Muhammadan religious endowments Clause 9—*contd.* *Section 17.*

though it infringed the rule against perpetuities (I. L. R. 34 Cal. 5, 23 C. L. J. 241, 34 Mad. 12).

Clause 9—*contd.* *Section 18.*

Section 18 relates to the rule against accumulation and provides how long the income of any property transferred can be directed to be accumulated so as to prevent its being received and enjoyed by the transferee. This section and section 117 of the Indian Succession Act allow accumulations for a period of one year only in certain cases. In England, the Thellusson Act allowed a much longer period. Moreover in certain cases, the restriction against accumulation was not applicable at all. Thus that Act allowed accumulations for the payment of debts and for providing funds for children. Accumulations are also allowed in English Law for maintaining property in good repair [(1891) 2 Ch. 13]. By the Accumulation Act, 1892, and by the Property Act, 1922, some more exceptions were added to the rule enacted in the Thellusson Act. The whole law is now consolidated in sections 164—166 of the Property Act, 1925 (15 Geo. V. c. 20.).

In their report, the Second Indian Law Commission remarked:—

"As to the rule prohibiting accumulation, we all should prefer the more liberal enactments of the Thellusson Act (39 and 40 Geo. III, c. 98), which allow an accumulation for 21 years and do not affect provisions for payment of debts or for raising portions. But as the rule embodied in the Succession Act, section 104, has now been in force for 14 years, Mr. Stokes and Mr. West do not press its alteration." Sir Charles Turner was, however, of opinion that the above exemptions were frequently required by the circumstances of large zamindari properties.

In cases which were not governed by section 18 of this Act or section 104, Indian Succession Act, 1865 (section 117 of the Indian Succession Act, 1925), the rule followed was that if there was nothing *per se* illegal in a direction to accumulate and if such direction was neither so unreasonable in its conditions as to be against public policy, nor given for the purpose of carrying out an illegal object, the direction should be given effect to (I. L. R. 34 Cal. 5). In a case quoted in a footnote in I. L. R. 47 Cal. 88 at page 93, Sir Lawrence Jenkins, after reviewing English and Indian authorities on the subject, remarks—"A direction to accumulate with a gift of the accumulations is not fundamentally bad, it only fails if it offends some independent rule of Hindu Law.....Or the direction to accumulate may be repugnant and so void, as an attempt to deprive a person of the enjoyment of that which has become his property. But, if, as the decisions I have cited imply, it was within the power of a Hindu testator to direct the accumulations of property to be added to or made part of his own property, then there would seem to be no difficulty in the way of his making a gift of it to a person who under the same gift may become entitled to the original corpus of the testator's property....What then is the period

during which an accumulation can be validly directed ? On principle, I think, it must be for so long a time as the absolute vesting of the entire interest can be withheld, or for so long a time as that during which the corpus of the property can be rendered inalienable, or its course or its devolution can be directed and controlled by a testator." Although these decisions show that accumulations may be directed with certain restrictions, they do not lay down any rule which is definite and which Courts can easily follow. It is desirable to lay down definitely on the lines of the English Law the periods and the objects for which a condition as to accumulation should be held valid. It is, however, difficult to adopt the English Law contained in the Property Act, 1925, in its entirety. Section 164 prescribes four periods during which accumulation can validly be directed, *viz.*—

(*a*) the life of the grantor or settlor ;

(*b*) a term of 21 years from the death of the grantor, settlor or testator ;

(*c*) the duration of the minority or respective minorities only of any person or persons living or *en ventre sa mere* at the death of the grantor, settlor or testator ;

(*d*) the duration of the minority or respective minorities only of any person or persons who under the limitations of the instrument directing the accumulations would, for the time being, if of full age, be entitled to the income directed to be accumulated.

Rules regarding accumulation are closely connected with the rule against Perpetuities. (Cheshire on Modern Real Property, p. 482 ; Fearne on Contingent Remainders, p. 537.) The English rule of perpetuities has a historical origin and has not been wholly adopted in India. According to the English Law, the perpetuity period is the life of any person or of the survivor of any number of persons, who is or who are alive or *en ventre sa mere* at the moment when the deed or the will which creates the interest begins to operate, *plus* a period of 21 years from the time when such designated person or the survivor of several designated persons dies [*Cadell* v. *Palmer* (1833) 1 Cl. and F. 372]. The rules against perpetuities in India so far as a transfer *inter vivos* is concerned are contained in sections 13 and 14. Under section 14 no transfer of property can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong. The periods in section 164 of the Property Act, 1925, cannot be incorporated in their entirety in the Transfer of Property Act without affecting the provisions of sections 13 and 14. We, therefore, consider it desirable to permit accumulations during the following periods only :—

(1) the life of the transferor ; or

(2) a period of 18 years thereafter.

This would avoid any difficulty of construction. At the same time we think it desirable to accept certain well recognised exceptions in law such as those relating to provisions for the payment of debts, raising portions for children and the repairs to the property transferred. Section 18, therefore, should be amended accordingly.

Clause 10. *Section 39.* Section 39 is intended to protect persons who are entitled to receive maintenance or for whom provision is made for advancement or marriage from the profits of any immoveable property. The section provides that such a right can be enforced against a transferee of the property, if the transfer has been made with the intention of defeating the right and the transferee has notice of the intention. The Courts have, therefore, always required proof of the intention on the part of the transferor and also of notice of the intention to the transferee. (I. L. R. 22 All. 326, 24 All. 160). The illustration to the section is not consistent with the section itself and does not make any reference to the intention of the transferor. In actual practice it is impossible to adduce proof of mere intention. As stated in 12 Bom. L. R. 1075 at pp. 1077 and 1078, in order to enable such proof to be adduced, a transferor must have announced his fraudulent intention of defeating the rights of persons entitled to maintenance and the transferee must have heard him doing so. As it is desirable to protect persons entitled to maintenance or for whom provision for advancement has been made from improvident holders of the property, it is necessary that the reference to the transferor's intention should be omitted from the section, and the section should be amended accordingly.

Clause 11. *Section 40.* Section 40 has already been dealt with along with section 11.

Clause 12. *Section 43.* Section 43 refers to a person making an *erroneous* representation that he is authorised to transfer certain immoveable property. The underlying principle is also applicable to a case when the representation is fraudulent. The expression "erroneously" has, in fact, been construed to include all representations whether tainted or untainted with fraud (I. L. R. 7 All. 864, 20 Cal. 296). It is, however, desirable to make the meaning clear by using the word "fraudulently" along with the word "erroneously".

The section also provides that a transfer by a person erroneously representing that he is authorized to make it operates on any interest acquired by such person in the property at any time during which the contract of transfer subsists. It embodies what is known as the principle of the "estate feeding the estoppel". The words "during which the contract of transfer subsists" are appropriately used and are clearly intended to mean that it is at the option of the transferee either to enforce the transfer or to repudiate the contract. In I. L. R. 18 Mad. 492, the Madras High Court has laid down in general terms that the contract of transfer subsists so long as the decree obtained

in a suit to enforce a transfer has not been fully satisfied and that until then the transferee is entitled to claim the benefit of any subsequent acquisition of interest in the property by the transferor. This does not appear to us to be sound although, having regard to the terms of the decree which was passed in that suit, the decision itself cannot be said to be incorrect. Once a decree has been passed in a suit brought on the transaction as a completed transfer, the contract must be taken to have merged in the decree whereupon new rights arise not under the contract, but under the decree.

With a view to meet the observations of the Madras High Court we think that the following paragraph should be added to the section after the words "till the contract of transfer subsists", *viz.*—

> "Where a suit is brought by the transferee to enforce his rights under the transfer, the transferee shall be entitled to claim any interest which the transferor may acquire in such property at any time prior to the passing of any decree in such suit, from which no appeal lies, and not thereafter."

Clause 13.
Section 52.

Section 52 deals with the doctrine of *lis pendens*. It begins with the words "during the active prosecution . . . of a contentious suit or proceeding", the marginal note is "Transfer of property *pending suit* relating thereto". As to the words "active prosecution", it has been held that there could hardly be said to be active prosecution if after filing the plaint the plaintiff has taken no steps to effect service of summons, or if after a decree dismissing his suit he takes no steps to file an appeal (18 Cal. 188, 195; 28 Cal. 23, 26). In Bombay the decisions are not quite consistent. The view generally held is that if no steps are taken to execute the decree and the property comprised in the decree is transferred four years after the decree, as in 37 Bom. 621, or seven years after the date of the decree as in 12 Bom. 217, the transfer could not be said to have been made *pendente lite*. In the latter case the Court went so far as to hold that the *lis pendens* ended with the decree. This view was accepted in 22 Bom. 939, but it was held that that rule did not apply "to administration suits and suits for an account and to suits of a similar nature in which the decree is the inception of subsequent proceedings". 22 Bom. 939 was a mortgage suit, and the transfer in that case was made after the decree for sale and before the date of sale. It was held, following 21 W.R. 349, which was approved by the Judicial Committee in L. R. 15 I. A. 97, that the transfer was *pendente lite*.

As to the word "contentious" it was held in some cases that a suit became contentious only from the date on which summons was served on the defendant (15 Cal. 647; 27 Cal. 77; 21 All. 408), and in some cases that it became contentious when the defence was put in (31 Cal. 658, which was a partition suit). But these decisions are not good law since the ruling of the Judicial Committee

in *Faiyaz Husain Khan* v. *Prag Narain* (1907) 34 I. A. 102, where it was held that according to the true construction of this section there was no warrant for the view that a suit, contentious in its origin and nature, is not so within the meaning of the section until after summons is served on the opposite party.

In view of the difficulties created by the use of the words "active prosecution" and "contentious", it is proposed to substitute the word "pendency" for the words "active prosecution", and to omit the word "contentious", and to add an explanation to make it clear when the pendency of a suit or proceeding shall be deemed to commence and when it shall be deemed to end.

We also propose to insert in the section the words "which is not collusive", for a collusive suit is no real suit at all, but merely a pretence (6 Bom. 703, 11 Bom. 708). Further, to attract the doctrine of *lis pendens* the suit must be pending in a Court of competent jurisdiction, and this has been made clear in the explanation.

We have not thought it proper to include in the explanation cases where an order is passed against an intervenor in execution proceedings, as the proper remedy in such cases is a suit under Order 21, rule 63 of the Code of Civil Procedure, 1908. We have also excluded cases of review.

It has been suggested that to avoid the difficulties that may arise by the application of the doctrine of *lis pendens*, the system of registration of suits prevailing in England should be adopted in this country at least in the Presidency Towns. This is really a question of administration and is beyond the scope of our reference.

Clause 14
Section 53.

The first and third paragraphs of section 53 are taken from 13 Eliz. c. 5 and 27 Eliz. c. 4. Both these statutes applied to Presidency-towns (22 W. R. 60; 6 Mad. H. C. R. 455. 474; 25 Bom. 202, 208-209), and were repealed by the Transfer of Property Act, so far as they applied to those towns. 13 Eliz. c. 5, dealt with transfers made with intent to defeat or delay creditors, and 27 Eliz. c. 4, dealt with transfers made with intent to defraud subsequent transferees for consideration.

The first paragraph of section 53 consists of two parts, of which the first relating to subsequent transferees is based on section 2 of 27 Eliz. c. 4, and the second relating to creditors is based on section 1 of 13 Eliz. c. 5. The second paragraph of section 53 had no place in either of the two statutes. It seems to have been founded upon the decisions on the two statutes. The third paragraph of the section is based on section 5 of 13 Eliz. c. 5 and section 4 of 27 Eliz. c. 4.

On the statute 27 Eliz. c. 4, the English decisions are clear to the effect that a voluntary transfer of land, afterwards made the subject of a conveyance for valuable consideration, may be avoided by the subsequent purchaser although in making the voluntary conveyance there was no actual fraud and although the purchaser

had notice of the settlement: see 1, Smith's Leading Cases, 12th edition, page 27. From the fact that the settlor afterwards conveyed the land to a purchaser for consideration it was inferred that the voluntary conveyance was made with intent to defeat the purchaser. "The principle appears to be that, by selling the property for a valuable consideration, the settlor so entirely repudiates the former voluntary conveyance and shows his intention to sell, as that it shall be taken conclusively against him and the person to whom he conveyed, that such intention existed when he made the conveyance, and that it was made in order to defeat the purchaser." "It may be assumed," said Grant, M. R. "that a voluntary settlement, however free from actual fraud, is by the operation of that statute (27 Eliz. c.4) deemed fraudulent and void against a subsequent purchaser for a valuable consideration even when the purchase has been made with notice of the voluntary settlement." He added, however, that he had great difficulty in persuading himself that the words of the statute warranted or that the purpose of it required such a construction, for it was not easy to see how a purchaser could be defrauded by a settlement of which he had notice before he made his purchase.

The English decisions were followed by Couch C. J., in *Judah* v. *Abdool* (1874) 22 W. R. 60, a case decided before the Transfer of Property Act came into force. Following the same principle Sale, J., held in *Joshua* v. *Alliance Bank of Simla* (1895) 22 Cal. 185, that the words "may be presumed" in paragraph 2 of the section should be construed as equivalent to "shall be presumed," and that a voluntary transfer of immoveable property afterwards made the subject of a transfer for consideration was void as against the subsequent transferee, even though the subsequent transferee had notice of the previous transfer. An appeal was preferred from the judgment of Sale, J., but the appellate court did not deal specifically with the point of law raised by the words "may be presumed" and the decision was confirmed on other grounds. The view taken by Sale, J., was dissented from by Jenkins, C. J., in *Bai Cooverbai* v. *Muhammad* (1905) 7 Bom. L. R. 267. As regards transfers made with intent to defraud creditors, the courts in India have held that the phrase "may be presumed" in the second paragraph should be given its plain meaning, that is to say, the meaning which it bears in the Indian Evidence Act, 1872, section 3. The result is that the same phrase "may be presumed" may have one meaning attached to it in case of transfers made to defraud subsequent transferees and another meaning in case of transfers made to defeat or delay creditors. Again, paragraph 3 of the section can hardly apply to cases where there is a contest between a prior voluntary transfer and a subsequent transfer for consideration. Such being the case, it is desirable to split the section into two parts—one dealing exclusively with transfers made with intent to defraud creditors and the other with transfers made to defraud subsequent transferees. In drafting the two sub-sections we have followed the lines of

section 172 and 173 respectively of the English Law of Property Act, 1925.

Paragraph 2 of section 53 lays down a rule of evidence. It says that when the effect of any transfer of immoveable property is to defeat or delay creditors, and the transfer is made gratuitously, the transfer may be presumed to have been made with intent to defeat or delay creditors. The words " when the effect of any transfer is to defeat or delay creditors " have given rise to considerable difficulty and the Courts have resorted to English decisions to determine when a voluntary transfer can be said to have that effect. But even in England the course of decisions on the subject is not uniform. In *Spirett* v. *Willows*, 3 De G. J., & S. 293, Lord Westbury laid down two separate rules—one as to creditors existing at the date of the transfer and another as to subsequent creditors. In *In re Lane-Fox* (1900) 2 Q. B. 508, Wright, J., adopted the second rule laid down by Lord Westbury, and held that an honest voluntary settlement made by a solvent person was not void merely because it proved some years afterwards *to have the effect* of defeating or delaying subsequent creditors. In *Freeman* v. *Pope*, 5 Ch. App. 538, it was laid down that it is not " necessary to prove any *actual* intention to delay creditors, where the facts are such as to show that the necessary consequence of what was done was to delay them," and that in such cases the intent *must* be inferred. This doctrine that the intent *must* be inferred was criticised in *Ex parte Mercer*, 17 Q. B. D. 290, a case which was approved by the Court of Appeal in *re Holland* (1902) 2 Ch. 360.

The principle now generally adopted by the Courts in England is that laid down by Kindersley, V.C., in *Thompson* v. *Webster*, 4 Drew 628, at p. 632. That principle is as follows :—

> " It is not necessary, in order to set aside a voluntary deed, that a settlor should be actually in a state of *insolvency*. The principle now established is this : the language of the Act being that any conveyance of property is void against creditors if it is made with *intent* to defeat, hinder or delay creditors, the Court is to decide in each particular case whether, on all the circumstances, it can come to the conclusion that the *intention* of the settlor in making the settlement, was to defeat, hinder or delay his creditors."

The above statement of the law was accepted as correct by the Judicial Committee in *Godfrey* v. *Poole*, 13 App. Cas. 497. Again, in *In re Holland* (1902) 2 Ch. 360 it was held by the Court of Appeal that in considering whether a conveyance was void under the statute, the Court must look at the whole of the circumstances surrounding the execution of the conveyance and see whether it was *in fact* executed with the intent to defeat and delay creditors. It is, therefore, proposed to delete paragraph 2 of section 53 and to leave the determination of the question of intent to be dealt with according to the ordinary rules of evidence.

Coming now to transfers made with intent to defraud subsequent transferees for value, we have already referred to the English cases by which it was determined that every voluntary conveyance of immoveable property was void as against a subsequent purchaser for value. These decisions, as stated above, were followed by Sale, J., but the law in England was altered by section 2 of the Voluntary Conveyances Act, 1893 (56 and 57 Vict. c. 21), by which it was provided that a voluntary conveyance, if made *bona fide* and without any fraudulent intent, should not be deemed fraudulent within the meaning of 27 Eliz. c. 4, by reason of any subsequent purchase for value. Section 2 of the Voluntary Conveyances Act has been repealed by the English Law of Property Act, 1925, and reproduced in section 173 of that Act. We think that a similar provision should be made and we have done so accordingly in sub-section (*2*).

For the reasons already given we have included paragraph 3 of section 53 in the new sub-section (*1*).

To make sub-section (*1*) more comprehensive we have provided, as is done in section 172 of the English Law of Property Act, 1925, that nothing contained in sub-section (*1*) shall affect the law of insolvency for the time being in force. Thus a voluntary transfer, though it may be good under sub-section (*1*), may be avoided in insolvency proceedings under the circumstances mentioned in section 55 of the Presidency-towns Insolvency Act, 1909, and section 53 of the Provincial Insolvency Act, 1920. Similarly, a transfer is not necessarily void under sub-section (*1*) because it amounts to an assignment of all the transferor's property for the benefit of a particular creditor or of particular creditors (*Alton* v. *Harrison* (1869) L. R. 4 Ch. 622, 626), but it may operate as an act of insolvency under section 9 of the Presidency-towns Insolvency Act and section 6 of the Provincial Insolvency Act, or it may be void as amounting to a fraudulent preference within the meaning of section 56 of the Presidency-towns Insolvency Act and section 54 of the Provincial Insolvency Act.

There has been some conflict of opinion whether a suit to set aside a transfer on the ground that it was made with intent to defeat or delay creditors should be brought on behalf of all the creditors or whether it is competent to any one creditor to institute such a suit. The trend of the decisions is in favour of a representative suit. In 34 Cal. 999, 16 Bom. 1 and 27 Bom. 322 it was held that the suit should be brought on behalf of all the creditors. The decisions under the corresponding section of 13 Eliz. c. 4, went the same way and it was held under that section that the action should be brought by the plaintiff on behalf of himself and all other unsatisfied creditors of the deceased: see *French* v. *French*, 6 De G. M. & G. 95, *Richardson* v. *Smallwood*, Jac. 552. In 42 Mad. 143, however, the opinion was expressed that a suit to avoid a transfer made with intent to defraud creditors may be instituted by a single creditor. We are unable to accept this opinion. The practice followed by the High Courts of

Calcutta and Bombay is in accordance with form No. 13, Appendix D to Schedule I of the Civil Procedure Code, and is based on the wholesome principle that the transferee should not be exposed to a multiplicity of suits at the instance of various creditors. We think it is desirable to give statutory recognition to this practice. We also do not agree with the view expressed by the High Court of Madras that a decree-holder is not a creditor and that he may therefore bring a suit on his own behalf to set aside the transfer. We have accordingly added a new paragraph.

The first paragraph of section 53 contains the words "prior or subsequent transferees", but it is difficult to see in what cases a prior transferee could have any reason to complain: for a completed transfer must always, in the absence of a special contract binding the transferee, take precedence of a later transfer: *see* section 48 of the Act. Hence we have omitted the word "pr or" in sub-section (*2*) of the section.

The first paragraph also contains the words "or co-owners or other persons having an interest in such property." It is difficult to conceive of any case in which a co-owner or other person having an interest in the property could be defeated by a voluntary transfer made by the transferor; and these words find no place in any of the corresponding English Statutes. We have accordingly omitted these words in sub-section (*2*).

Clause 15. *Section 53-A.* We have proposed a more rigorous use of registration in the transfer of immoveable properties than is now enjoined by law, and the changes we have proposed are, we think, calculated to minimise, if not to prevent, perjuries and frauds. We cannot, however, ignore the fact that in actual practice circumstances do arise when the rigorous application of the law of registration may result in fraud instead of preventing it. Similar circumstances led to the introduction of the doctrine of part performance in England.

By section 4 of the Statute of Frauds (1677) (29 Car. II, c. 3), it is provided that no action or suit shall be maintained on an agreement relating to land which is not in writing signed by the party to be charged with it. The strict application of the provision led to great hardship in cases where a parol agreement relating to land had been partly performed by one party and yet he could not sue the other party for specific performance. Thus, the latter party was enabled to practise a fraud upon the former. In such cases the Courts intervened on equity and enforced specific performance, holding that part performance took the cases out of the Statute of Frauds. The general ground upon which the doctrine is based is prevention of fraud. It is said that where one party has executed his part of the agreement in the confidence that the other party would do the same, it is obvious that, if the latter should refuse, it would be a fraud upon the former to suffer this refusal to work to his prejudice (*see* Story on Equity, section 1045). Again, "a more general ground and that which ought to be

the governing rule in cases of this sort is that nothing is to be considered as a part performance which does not put the party into a situation which is a fraud upon him unless the agreement is fully performed." (*Ibid*, section 1047,)

In applying the doctrine of part performance the Courts have confined it within strict limits. From the decided cases the following may be taken to be the essential elements necessary for the application of the doctrine :—

(1) that the transferee has been put in possession of the property;

(2) that his possession can be referred to the particular transfer and not to any other relationship;

(3) that it will amount to a fraud on the part of the transferor to back out of such transfer; and

(4) that the terms of the transfer can be ascertained with reasonable certainty.

Notwithstanding weighty opinion to the contrary, the doctrine is still found to be necessary in England. In India the position is somewhat different though the doctrine is just as applicable. In England the Statute of Frauds is a bar to a suit or action when the agreement is not in writing; in India registration is necessary to the validity of a transfer. Notwithstanding this difference the need for the prevention of fraud is the same in both countries. Hence, the doctrine has been applied by the Indian Courts to cases where the transfer was not effected by a registered instrument. In the case of *Mahomed Musa* v. *Aghore Kumar Ganguli* (42 I. A. 1), their Lordships of the Privy Council observed :—

> "They do not think that there is anything either in the law of India or of England inconsistent with it (the doctrine of part performance), but, upon the contrary, that these laws follow the same rule. In a suit, said Lord Selborne in *Maddison* v. *Alderson* (8 App. Cas. 467), founded on such part performance .... the defendant is really 'charged' upon the equities resulting from the acts done in execution of the contract, and not .... upon the contract itself. If such equities were excluded, injustice of a kind which the statute cannot be thought to have had in contemplation would follow."

Their Lordships further said :—

> "The matter has advanced beyond the stage of contract; and the equities which arise out of the stage which it has reached cannot be administered unless the contract is regarded."

They go on to say :—

> "Many authorities are cited in support of these propositions from English and Scotch law, and no countenance is given to the proposition that equity will fail to support a transaction clothed imperfectly in those legal forms to which finality attaches after the bargain has

been acted upon. From these authorities one dictum quoted by Lord Selborne from Sir John Strange (1 Ves. 441) may be here repeated: 'if confessed or in part carried into execution, it will be binding on the parties, and carried into further execution as such, in equity'. Their Lordships do not think that the law of India is inconsistent with these principles. On the contrary it follows them."

The doctrine has been applied to numerous cases in India, as in:—

(1914) 18 C.W.N. 445.
(1915) 20 C.W.N. 149.
(1917) 22 C.W.N. 522.
(1918) 23 C.W.N. 284.
(1919) 24 C.W.N. 462.
(1920) 25 C.W.N. 905.
(1917) 41 Bom. 438.
(1921) 45 Bom. 1170.
(1918) 40 All. 187.
(1920) 46 Mad. 919.
(1923) 1 Ran. 419.
(1925) 3 Ran. 243.

We do not think that the time has arrived when this equitable doctrine can be safely abrogated in favour of a rigid application of the law of registration. Ignorant transferees in this country who have partly performed the contract require a greater measure of protection than even a transferee in England. When a transferee has in the faith that the transfer would be completed according to law taken possession, it would be inequitable to allow the transferor to treat the transferee as a trespasser. We, therefore, think that statutory recognition should be given to the doctrine of part performance. At the same time care should be taken that the law of registration is not evaded and that the introduction of the doctrine does not lead to "perjuries and frauds" which it is the object of the doctrine to prevent. With this end in view we propose—

(1) that the agreement should be in writing, signed by the party or his agent whom it is sought to bind;

(2) that the transferee should in part performance of the contract take possession of the property or, if already in possession, should continue in possession and in the latter case should do some act in furtherance of the contract;

(3) that the transferee, seeking to avail himself of the doctrine, should perform or be willing to perform his part of the bargain as contained in the writing;

(4) that when the contract has been partly performed all rights and liabilities under the contract should arise and be enforceable as between the parties to the contract notwithstanding that the transaction has not been completed according to law; and

(5) that the application of the doctrine should not affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

We think that it should be made clear that by reason of the part performance, although the terms of the contract are made binding on the parties thereto, the transferee will not get a good title unless the transfer is effected according to law, that is, executed and registered. In this view registration would still be necessary in order that the transferee may acquire a perfected and marketable title. But, although on account of non-registration no title has passed, yet by reason of part performance equities have arisen which Courts of law ought to recognise and enforce. As pointed out in Mohamed Musa's case, "'when a contract has been partly performed, the matter has advanced beyond the stage of contract and the equities which arise out of the stage which it has reached cannot be administered unless the contract is regarded," *i. e.*, as if the transaction had been completed according to law. We propose, therefore, that all the rights and liabilities arising under the contract as expressed in the writing should be enforceable but no more. There is no difficulty in the case of a sale or a mortgage because a contract for sale or mortgage need not be in writing or registered. Questions may arise in the case of an agreement for a lease which creates a present demise. Such agreements require to be in writing and registered. If in performance of such an agreement the lessee takes possession, he may not even sue for specific performance because he cannot prove the agreement if it be not registered (*See* 26 C. W. N. 329.) Such a state of things enables the lessor to treat the lessee in possession as a trespasser and thereby practise a fraud upon him. We think that the Courts should be in a position to give relief to such a lessee in possession. We propose therefore that in such a case the writing containing the agreement may be proved in Court notwithstanding non-registration. In order to avoid perjured evidence, it is desirable in our opinion that the agreement should in all cases be in writing when the doctrine of part performance is sought to be invoked.

We are not unmindful of the weighty opinion expressed in Chapter 35 of the report of the Civil Justice Committee. That Committee has recommended a rigid application of the law of registration and the rejection of the doctrine of part performance. The principal objections formulated by the Committee are—

(1) The recognition of the doctrine is inconsistent with the necessity for registration. We have shown that, inasmuch as part performance cannot confer a title, registration would still be necessary.

(2) A mass of perjured evidence will be introduced if oral agreements are allowed to be proved. To meet this objection we have proposed that the agreement should be in writing.

(3) If registration is made essential in every case people will get accustomed to it and there will be no necessity for the application of the doctrine of part performance. We do not think the country has arrived at that stage when the necessity for the application of this equitable doctrine has ceased to exist.

We think that with the safeguards we have suggested the doctrine should be given statutory recognition. In fact, our proposal does not go beyond what the Courts in India have already recognised by judicial decisions. We have deliberately excluded voluntary transfers from the operation of the doctrine of part performance because obviously no equities arise in favour of volunteers.

There is some conflict of decisions in the Indian Courts with regard to the period within which equitable relief can be given to parties to a transaction when there has been no registered instrument. One view is that such relief can be given only within the period during which a suit for specific performance would lie, the other view being that such relief can be given even after that period has expired. It seems to us that the first view, to which we propose to give effect by adding section 30A to the Specific Relief Act, 1877, does not go far enough, in all cases, to afford the relief which the equities arising out of part performance require. Because, even after the period of limitation, when part performance has taken place, the parties stand in the same relation to each other as they did within the period of limitation and the equities which arose within that period remain the same. In fact, the longer the possession in part performance, the higher will be the equities. We, therefore, think that, in order that the relief may be effective, it ought to be available at all times during which the transferee is in possession in part performance of the contract and subject to the other conditions which we have proposed. In 46 Mad. 919 and 23 C. W. N. 284, the Courts took the view that the relief was available even after the period of limitation for specific performance was over. We feel that, in order that the relief may be real, it ought to be available as between the parties to the transaction even after such period of limitation.

It is necessary in this connection to have a new section in the Specific Relief Act dealing with the same subject, and we have, therefore, proposed the addition of section 30A at the end of Chapter II in the Specific Relief Act. We propose that section 49 of the Registration Act should be amended so as to provide for the admission of unregistered documents, required by law to be registered, for the purpose of proving part performance within the meaning of the new section 53A of the Transfer of Property Act and section 30A of the Specific Relief Act.

Inasmuch as the statutory recognition of part performance is a matter of considerable importance, we think it desirable to explain in further

detail the reasons for the various recommendations we are making.

(1) In order to avoid perjured evidence which is likely to centre round an oral agreement we are providing for the agreement to be in writing.

(2) If possession be taken in part performance of the contract, that fact along with the writing ought to be sufficient to attribute the possession to the agreement. But in the case of a person already in possession we have recommended some further act of part performance, *e.g.*, by payment of different rent or the spending of money, because the possession may not be exclusively referable to the agreement.

(3) In providing that the transferor shall be debarred from enforcing against a transferee any rights except such as arise out of the agreement, we desire to make it clear that the rights arising out of the contract as between the transferor and the transferee should be enforceable as if the transfer has been completed according to law. This provision will prevent a transferor from ejecting a transferee who has in part performance of the contract taken possession, and at the same time enable the transferor to sue the transferee upon his covenant, say, to pay rent. The effect of this provision will be that the mutual covenants between the transferor and the transferee will be operative, though by reason of non-registration no title has passed. This will necessitate the completion of the transfer according to law by execution and registration in order that the transferee may get a marketable title. Thus, the law of registration will not be evaded.

(4) We have provided for a further safeguard in that the equities arising out of part performance may not affect the rights of a transferee for value without notice. This will again have the effect of requiring the completion of the transfer according to law because, otherwise, the first transferee will be in a precarious position in the case of a subsequent transferee for value without notice asserting his rights under such subsequent transfer. The claims of the subsequent transferee will, of course, be subject to the doctrine that, ordinarily, possession will constitute notice of the title of the person in possession. Thus the transferor will not find it easy to practise a fraud upon the transferee in possession by making a second transfer. The second transferee will have notice of th title of the first transferee in possession whatever that title may be. The protection given to the second transferee is not illusory because under the amended section 3 of this Act he will be regarded as having notice of the title of the person in actual possession and not of the title of the prior transferee who may be only in constructive possession. Therefore, it would be still necessary for the first transferee in constructive possession to have his transfer perfected according to law by registration and thereby acquire an indefeasible title.

SALES.

Clause 16. *Section 54.* Except in the case of gifts, all transfers dealt with in the present Act are required to be made by registered instruments only if

the immoveable property involved therein is of the value of Rs. 100 and more. During the passage of the Act Sir Richard Garth (the then Chief Justice of Bengal) recorded a strong opinion that registration should be compulsory in the case of all transactions relating to immoveable property. The Civil Justice Committee in Chap. 35 of their report (page 447) has strongly advocated that the law as to registration should be stiffened and that every instrument relating to immoveable property should be compulsorily registrable. This important change should now be made. Section 54 of the Transfer of Property Act should be amended by providing that a sale in the case of all kinds of immoveable property or any interest therein can only be effected by a registered instrument.

The distinctions drawn between tangible immoveable and intangible immoveable property in section 54, and between property of the value of less than Rs. 100 and property of the value of Rs. 100 or more become unnecessary, and paragraph 3 also is not necessary, while paragraph 2 should be amended so as to apply to all kinds of immoveable property.

Although sales by the delivery of property merely are done away with, the paragraph which explains what constitutes 'delivery' should be retained since in subsequent sections reference is made to delivery of property

Clause 17.
Section 55.

Sub-clause (*a*) of clause (1) of section 55 provides that a seller is bound to disclose to the buyer any material defect in the property of which the seller is aware The expression 'material defect in the property' has been held to include a defect in the title of the seller. (I. L. R., 20 Bom. 522.) We propose to give effect to the decision by inserting the words 'or in the seller's title thereto' in sub-clause (1).

Sub-clause (*b*) of clause 4 of the same section provides that the vendor's lien for the purchase-money can be enforced against the property in the hands of the buyer. The provision as it stands is insufficient, as such lien can easily be defeated by the buyer by parting with the property. It is, therefore, proposed to provide that it can be enforced against the property in the hands not only of the buyer, but also of all other persons claiming under him if they have notice of the sale. This clause is also silent as to the date from which interest on the unpaid purchase-money should run. It seems fair that it should run from the date when the buyer is put in possession.

Sub-clause (*b*) of clause 6 of the same section relates to the buyer's lien and provides that it can be enforced against the seller and other persons claiming under him with notice of the payment. It also provides that the buyer's lien can only be enforced against a person claiming under the seller, if such person has notice of the payment of the purchase-money. The transferees and legal representatives of a seller are thus enabled to escape any liability for the amount received by the seller by pleading that they had no notice of the payment of the purchase-money. The reasons for limiting the seller's lien against

third persons who have notice of the sale do not hold good in the case of the buyer's lien against persons claiming under the original seller. The words "with notice of the payment" in sub-clause (*b*) of clause 6 should, therefore, be omitted.

Clause 18. *Section 56.*

Section 56 purports to give effect to the doctrine of "marshalling" In the case of a sale the right of marshalling is given "as against a seller." It has been accordingly held by the High Courts of Madras and Allahabad that, the buyer has no such right as against a prior mortgagee (31. Mad. 419, 17 All. 434). In 13 Bom. L. R. 678 the High Court of Bombay also took the same view and held that section 56 applied only as between a seller and his buyer and not as between a mortgagee of the seller and the buyer Under section 55 (1) (*g*), in the absence of a contract to the contrary, it is the duty of the seller to discharge all encumbrances existing at the date of the sale. In practice section 56 does not give any relief to the purchaser.

The section begins with the words "Where two properties are subject to a common charge," and does not provide for the case when there are more properties which are subject to a common charge and some or one of them is afterwards sold. To provide for such cases we propose to amend this section and bring it into line with section 81 which deals with the marshalling of securities

Clause 19. *Section 58(a).*

The words "if any" in paragraph 2 are now superfluous and should be omitted.

Section 58 (*c*) contains the definition of a mortgage by conditional sale. It is with the greatest difficulty in many cases that such mortgages can be distinguished from sales with a condition for repurchase. As clause (*c*) of section 58 indicates, the real point of difference between the two kinds of transactions is that, in the case of a mortgage by conditional sale, the sale is only ostensible, whereas in the case of an out and out sale it is real. The ostensible or real nature of the transaction can, however, be only determined by finding out the intention of the parties. In order to escape the liability of accounting for the profits of the property and other liabilities imposed on a mortgagee, and also to escape the provisions of some of the local laws enacted for the benefit of agriculturists, creditors resort to the mode of having a mortgage which is in form an out and out sale. Since the decision of the Privy Council in *Balkishen Das* v. *Legge* (I. L. R. 22 All. 149), it has been a well-settled rule that it is not open to Courts to allow any extraneous evidence in order to find out the intention of the parties. Such intention must, therefore, be gathered from the document itself which purports to effect the transaction. These transactions have given rise to a great deal of litigation and Courts are compelled to enumerate and consider all the various criteria which have been laid down for the purpose of determining whether a transaction is a mortgage or an out and out sale. In order to avoid the difficulties indicated above, we think it is desirable to lay down a statutory test by which the intention is to be gathered.

We, therefore, propose that no transaction should be deemed to be a mortgage by conditional sale unless the condition is embodied in the document which operates or purports to effect the sale.

Clause 19—contd. Section 58(d). In a suit on a usufructuary mortgage where possession had not been delivered, the Madras High Court held that the mortgage-money had not become due under section 68 of the Transfer of Property Act and that under section 67 the mortgagee was entitled to a decree for sale. They held that the provision of the latter section that the usufructuary mortgagee has no right to sell did not apply on the ground that delivery not having been effected, the transaction did not amount to a usufructuary mortgage (I. L. R. 41 Mad. 259). It seems to us that the High Court in that case omitted to notice that the mortgagee could only sue for the mortgage-money under section 68 on the basis of the transaction being a usufructuary mortgage and on no other, and that the same transaction could not be treated as a usufructuary mortgage for the purpose of attracting the provisions of section 68 and as not being a usufructuary mortgage for the purpose of applying section 67. The remedy of a usufructuary mortgagee to whom possession is not delivered is to sue for possession, and the mere fact that possession is not delivered cannot alter the character of the transaction (7 N. W. P. 56, 7 Beng. L. R. 14, I. L. R. 10 Cal. 68, 4 I. A. 15, 31 All. 318). We think it necessary to amend the section as to avoid the anomalous result arrived at in the Madras case quoted above. We accordingly propose that after the words "where the mortgagee delivers possession" the words "or expressly or by implication binds himself to deliver possession' should be inserted.

The definition of a usufructuary mortgage is not exhaustive. It does not provide for a case where the mortgagee is entitled to appropriate a portion only of the income of the property mortgaged in payment of the mortgage-money. We propose to alter the section accordingly.

Section 98 only deals with certain classes or types of anomalous mortgages and is not exhaustive. We think it would be better to define anomalous mortgages as covering all mortgages other than those defined in clauses (*b*) to (*d*) of section 58 and that the definition should be inserted in this section as a separate clause. The rights and liabilities of the parties under anomalous mortgages should be dealt with in section 98.

Clause 20. Section 59. For the reasons set out in the note relating to section 54, the difference betweeen mortgages relating to immoveable property of the value of less than Rs. 100 and those of the value of Rs. 100 or upwards is done away with. All mortgages, irrespective of the value of the property involved therein, should be compulsorily registrable.

Clause 21. Section 59A. Whether the words 'mortgagor' and 'mortgagee', as used in the different sections in this Chapter, includ all persons deriving title from them has given rise to some difficulties (*See* 39 I. A. 7: and 21 All. 223.) In order to

make this clear, we propose the addition of section 59A.

Clause 22.
Section 60.

The word 'payable' in section 60 at one time gave rise to a diversity of opinion. It was held in some cases that when a day was fixed for the payment of the debt secured by a mortgage and nothing more was stated, the presumption was that the day was fixed for the convenience of the debtor and that it was open to the mortgagor, if he liked, to pay the debt at an earlier date (I. L. R. 10 All. 602). A contrary view was taken in other cases and the general principle that the rights of redemption and foreclosure are co-extensive was strictly followed (I. L. R. 5 Bom. 22, 29 All. 471). In the last mentioned cases, where the deed provided that the mortgagor should pay "within....years" the suit brought to redeem the property before the expiry of that period was held premature. There is nothing in law to prevent the parties from stipulating expressly that the mortgagor may discharge the debt within the specified period and take back the property, but it is an elementary proposition that the mortgagee is not entitled to foreclose before the mortgage-money has become due. As a corollary to that proposition it is reasonable to hold that a mortgagor also should not be allowed to redeem before the mortgage-money has become due. It is possible that a mortgagee, relying on the condition in a mortgage regarding the period of redemption, may have entered into other transactions which will be affected if the mortgage is redeemed before the period stipulated for redemption or foreclosure has expired. In *Bakhtawar Begum Hosaini Khanum*, I. L. R. 36 All. 195, the Privy Council has approved of the view taken in I. L. R. 29 All. 471 that redemption should not be allowed within the term of the mortgage. In order to remove any doubt on this point, the word 'due' has been substituted for the word 'payable' in the first paragraph.

It should be made clear that on redemption a mortgagee is bound to deliver not only the mortgage-deed in his possession but all documents in his possession relating to the mortgaged property. As it is proposed that hereafter all mortgages should be by registered instruments, the words in brackets, *viz.*, "where the mortgage has been effected by a registered instrument" have become unnecessary and should be omitted.

The last paragraph of the section relates to what is known as the principle of the 'indivisibility or integrity of a mortgage'. Such integrity or indivisibility exists not only with reference to the mortgagee, who may be generally benefited thereby, but also with reference to the mortgagor. Save as a matter of special arrangement neither the mortgagor, nor the mortgagee nor any person claiming through either of them should get relief except in consonance with the principle of indivisibility. We do not think it necessary to alter the last paragraph of the section except that the word 'only' should be inserted between the words "except" and "where" with a view to get rid of the effect of the decision in 27 Bom. L. R. 1449,

The only case, therefore, when the integrity of a mortgage may be allowed to be broken, apart from special arrangement, is when a mortgagee acquires a share in the mortgaged property.

Clause 23. *Section 61.* Section 61 abolished the doctrine of the consolidation of mortgages. The section was based on section 17 of the Conveyancing Act, 1881 (corresponding to section 93 of the Property Act, 1925). In England before that statute was enacted, and in this country before Act IV of 1882 was passed, a mortgagee was allowed to consolidate securities in his hands and force a mortgagor to redeem all of them or to prevent him from redeeming one of them without redeeming the others. [Ghose on Mortgage, Vol. I, p. 429, 5th Edn., 6 Bom. H. C. R. (A. C. J.) 90.] This was inequitable and was altered by section 61 of the Act. But even that section is not exhaustive. It is proposed, therefore, that a mortgagor should be allowed to redeem simultaneously all debts or any one or more of them which have become due to the same mortgagee. The same principle ought to apply where portions of one and the same property are mortgaged separately. Accordingly, any reference to "property" has been omitted and the words "two or more mortgagees" have been used and the illustration has been omitted.

Clause 24. *Section 62.* Section 62 which relates to a usufructuary mortgage requires to be amended on the same lines as section 58 (*d*).

Clause (*b*) of the section is limited to a case where out of the rents and profits of the mortgaged property the mortgagee is entitled to recover only the interest due to him on his principal. The clause should also be made applicable to cases where the rents and profits are to be appropriated in payment of a part of the mortgage-money, *i.e.*, in payment of either interest in part or principal in part or both in part. To effect this change, the words "principal money" should be changed into "the balance of the mortgage-money".

Clause 25. *Section 63.* Section 63 relates to accessions and the second paragraph of the section provides for the payment of the costs of accessions by the mortgagor where such accessions are made in certain circumstances and are delivered to the mortgagor. It is stated that the proper cost payable by the mortgagor is to be added to the principal money 'at the same rate of interest'. Nothing is stated in the section about any rate of interest. Difficulty might also arise where a mortgage-deed is silent as to the rate of interest. For the words 'at the same rate' the following words should be substituted, *viz* :—

> "at the rate of interest payable on the principal, and, where no such rate is fixed in the mortgage-deed, at the rate of nine per cent. per annum."

Clause 26. *Section 63A.* Section 63 applies to accessions only. There is no express provision in the Act allowing a mortgagee to make improvements to the mortgaged property. In the absence of such express provision it has been held in some cases that a mortgagee is not entitled to charge or obtain any

compensation for improvements made (I. L. R. 19 Mad. 327, 37 All. 81). On the other hand, some Courts following the English decisions in *Shepard* v. *Jones*, 21 Ch. D. 469, *Sandon* v. *Hooper*, 6 Beav. 246, *Henderson* v. *Astwood* (1894), A. C. 150, have held that a mortgagee should have a charge for improvements if they are reasonable (I. L. R. 43 Bom. 69, 45 Bom. 1301). According to the English law, as summarised by Fisher on Mortgage (Art. 1782, 6th Edn.), "the improvements must always be reasonable having regard to the nature and value of the estate: for, if it were not so, a weapon would be put in the mortgagee's hands with which he might greatly clog the right of redemption: which he has no right to make more expensive than is necessary to keep the estate in good repair and working order and to protect the title." The English cases on the subject are also reviewed in Coote on Mortgage, where it is pointed out that the later decisions are more favourable to the mortgagee than the older authorities. In the 8th Edition of Coote on Mortgage, the law is thus expounded (p. 1232):—

"Unless the sanction of the mortgagor has been obtained, the mortgagee will not be allowed for substantial repairs, not being strictly necessary, or for improvements, unless the value of the property has been increased thereby..... Indeed, according to some older cases, even substantial improvements have been disallowed, unless done with the consent of, or acquiescence after notice by, the mortgagor. A mortgagee can hardly be said to be safe in making improvements in the mortgaged property without such consent or acquiescence. But the tendency of later decisions appears to be more favourable to the mortgagee in this respect and it has been laid down that, *primâ facie*, a mortgagee who has expended money in improvements is entitled to an inquiry whether the outlay has increased the value of the property, and to be allowed such outlay so far as the value is proved to have been increased thereby."

We prefer to adopt in India the view summarised in Fisher on Mortgage except that we do not consider it desirable to leave it to the Court to determine in each case what improvements are reasonable and what not. We accordingly propose to have a uniform and definite rule, namely, that no mortgagee shall be entitled to charge for any improvements unless they are made to preserve the property from destruction or deterioration or unless they are necessary to prevent the security from becoming insufficient or made in compliance with the lawful order of any public servant or public authority. We accordingly propose to add a new section 63A dealing with improvements. We have throughout guarded the right of private contract.

Clauses 27, 28 and 35. *Sections 64, 65, 71.* The words 'for a term of years' in these sections are unnecessary and should be omitted.

Clause 28. *Section 65.* This section relates to the implied covenants by a mortgagor, and provides in the penultimate paragraph that covenants regarding payment of

public charges and future rent in the case of lease hold property do not apply in the case of a usufructuary mortgage. This provision is not clear. Covenants specified in the section are binding on a mortgagor in consequence of his obligation to preserve the mortgage-security. No sufficient reason is apparent why, in the case of a usufructuary mortgage when possession is not delivered to the mortgagee, the mortgagor should not be under a duty to pay the public charges and future rent. It appears from the papers underlying the Act that the provision at present contained in this paragraph was first introduced in Bill IV of 1879, when clauses (*c*) and (*d*) did not contain the words " so long as the mortgagee was not in possession ". In the case of a usufructuary mortgage, if the mortgagor has not put the mortgagee in possession, it is as much his duty as it is in the case of any other mortgage to preserve the property on the security of which he has obtained a loan. The words " so long as the mortgagee was not in possession " were added in sub-clauses (*c*) and (*d*) of section 65 in the final Bill, but, apparently through inadvertence, this paragraph was not omitted.

Clause 29. *Proposed new section 65A.*

In the absence of an express provision in the Act, a question is sometimes raised whether a mortgagor in possession is competent to grant a lease of the mortgaged property during the continuance of the mortgage and whether such a lease is binding on the mortgagee. In England, before the Conveyancing Act, 1881, was passed, a mortgagor could not grant leases which were binding on the mortgagee [*Keech* v. *Hall*, 1 Smith L. C., 577, 12th Edn., *Corbett* v. *Plowden*, 25 Ch. D. 678, *Robbins* v. *Whyte* (1906) 1 K. B. 125]. This view was followed in the case of an English mortgage in Bombay (I. L. R. 30 Bom. 250) and it was observed as follows :—

> " If a mortgagor left in possession grants a lease without the concurrence of the mortgagee, the lessee has a precarious title, inasmuch as, although the lease is good as between himself and the mortgagor who granted it, the paramount title of the mortgagee may be asserted against both of them,"

In Allahabad, it was held that a mortgagor ordinarily cannot, without the concurrence of his mortgagee, execute a lease which would be binding upon the mortgagee. He may execute a lease which may be binding upon himself and so long as the mortgagee does not interfere with the possession of the lessee, so long may the lessee enjoy the benefits of the lease; but ordinarily without the concurrence of the mortgagee the mortgagor cannot grant a lease which will be binding upon the mortgagee, (2 A. L. J. 294.) This view was not accepted in Calcutta In 40 C. L. J. 500, following the observations in Ghose on Mortgage (Vol. I, p. 283), it was held that a mortgagor may make a lease conformable to usage and in the ordinary course of management, and the tenancy so created will be binding on the mortgagee. The Conveyancing Act, 1881, expressly authorises a mortgagor to grant leases of the mortgaged property for particular periods (section 18 of the

Conveyancing Act, 1881, and section 99 of the Property Act, 1925). In our opinion, it is necessary to provide expressly in the Transfer of Property Act that a mortgagor shall, subject to express conditions in the mortgage-deed, be entitled to grant a lease of the mortgaged property. In order, however, to protect the interests of the mortgagee, we propose to provide certain restrictions, mostly taken from section 99 of the Law of Property Act, 1925, with variations suitable to the conditions of this country.

Clause 30. *Section 67.*

For the reasons stated in the notes under section 60, the word 'payable' should be replaced by the word 'due'.

Under the present law the remedy by way of foreclosure is open to a mortgagee in the case of a mortgage by conditional sale and in an English mortgage, as also in anomalous mortgages, by the terms of which the mortgagee is entitled to foreclose. By rule 4(2) of Order XXXIV of the Code of Civil Procedure, the Courts in India have been empowered, when a suit is brought for foreclosure, to direct a sale in lieu of foreclosure. The discretion conferred by that rule on the Courts has been exercised in different ways, some Courts refusing foreclosure, while others have granted it. We understand that in Allahabad foreclosure decrees are more frequent. As to equitable mortgages by deposit of title deeds also, a different practice prevails in different Courts. In Calcutta and Allahabad the Courts have invariably refused foreclosure in such cases (24 Cal. 348, 14 All. 238), while in Bombay foreclosure decrees are sometimes passed (14 Bom. 269).

The question is discussed by the late Sir Rash Behari Ghose in the 5th Edition of his Law on Mortgage, at p. 32, where he says:

"But although sales take place more frequently now, foreclosure is still a common method of working out the rights of mortgagees in England. I may, however, be permitted to observe that in complicated cases, the rights of the parties can be adequately protected only by a decree for sale; foreclosure being both a cumbrous and dilatory method of procedure. When the Transfer of Property Act was under consideration, it was proposed in this country to do away with foreclosure altogether, and to give the mortgagee only the right to realise his security by a sale of the pledge. But it was thought by the then Law Member of the Governor General's Council that the amount of simplicity which would be thus gained would not justify the amount of disturbance which would be created by such a change in the law. I, however, venture to doubt whether the slight disturbance which would have been created by such a law would have been too dear a price to pay for the elegance and simplicity which such a measure would have given us. At any rate the gain to the community would have been sufficient compensation for any possible disturbance. The right of a mortgagee to foreclose, we should remember, naturally grew in England out of the form of an English mortgage, which consists of a transfer of ownership, accompanied by a condition for retransfer upon

due payment of the debt, probably the rudest method, as Professor Holland points out, in which security can be given for the fulfilment of an engagement. In many of the States of Amrica, as well as in Ireland, sale is regarded as the most appropriate remedy on a mortgage. The same practice is followed in countries which have adopted the Roman law as the basis of their jurisprudence. In English law, however, the more cumbrous mode of proceeding has stood its ground down to the present day, but it may be affirmed without much temerity that foreclosure with its successive periods of redemption, its liability to be reopened, and the manifest inadequacy of the remedy in complicated cases, is doomed even in England."

In Wiltsie on Mortgage Foreclosure, Vol. I, p. 5, 3rd Edn. (an American work), it is observed:—

"Strict foreclosure or foreclosure without a sale was a procedure greatly used in England at one time and its purpose was to perfect in the mortgagee an absolute title, instead of to obtain a decree for sale; the Courts in most States recognise this method, but allow its use only in exceptional cases, owing to its severity upon the rights of the owner of the equity of redemption."

We, therefore, consider it desirable to confine the remedy of foreclosure to the case of a mortgage by conditional sale or an anomalous mortgage where, by the express terms of the deed, the parties have stipulated for foreclosure; and to disallow it in all other cases.

Clause 31.
Section 67A.

While dealing with section 61, we pointed out that it is inequitable to enforce the principle of the consolidation of securities to the prejudice of a mortgagor. When, however, a mortgagee holds several mortgages in respect of the same or different properties, it will be prejudicial to the mortgagor if the mortgagee is allowed to enforce one mortgage and keep the other mortgages alive. In the case of a number of mortgages in which the only remedy open is foreclosure, the disadvantage of the mortgagor will be very marked as he may lose the whole property in satisfaction of one debt, which may be less than the real value of the property, and will be liable to have a personal decree passed against him in satisfaction of the debts under the other mortgages. In the case of mortgages too where the only remedy is sale, the property will never realize its fair and proper value if it be sold subject to another mortgage. Thus, in 25 C. W. N. 129, where the Calcutta High Court was constrained to hold that the holder of two independent mortgages over the same property, in the absence of a contract to the contrary, was not prevented from obtaining a decree for sale on each of them in a separate suit, it had to add a reservation in the decree that he could not sell the property twice over nor could he sell it under either of the decrees subject to the other. In that case the Court held that the right course to follow in such circumstances was to direct that the property be sold free of both charges, whether in execution of the decree on the

first mortgage or of the decree on the second mortgage, and that the balance of the sale proceeds after payment of incidental expenses be applied in discharge of the dues on the first mortgage and the second mortgage one after the other, and that the residue, if any, stand to the credit of the holder of the equity of redemption. This course, although equitable, is not warranted by any provision of the Act or of Order XXXIV, Civil Procedure Code. To avoid such difficulties, we propose a new section to be numbered section 67A.

Clause 32.
Section 68

Section 67 and section 67A deal with the right of a mortgagee against the mortgaged property, while section 68 relates to his right to recover the mortgage-money personally from the mortgagor. Section 68 indicates the circumstances under which the right accrues or the cause of action arises, namely:—

(*i*) when the mortgagor binds himself personally to repay the debt,

(*ii*) when the mortgage-security is wholly or partially destroyed or rendered insufficient in consequence of any cause other than the wrongful act or default of the mortgagor or mortgagee,

(*iii*) when the mortgagee is deprived of his security by or in consequence of the wrongful act or default of the mortgagor,

(*iv*) where, the mortgagee being entitled to possession, the mortgagor fails to deliver possession of the mortgaged property or to secure to him the undisturbed possession thereof.

The cases mentioned in clauses (*i*), (*iii*) and (*iv*) are referred to in clauses (*a*) to (*c*) of the present section, while that mentioned in clause (*ii*) is contained in the last paragraph.

But section 68, as it stands at present, deals not only with the cases in which a mortgagee is entitled to sue for the mortgage-money; it also indicates to some extent the persons against whom the suit may be maintained. The opening words of the section are "The mortgagee has a right *to sue the mortgagor* for the mortgage-money". We propose to omit the words "the mortgagor." The reason is that the use of these words has given rise to a doubt as to whether the words "the mortgagor" refer to the mortgagor personally or whether they include his legal representatives or transferees. (*See* 27 Mad. L. J. 494 and 39 I. A. 7). As to clause (*i*), being the case where the mortgagor binds himself to repay the sum, no question can arise as to the liabilities of the legal representatives of the mortgagor or his transferees; the word "himself" in that clause clearly indicates that none but the mortgagor can be sued for the mortgage-money in that case. As regards clauses (*ii*), (*iii*) and (*iv*), the legal representative of the mortgagor or his transferee may be liable to be sued personally in some cases, while not in others. It would make the section very cumbrous if we attempted to lay down the different circumstances under which the personal liabilities of legal representatives and transferees arose and the extent of their liability. We have

therefore considered it desirable to leave these matters alone, as we think that the question in each case should be decided by the general law.

Clause (*c*) of the present section provides that the mortgagor is personally liable when he fails to deliver or to secure to the mortgagee the possession of the property without disturbance by him or "any other person". The words 'any other person' are very wide and might include a trespasser. The disturbance of the mortgagee's possession by a trespasser or by a third person with whom the mortgagor was not in collusion should not confer upon the mortgagee a right to sue the mortgagor for the mortgage-money. The words "or any other person" have been held to mean a person claiming under a title superior to that of the mortgagor (I. L. R. 15 Mad. 304, 19 All. 191, 42 Mad. 578). In clause (*iv*) above we propose to substitute for the words "any other person" the words "any person claiming under a title superior to that of the mortgagor."

The personal remedy declared by the section is additional and it has been held that it can be pursued by the mortgagee concurrently with his other remedies or even before he proceeds against the mortgaged property or security (17 Mad. 469). Although *primâ facie* a mortgage involves the idea of a loan (I. L. R. 44 Cal. 388, at p. 400), it is essentially a security. In actual practice this concurrent remedy has led to considerable abuse. The mortgagee, with a view to get an increase of interest or other undue advantage by the threat of arrest and imprisonment, may obtain a money decree without proceeding against the property. We, therefore, propose that in the cases mentioned in clause (*i*) and clause (*ii*) the mortgagee should exhaust all his available remedies against the mortgaged property before he seeks to pursue the personal remedy against the mortgagor. In cases falling under clauses (*iii*) and (*iv*) above, such a restriction on the rights of a mortgagee is not called for. The proposed provision will not be inconsistent with Order XXXIV, rule 6, of the Civil Procedure Code, under which, in a mortgage suit, the mortgagee is not entitled to execute the decree personally against the mortgagor till the mortgaged property has been sold and the sale proceeds are found insufficient to pay off the entire mortgage-debt.

We also consider that it should be open to a mortgagee to abandon or relinquish the security, if he chooses to do so, in cases falling under clause (*i*) and clause (*ii*) above, if he is anxious to pursue the personal remedy. The mortgagee should not, however, be allowed to relinquish a portion only of the security so as to increase the burden on the remaining portion (I. L. R. 50 Cal. 718). In order to ensure that the relinquishment of the security is complete, it is proposed that it should be made by a registered instrument.

In the case mentioned in clause (*i*) above, the cause of action to sue for a personal decree will arise on the date fixed for repayment. In other

cases the cause of action is accelerated and the mortgagee need not wait till the due date has arrived (I. L. R. 25 Cal. 450, 15 Mad. 174, 16 All. 318, 26 Bom. 241). The period of limitation for the enforcement of the personal remedy, if the document be registered, is six years (Art. 116 or 120 of the Limitation Act, 12 Cal. 389, 12 I. A. 12, 34 All. 246). Much longer periods are provided for remedies against property. A suit for the enforcement of the personal remedy may, therefore, have to be instituted earlier than the mortgage suit. In order that such a suit may not be barred by limitation, or struck off for non-prosecution, we propose to provide that it should be stayed till the mortgagee exhausts his remedies against the mortgaged property.

The amendment of section 68 does not necessitate the amendment of Order XXXIV, rule 6, Civil Procedure Code. The rule applies to a mortgage suit and has no application to a suit under this section in which the only decree that can be passed is for the payment of money (I. L. R. 29 Mad. 362).

So also no amendment of rule 14 of Order XXXIV is necessary. In cases where the mortgagee is required to exhaust his remedies against the mortgaged property, the property would be sold before he is allowed to exercise his right for a personal decree against the mortgagor and the provisions of rule 14 will not come into operation. That rule can only apply to other cases where he is not required to proceed against the mortgaged property first.

In cases in which the mortgage-money is agreed to be paid by instalments or the interest is to be periodically paid, it has been held that a sufficient portion of the mortgaged property may be brought to sale for the amount due. These cases are governed by the express terms of the mortgage deed (I. L. R. 35 Bom. 327, 42 Mad. 813), and are not affected by section 68.

Clauses 33 and 34. Section 69 and proposed new section 69A.

Clause (*a*) and the last paragraph of section 69 refer to English mortgages. Clause (*a*), however, relates to an English mortgage which contains an express power of sale, while the last paragraph deals with one which does not contain any such power. In the case of English mortgages dealt with in clause (*a*) the power of sale is to be exercised in accordance with the procedure prescribed in paragraphs 2 to 4 of the section, whereas in the case of those in the last paragraph the rules contained in sections 6 to 11 of the Trustees' and Mortgagees' Powers Act (XXVIII of 1866) apply. The procedure laid down in section 69 differs from that prescribed in Act XXVIII of 1866 in several particulars. Act XXVIII of 1866 was based on Lord Cranworth's Act (23 & 24 Vict., c. 145) which was repealed by the Conveyancing Act, 1881 (41 & 42 Vict., c. 41). Sections 19 to 22 of the latter statute relate to the exercise of the power of sale by a mortgagee and are now reproduced in sections 101 to 108 of the Property Act, 1925 (15 & 16 Geo. V, c. 20). The provisions of Lord Cranworth's Act were, as pointed out by Fisher on Mortgage

(paragraph 975, 6th Edn.), open to the following defects :—

> "If....the interest on the mortgage be payable half yearly, it seems that the repealed statutory power cannot be exercised till at least eighteen months have expired from the date of the security. The interest must have been in arrear for six months, and six months' notice must have been given; and in the absence of a provision that the notice may be given before the interest has actually fallen into arrear for six months, an exercise of the power depending upon such a notice could hardly be considered safe.
>
> Again, the purchaser's title is protected only where no case has arisen to authorize the exercise of the power, and where no notice has been given. The Act is silent as to an improper exercise of the power after it has arisen, and which is irregular otherwise than by the absence of notice; nor does it protect the purchaser where he is aware of the absence of notice, or of other irregularities; and it gives the person damnified an express remedy in damages only where the exercise of the power was unauthorised: but none where, being authorised, it was improperly exercised either for want of notice or otherwise."

These defects are also present in the Indian Act (*cf.* sections 6 to 9 of Act XXVIII of 1866). In England they were removed by sections 19 to 21 of the Conveyancing Act, 1881, corresponding to sections 101 to 108 of the English Property Act, 1925. Paragraphs 2 to 4 of section 69 are also based on those sections of the Conveyancing Act, 1881. We think that the antiquated and manifestly defective procedure in Act XXVIII of 1866, based on an English statute which has long been repealed, should be revised.

In our opinion, English mortgages, whether they contain an express power of sale or not, should all be governed by the provisions of paragraphs 2 to 4 of section 69 which are based on the existing provisions of the English law. We, therefore, propose that section 69, along with clause (*a*), should be recast and the provisions relating to the appointment of a receiver, referred to in the last paragraph of the section, should be the subject of a separate section.

As the Trustees' and Mortgagees' Powers Act, 1866, deals with other matters, such as trusts and leases, besides mortgages, it should not be repealed. In order, however, to make it clear that the Act will no longer apply to mortgages, we propose that the words "notwithstanding anything contained in the Trustees' and Mortgagees' Powers Act, 1866," should be inserted at the beginning of section 69.

We also consider that in all cases where the mortgagee is entitled to exercise the powers of

sale under section 69, it is desirable to make provision for the appointment of a receiver. We propose that a new section (section 69A) should be added on the lines of sections 101 (*iii*) and 109 of the English Property Act, 1925, providing for the appointment of a receiver, the rights and liabilities of such receiver and the procedure to be followed when such appointment is made. At the same time, we think it desirable that specific provision should be made under section 69A for the following:—

(*a*) unless otherwise provided by the terms of the mortgage-deed, the receiver should be appointed by the consent of both the mortgagor and the mortgagee;

(*b*) where the parties do not agree regarding the person to be appointed as a receiver, they should have liberty to apply to the Court in a summary proceeding.

We also think it desirable to make provision in the section on the lines of section 34 of the Indian Trusts Act, 1882, enabling the parties or the receiver to apply in a summary proceeding to the Court for its opinion or advice or for directions in matters connected with the management or administration of the mortgaged property.

Clause 36.
Section 72.

It is inequitable to confine this section to a mortgagee in possession. With the exception of the provision in clause (*a*) relating to the management of the property and the collection of rents and profits, this section may apply to all mortgagees generally. A mortgagee, whether he is in possession or not, is entitled to spend money for the purposes mentioned in clauses (*b*), (*c*), (*d*) and (*e*), subject, as regards clauses (*b*) and (*c*), to the proviso that he should not be entitled to exercise that right unless the mortgagor is in default. It has been held that if a mortgagee who is not in possession spends money to preserve the property from forfeiture or sale he is entitled to be reimbursed for the money spent (I. L. R. 30 Cal. 794). In a Bombay case it was recently held (25 Bom. L. R. 843) that section 72 did not imply that a mortgagee not in possession had no right to charge the mortgaged property for payments properly made by him in relation to his security. Whether a mortgagee is in possession or not, it is to his interest to spend money to preserve his security and he should have a right to do so. We, therefore, propose that a mortgagee, though not in possession, should be entitled to spend such money as may be necessary for purposes mentioned in clauses (*b*), (*c*), (*d*) and (*e*), subject to the condition, as to (*b*) and (*c*), that he should not be entitled to do so until the mortgagor is in default.

We also propose to omit the words in the first paragraph of the section, namely, "during the continuance of the mortgage". These words had to be in the original section as the section was confined to a mortgagee in possession. Further, as we propose to amend Order XXXIV of the Code of Civil Procedure so as to entitle the mortgagor to redeem at any time before the sale is confirmed or the foreclosure takes place under the provisions of the Code, these words have to

be omitted in order that a mortgagee may be entitled, if occasion arises, to spend such money as may be necessary for these purposes until the sale is confirmed or a final decree for foreclosure is passed.

By the omission of clause (*a*) from section 72 we do not propose to take away the right of a mortgagee in possession to spend money for the management of the property or collection of the rents and profits. As section 76 relates to a mortgagee in possession, we propose to make provision in that section for the recognition of the right.

In the penultimate paragraph of section 72 it is stated that a sum paid as insurance premium shall be a charge on the mortgaged property, while the second paragraph provides that sums mentioned in clauses (*a*) to (*e*) should be added to the principal money. It is not clear whether any distinction is really intended between insurance premia and other necessary costs and charges. The sums payable for insurance ought to be treated on the same footing as those spent for necessary costs and charges. We are, therefore, of opinion that such sums should be added to the principal money and should carry the same rate of interest.

Clause 37. *Section 73.* The present section deals only with the case where the mortgaged property is sold for the arrears of revenue or rent. There is a conflict of decisions on the point whether the principle underlying the section applies to a case where the mortgaged property is compulsorily acquired under the Land Acquisition Act, 1894. In I. L. R. 16 All. 78, the Allahabad High Court held that a mortgagee had no charge on the amount of compensation awarded for the acquisition of the mortgaged property under the Land Acquisition Act and that the mortgagee ought to have claimed apportionment in acquisition proceedings. A contrary view was taken in I. L. R. 6 Mad. 344, and the Allahabad decision was dissented from in Calcutta and Patna (13 C. W. N. 350, 5 Pat. L. J. 650). It has been held that the compulsory acquisition of a property does not amount to its destruction within the meaning of section 68 and that the property acquired is converted into money (I. L. R. 13 Mad. 321). According to the general principle of 'conversion' on which section 73 is based, the amount awarded as compensation is impressed with the charge to which the land is subject. In England, where money is paid into Court as the proceeds of real estate converted by compulsory powers under Acts of Parliament, as under section 69 of the Land Clauses Consolidation Act, it usually remains in Court subject to the rights of the parties interested in it to have it reinvested in land, and it is considered to be impressed with the quality of real estate (In *re* Stewart 1 Sm. and G. 32, 1 W. & T. L. C. 393, 8th Edn.). The view taken by the majority of the High Courts is in accordance with the general principle stated above and we propose to give effect to it by the addition of sub-section (2) to section 73.

Section 73 at present provides that a mortgagee has merely a charge on the surplus sale proceeds. The use of the word "charge" appears to us to be unhappy inasmuch as a charge under section. 100 relates to immoveable property and is enforced as a simple mortgage. The procedure for enforcing a simple mortgage obviously does not apply to the enforcement of a claim against a fund. The use of the word also leaves the remedy of the mortgagee uncertain. We, therefore, propose to avoid its use and to provide that the mortgagee shall be entitled to claim payment out of the surplus fund or compensation money payable to the mortgagor as the case may be. In the amended section we have also provided for priorities as in the case of a charge. The mortgaged security being converted into money, we see no reason why the mortgagee should have to wait until the due date, particularly when he can no longer bring a suit to enforce the mortgage.

Clause 38. *Sections 74 and 75.* These sections are based on what is known as the principle of "subrogation". For reasons stated in the notes in the proposed new sections 92 and 94, we propose to delete these sections.

Clause 39. *Section 76.* In clause (*c*) of section 76 it is provided that the mortgagee in possession shall be liable for the payment of Government revenue, other public charges and arrears of rent. If the mortgaged property is leasehold, it is also his duty to pay any rent which may become due during the period of the lease. We propose, therefore, to insert in clause (*a*) the words "and all rent" after the words "charges of a public nature."

In clauses (*b*) and (*d*) of the section the term "rents and profits" is used, while in clause (*c*) the word "income" is used. In clauses (*h*) and (*i*) and also in section 77, the word "receipts" is used. In our opinion the use of these different terms is appropriate in regard to the context in which they are used and they are in contradistinction to one another. Government revenue, public charges and rent are always paramount charges on immoveable property and the failure to pay them renders the property liable to be sold. The liability of a person in occupation of the property, including a mortgagee in possession, is commensurate with his right to enjoy the income of the property. In clause (*c*), therefore, it is provided that in the absence of a contract to the contrary it is the primary duty of a mortgagee in possession to pay the aforesaid dues out of whatever income he may realise from the property. He cannot claim any deduction until these liabilities are satisfied. In clause (*d*), however, the term "rent and profits" is used to indicate that a mortgagee is liable to make necessary repairs to the property out of the balance of the actual realisations from the property after deducting therefrom the payments mentioned in clause (*c*) and the interest on the principal money. He is not bound to spend money on repairs, out of his own pocket (I. L. R. 15 Mad. 290). Clause (*h*) refers to the manner in which the account he is bound to keep under clause (*g*) is to be taken. Under clause (*g*) he is to keep a clear, full and accurate account of

" all sums received." Clause (*h*) provides how the balance of the sums received by a mortgagee after deducting outgoings mentioned therein is to be debited towards the payment of the mortgage-money. The clause properly uses the term "receipts" and shows that they are to be actual and gross realisations. In clause (*i*), the words "gross receipts" are used. This phrase was quite appropriate with regard to the fact that no provision was made in clause (*h*) for deducting expenses incurred for the management of the property or the collection of the rents and profits. Now that this provision has been made in clause (*h*), it is unnecessary to retain the word "gross" in clause (*i*). The same has been accordingly omitted.

The words "on the mortgage-money" after the words "on account of interest" in clause (*h*) are ambiguous. As defined in section 58, the word "mortgage-money" includes both principal and interest. Where the mortgage-deed provides for the payment of simple interest only, the word "mortgage-money" in this clause might indicate compound interest. In our opinion the words "on the mortgage-money" should be omitted. The word "interest" by itself is sufficient to show that according to the terms of a particular mortgage-deed it will be calculated as simple or compound as the case may be.

In section 72, we have proposed the omission of clause (*a*) which relates to a right of a mortgagee to spend money for the management of the mortgaged property and the collection of rents and profits. In our opinion the inclusion of the clause in that section was not appropriate, particularly as money spent for the purposes mentioned therein is to be added to the principal. We do not think that money spent for management of the property or the collection of rents and profits should be treated as an accretion to the principal. In our opinion, as in the case of payments mentioned in clauses (*c*) and (*d*) of section 76, money spent for management or the collection of rents and profits should be treated as outgoings (*See* Ghose on Mortgage, Vol. II, p. 805, 4th Edn.). In England, such expenses are treated as "just allowances" (*see* Seton on Decrees, Vol. III, p. 1976). We, therefore, propose to provide in clause (*h*) of section 76 that the expenses of management and collection of rents and profits should be deducted out of the receipts of the mortgagee in possession along with other outgoings mentioned therein. We thereby also give effect to the right of a mortgagee in possession to incur such expenses. A right to recover such money accrues to him only in making deductions from the receipts, while taking accounts under clause (*h*).

In spite of the provisions in clause (*i*) that after the tender or deposit by the mortgagor, the mortgagee must account for his receipts or gross realisations, it has been held in I. L. R. 47 Mad. p. 7, that it was open to a mortgagee to deduct any sum which he may have properly incurred in respect of the mortgaged property even after such tender or deposit. In our opinion, this view is not correct. After the amount due in respect of the mortgage has been

properly tendered or deposited in Court, it should not be open to a mortgagee to add any sum to the mortgage-money. We, therefore, propose to provide in clause (*i*) that a mortgagee shall not be entitled to deduct any amount from the receipts on account of any expenses incurred after the date of the tender or deposit.

Section 79.—Section 79 is based on the dissenting judgment of Lord Cranworth in *Hopkinson* v. *Rolt* (9 H. L. C. 514). The majority of the judges held in that case that the first mortgagee should be postponed in respect of any advances made by him after notice of a subsequent incumbrance. The principle on which the majority judgment is based is that the prior mortgagee has the option to make or refuse to make any further advance and, although he may have agreed to do so, no specific performance of such an agreement could be obtained [(1892) 1 Ch. 271, 12 Bom. 242]. He should not, therefore, be permitted by any voluntary addition to the amount of his advance to affect the rights of the subsequent incumbrancer who acquires his security on the property as it exists. On the other hand, as pointed out by Lord Cranworth, mortgages are but contracts and, when once the rights of parties under them are defined and understood, it is impossible to say that any rule regulating their priority is unjust. His Lordship observed "if the Law is once laid down and understood, that a person advancing money on a second mortgage, with notice of a prior mortgage covering future as well as present debts, will be postponed to the first mortgagee, to the whole extent covered or capable of being covered by the prior security, he has nothing to complain of".

In their report dated 20th May, 1870, the Law Commissioners observed that the dissenting view of Lord Cranworth in *Hopkinson* v. *Rolt* was more just than the view taken by the majority of the Judges. However, the majority view prevailed in England [*West* v. *Williams* (1898) 1 Ch. 488, C.A. (1899) 1 Ch. 132], but in 1924 the Property Law (Amendment) Act provided that a prior mortgagee may tack further advances to his original advance and claim priority to subsequent incumbrances in the following cases :—

(*i*) if further advances are made by arrangement with subsequent mortgagees to that effect ;

(*ii*) if they are made without notice of the subsequent mortgages ;

(*iii*) if they are made in pursuance of an obligation covenanted in the prior mortgage, it being immaterial whether at that time the prior mortgagee had or had not notice of subsequent mortgages.

These provisions are reproduced in section 94 of the Property Act, 1925. In our opinion, therefore, the section does not require amendment.

Clause 40.
Section 80.

As the principle of 'tacking' is akin to subrogation, we propose to number section 80 as section 93, so as to place it after the section which relates to subrogation.

Clause 41. *Section 81.* Section 81 deals with the marshalling of securities. It appears from the proceedings underlying Act IV of 1882 that the section is based on the following passage in Fisher on Mortgage (Art. 1356, p. 694, 6th Edn.):—

> "If the owner of two estates mortgaged them both to one person, and then one of them to another, without notice, the second mortgagee may insist, under the doctrine of marshalling, but without interfering with the rights of the former, that the debt of the first shall be satisfied out of the estate not mortgaged to the second, so far as that shall extend."

Like section 56 this section provides for marshalling when there are "two properties only". It is also restricted to a case when the second mortgagee intends to marshal the securities. It does not provide for the case of more than two properties nor for the case where the property has been mortgaged more than twice and a mortgagee subsequent to the second mortgagee desires to marshal the prior securities. We propose to widen the scope of the section by providing that it should apply to cases where there are more than two properties and to all subsequent mortgagees generally.

The section also requires that, in order that a subsequent mortgagee should be entitled to have the securities marshalled, it must be shown that he had no notice of the prior mortgage (I. L. R. 23 Cal. 720). This condition appears to have been based on the observations of Lord Hardwicke in *Lanoy* v. *Duke of Athol* (2 Atk. 446). In later English decisions this condition was held to be unnecessary. In *Gibson* v. *Seagram* (20 Beav. 614) Lord Romilly remarked that the rule of marshalling was independent of the question whether the subsequent mortgagee had notice of the prior mortgage or not. [*See* also *Flint* v. *Howard* (1893) 2 Ch. 54, 73.] In India also, in cases where the Transfer of Property Act did not apply, it was held that a subsequent mortgagee could marshal the securities even though he had notice of the prior mortgage (I. L. R. 18 Bom. 160, 22 Bom. 304). As stated in the leading case of *Aldrich* v. *Cooper* (1 W. & T. L. C., at p. 38), the principle of "marshalling" is that it shall not depend upon the will of one creditor to disappoint another and that equity intervenes to restrain the first creditor from resorting to the security of the subsequent creditor, until the other, which he alone possesses, is exhausted. Thus, according to the correct application of the principle, the question of notice of the prior mortgage to the subsequent encumbrancer is immaterial. Further, the words "not so as to prejudice the rights of the first mortgagee" are sufficient to prevent any injustice being done to the prior mortgagee. We, therefore, propose that the words "who has not notice of the former mortgage" should be omitted.

It is well established that in order that the doctrine of "marshalling" can be applied, there must be two funds or securities, both originally the property of the same owner; and the debts

must be the debts of the same person. [*Ex parte Kendall*, (1811) 17 Ves. 520; 1 W. & T. L. C. 46; Halsbury's Laws of England, Vol. 21, p. 304]. Neither in England nor in this country has the doctrine been extended to a case where only a portion of the property already mortgaged is subsequently sold or mortgaged. If the prior mortgagee is forced to have recourse to a portion of the mortgaged property for the recovery of his money, it may be that both he and the mortgagor will be prejudiced, and the sale of the property in portions will not realise an adequate price. We do not, therefore, consider that it will be safe to extend the doctrine of marshalling to such a case.

We propose to omit the word "valuable" before the word "consideration" in the concluding portion of the section. The Indian law does not recognise any distinction between good and valuable consideration (*see* section 25 of the Indian Contract Act; Pollock and Mulla's Contract Act, p. 34).

Clause 42. *Section 82*

This section enunciates the rule of contribution; where several properties are mortgaged. In our opinion, the principle of contribution ought to cover a case not only where several properties are mortgaged, but where the mortgaged property is subsequently sub-divided into distinct and separate portions, the liability of the co-sharers being distinct and several and not joint. This question was raised in I. L. R. 26 Mad. 686; but was not decided. In some cases it has been held that when the title becomes severed after the mortgage either by the death of the mortgagor or by the sale of the shares in the property by the mortgagor, the rule of contribution applies (*see* 1 All. 455, 20 Bom. 615, 21 Cal. L. J. 104, 43 All. 589). We propose to amend the section to make this point clear.

There is also some difference of opinion as to whether for the purposes of contribution the value of the different properties or the portions of one property should be calculated as at the date of the original mortgage or at the date of the subsequent transfer. In some cases it has been held that valuation is to be made as at the date of the mortgage irrespective of the price that may have been paid by the purchaser (*see* 12 C. W. N. 107, 745, 27 All. 549). In a Bombay case, however, the valuation at the date of the sale was adopted (I. L. R. 26 Bom. 88). We propose to provide that the value taken shall be the value as at the date of the original mortgage. This rule has the support of the Judicial Committee who, in assessing contribution to a decree for mesne profits, assessed liability at the date of the decree (L. R. 31 I. A. 94).

Following the reasons for the similar amendment in section 81, in the last paragraph of the section the word "subsequent" has been substituted for the word "second" before the word "mortgagee".

Clause 43. *Section 83*

In addition to the remedies open to a mortgagor for redemption by tender out of Court or by a suit, this section provides a summary procedure for redemption. The section is a survival

of the repealed Bengal Regulations I of 1798 and XVII of 1806. Deposit made under this section has all the effects of a valid tender, and the withdrawal of the deposit by the mortgagee has the effect of discharging the mortgage (I. L. R. 17 Mad. 267). According to the rules framed with reference to this section by the High Courts of Calcutta, Madras and Bombay, the mortgagee, before he is entitled to draw the money, may be required to file all documents of title that are in his possession and also a draft re-conveyance or an acknowledgment as he would be required to do under section 60. In the absence of an express provision similar to that in the first paragraph of section 60, the validity of those rules has been doubted (*see* Shephard and Brown, Transfer of Property Act, p. 352, 7th Edn.). The proposed amendment is intended to remove this doubt.

Clause 44. *Section 84.* Section 84 provides for the cessation of interest after a tender or a deposit. As a tender, if refused, is generally followed by a deposit, the case of a deposit without a previous tender ought to be distinctly mentioned. In I. L. R. 49 Mad. 619 it was held that if, after a reasonable time, the mortgagee who has notice of a proper deposit, refuses to take the deposit, there is still a presumption that the mortgagor continues ready and willing to pay, and the interest does not run even if the mortgagor withdraws the deposit. In our opinion this view is not correct. It is obviously unreasonable that interest on the mortgage debt should cease to run if the mortgagor withdraws the deposit and derives benefit from the money withdrawn. We propose to add a proviso to the first paragraph of the section making it clear that where the mortgagor has deposited the amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of the withdrawal.

In para. 3, we also propose to make it clear that if the mortgage-deed provides that reasonable notice before payment of tender of the mortgage-money is to be given to the mortgagee, the provisions of this section will not apply till such notice has been given.

Clause 45. *Section 91.* Section 91 specifies persons who, in addition to a mortgagor, are entitled to redeem. Clauses (*a*) and (*b*) can be suitably combined in one clause. Clauses (*d*) and (*e*) are superfluous, and, in our opinion, should be omitted.

An attachment does not create any interest such as a charge or a loan in the property attached (I. L. R. 29 Cal. 428, 32 Mad. 429), and there is no reason why an attaching creditor should have the right of redemption. We, therefore, propose to omit clause (*f*).

Clause 46. *Proposed new section 92.* As stated before, sections 74 and 75 of the Act are based on what is known as the principle of subrogation. The principle can come into operation either by act of parties, *e.g*, by assignment of the debt, or by operation of law, but, technically, the term "subrogation" is confined to cases where the right arises by operation of law. In Roman Law, a creditor, who lent money to the debtor for the purpose of paying off

a mortgage on condition that he was to be substituted in the place of the mortgagee, was entitled to claim the benefit of the security discharged with his money (*see* Donatt's Civil Law, section 1774; *see* also Hunter's Roman Law, pp. 441 and 443); and this right has been recognised in all modern systems derived from Roman Law. Section 74 is confined to the case when a subsequent mortgagee pays off a prior mortgagee. The rule contained in the section is really covered by section 75, but both those sections apply only to the case of a subsequent mortgagee. The principle of subrogation, however, ought to apply generally to all cases other than those of a mortgagor who pays off his own debt or of a mere volunteer. In *Bisseswar Prasad* v. *Lala Sarnam Singh*, 6 C. L. J. 134, at pp. 137-38, it is observed as follows:—

> "The doctrine of subrogation is a doctrine of equity jurisprudence. It does not depend on privity of contract, express or implied, except in so far as equity may be supposed to be imported into the transaction, and thus raise a contract by implication. It is founded on the facts and circumstances of each particular case, and on the principles of natural justice. While, therefore, the doctrine will be applied in general wherever any person other than a mere volunteer pays a debt or a demand, which in equity or good conscience should have been satisfied by another, or where the liability of one person is discharged out of a fund belonging to another, or where one person is compelled for his own protection or that of some interest which he represents, to pay a debt for which another is primarily liable, or wherever a denial of the right would be contrary to equity and good conscience, the doctrine will never be permitted, where the application of it would work injustice to the rights of those having equal or superior equities."

In our opinion, all persons who have an interest in the mortgaged property or in the right of redemption, except the mortgagor, that is, all those who are referred to in section 91 as having the right of redemption, should be entitled to be subrogated to or substituted in the place of the creditor who is paid off. We think proper to omit sections 74 and 75 and to provide in this new section 92 for the principle of subrogation.

A surety is obviously entitled to be subrogated to the rights of the creditor if he pays him off. To use the argument of Sir S. Romilly in *Craythorn* v. *Swinburn* (14 Ves. 160, at p. 162) "a surety will be entitled to every remedy which the creditor has against the principal debtor to enforce every security and all means of payment; to stand in the place of the creditor, not only through the medium of contract, but even by means of securities entered into without the knowledge of the surety; having the right to have those securities transferred to him, though there was no stipulation for that; and to avail himself of all those securities against

the debtor." The same principle has been incorporated in sections 140 and 141 of the Indian Contract Act, 1872.

The right of a co-mortgagor or one of several joint debtors to be subrogated to the security of the creditor, so as to enable him to recover from his co-debtors by means of such securities their proportionate shares of indebtedness which has been discharged by him, rests upon the same equity as that of a surety or any other person entitled to redeem the mortgage; for each joint debtor is regarded as the principal debtor for that part of the debt which he ought to pay and as the surety for his co-debtors as to the part which ought to be discharged by them (*see* Ghose on Mortgage, Vol. I, p. 371, 5th Edn.).

It cannot, however, be laid down as a general rule that a person merely discharging a debt is entitled to the benefit of the mortgage. Obviously, a mortgagor himself who is liable to pay a debt contracted by him, or the transferee from such a mortgagor who has undertaken the liability, cannot claim the right of subrogation; nor can the application of the principle be invoked in favour of a mere volunteer (I. L. R. 32 All. 25). As stated in Ghose on Mortgage, Vol. I, p. 364, 5th Edn., the real question in all such cases is whether the payment made by a person who is not in any way interested in the mortgaged property or the right of redemption was a mere loan to the debtor on his personal security, or whether it was made under an agreement that he should be substituted for the creditor. Although in most cases a Court may presume such an agreement, we think it desirable to provide that such an agreement must be reduced to writing and must be registered.

In order to avoid any complication and the difficulty of apportioning the claims arising from subrogation, the Courts have held that a right of subrogation does not arise till the whole of the mortgage debt is paid off (I. L. R. 36 Cal. 193, 38 All. 502). We, therefore, propose to provide in the last paragraph of section 92 that the right of subrogation shall not be claimed unless the mortgage in respect of which the right is claimed has been redeemed in full.

Clause 46— *contd.* *Section 93.*

As the principle of "tacking" is closely allied to subrogation, we propose to put section 80 as section 93.

Clause 46— *contd.* *Proposed new section 94.*

Section 75 and Order XXXIV, rule 11, of the Code of Civil Procedure embody partly the principle of subrogation and partly the principle expressed in the phrase "redeem up and foreclose down." We have transferred to section 92 so much of section 75 and of Order XXXIV, rule 11, as relates to the doctrine of subrogation and embodied in a new section so much of the section and rule as relate to the conception of "foreclosing down." As this is a rule more of substantive law than of procedure, its proper place is in the Transfer of Property Act and not in the Code of Civil Procedure. We, therefore, propose to omit section 75 and to repeal Order XXXIV,

rule 11. As this doctrine is akin to the doctrine of subrogation, we have placed it after section 92.

Clause 47. *Section 95.*

Section 95 gives a co-mortgagor redeeming the mortgage a charge on the shares of other co-mortgagors in the mortgaged property for expenses incurred by him in redeeming the mortgaged property and obtaining possession thereof. The section has been based on the observations in Macpherson's Law of Mortgage in Bengal and the N. W. Provinces, 5th Edn., p. 145. It is difficult to understand why the words "obtains possession thereof" are inserted in this section. In I. L. R. 11 Mad. 416 the Madras High Court observed that the section gave the redeeming co-mortgagor two rights, (1) a right to obtain possession and (2) a charge on the interests of his co-mortgagors. In I. L. R. 26 All. 227 the Allahabad High Court held that the words were only applicable if the mortgagee is in possession. In *Malik Ahmad Wali Khan* v. *Musammat Shamsi Jahan Begam* L. R. 33 I. A. 81, their Lordships of the Privy Council observed as follows :—

> "The section might be so strictly construed as to limit its operation to mortgages under which possession passes, and, therefore, on redemption properly re-passes. But it seems to their Lordships more reasonable to construe the section distributively, to make the condition of obtaining possession apply only to the cases in which its fulfilment is from the nature of the mortgage possible and in other cases to make the charge follow upon redemption."

In view of the above observation, the reference to the recovery of possession in the section seems undesirable and we propose that it should be omitted. Moreover, as in the proposed section 92 a co-mortgagor is allowed the right of subrogation, we are of opinion that instead of providing for a separate charge for the costs of redemption it will be better if it is provided that a co-mortgagor can add such costs to the mortgage-money and recover them from other co-mortgagors in proportion to their shares in the property. We have amended the section accordingly.

Clause 48. *Section 98.*

As stated in the notes under section 58, the definition of an anomalous mortgage is included in that section. In our opinion, this section should be confined to the rights and liabilities of parties to these mortgages.

Clause 49. *Section 100.*

Section 100 defines a charge, and the latter part of the section provides that all provisions relating to a mortgage, and sections 81 and 82 shall apply in the case of a charge. This does not clearly show what exactly are the rights and liabilities of a charge-holder. It is true that a charge is distinguishable from a mortgage in that it does not amount to transfer of any interest in the property subject thereto (*see* Ghose on Mortgage, Vol. I, p. 110). We think it would be desirable to provide that the rights and liabilities of the parties in the case of a charge should be similar to the rights and liabilities of parties to a simple mortgage, as a charge resembles a simple

mortgage more than any other kind of mortgage. A charge-holder, like a simple mortgagee, has only a right to bring the mortgaged property to sale; he cannot have a right of foreclosure (*see* Order XXXIV, rule 15 of the Civil Procedure Code).

As a charge does not involve the transfer of an interest in the property subject thereto, it has been held that it cannot be enforced against a transferee for consideration without notice (I. L. R. 9 All. 591, 13 All. 28, 33 Cal. 985, 42 Cal. 849, and 19 C. W. N. 37). The contrary view was taken in some cases where a charge was created by a decree (2 All. 162, 28 All. 655 and 38 All. 254). The former view appears to us more consistent with equity.

As charges created by the operation of law or by a decree will not necessarily be registered it is desirable to protect transferees for consideration without notice and provide that a charge will not be enforced against them.

Clause 50.
Section 101.

Section 101 relates to the principle of "merger" and provides that if a mortgagee or charge-holder of property acquires the interest of the mortgagor or the owner, his own mortgage or charge is extinguished, unless he expressly reserves the continuance of such mortgage or charge or unless such continuance is held to be for his benefit. As stated in an American case, "the doctrine of merger springs from the fact that when entire equitable and legal estates are united in the same person there can be no occasion to keep them distinct, for ordinarily it could be of no use to the owner to keep up a charge upon an estate of which he has been seized in fee simple. But if there is an outstanding or intervening title, the case is different. It has, therefore, been expressly enacted in America that a mortgage is never merged if there is an outstanding incumbrance." (Jones on Mortgage, Vol. II, pp. 401 to 403, 7th Edn.) In *Toulmin* v. *Steere* (3 Mer. p. 210), it is held that the purchaser of an equity of redemption with notice of subsequent incumbrances stands in the same situation as if he himself had been the mortgagor, and cannot set up against such subsequent incumbrances either a prior mortgage of his own or a mortgage which he may have paid off. A purchaser of the equity of redemption can easily take steps to defeat the effect of Toulmin's case by simply stating that the original debt paid off subsists for his benefit. The rule in Toulmin's case has been embodied in the present section 101, but decision in that case has been more than once questioned in English Courts (*See* 2 W. & T. L. C., p. 49, 8th Edn.). In *Thorne* v. *Cann* (1895) A. C. p. 11, Lord Herschell observed with regard to Toulmin's case as follows :—

> "A case which has certainly not met with universal acceptance and it has often been commented upon and criticised adversely."

In the same case Lord Macnaghten said :—

> "The authority of that case cannot now-a-days be treated as going beyond the actual decision."

In several cases the Privy Council has laid it down that in each case it will depend on the intention of the parties whether a particular charge or incumbrance was extinguished or subsisted (10 I. A. 62, 11 I. A. 126, 29 I. A. 9 and 39 I. A. 68). In *Gokuldoss* v. *Rambux*, 11 I. A. 126, at p. 133, Sir Richard Couch, after reviewing the Indian decisions on the point which followed the rule in Toulmin's case, observed :—

> "The doubts as to that case (*Toulmin* v. *Steere*) or the propriety of introducing the doctrine of it into India as a rule of justice, equity, and good conscience, do not seem to have been considered by the High Court at Calcutta or Bombay."

> "The doctrine of *Toulmin* v. *Steere* is not applicable to Indian transactions except as the law of justice, equity, and good conscience. And if it rested on any broad intelligible principle of justice it might properly be so applied. But it rests on no such principle. If it did it could not be excluded or defeated by declarations of intention or formal devices of conveyancers, whereas it is so defeated every day. When an estate is burdened by a succession of mortgages, and the owner of an ulterior interest pays off an earlier mortgage, it is a matter of course to have it assigned to a trustee for his benefit as against intermediate mortgagees to whom he is not personally liable."

> "In India the art of conveyancing has been and is of a very simple character. Their Lordships cannot find that a formal transfer of a mortgage is ever made, or an intention to keep it alive ever formally expressed. To apply to such a practice the doctrine of *Toulmin* v. *Steere* seems to them likely, not to promote justice and equity, but to lead to confusion, to multiplication of documents, to useless technicalities, to expense, and to litigation."

In a recent case in *Malireddi Ayyareddi* v. *Gopala Krishnayya*, I. L. R. 47 Mad. 190, the Privy Council has again remarked as follows :—

> "It is now settled law that where in India there are several mortgages on a property the owner of the property subject to the mortgages may, if he pays off an earlier charge, treat himself as buying it and stand in the same position as his vendor, or to put it in another way, he may keep the incumbrance alive for his benefit and thus come in before a later mortgagee."

We propose to give effect to the long course of decisions both in England as well as of the Judicial Committee referred to above. It may generally be taken to be the intention of a creditor, and to his benefit, to keep his own

incumbrances, as well as those which he has paid off, alive against subsequent incumbrances. We propose accordingly to amend the present section.

Clause 51. *Section 102.* Section 102, which relates to the service of notice on or tender to an agent of a mortgagee allows the mortgagor to apply to the Court for direction if the mortgagee or his agent cannot be found *in the district* in which the mortgaged property is situate. Even if the mortgagor knows the mortgagee or his agent's whereabouts outside the district, the section allows him to apply to the Court. The third paragraph also contains a similar provision as regards tender. We think that unless the whereabouts of the mortgagee or his agent are *entirely* unknown to the mortgagor or unless the mortgagee or his agent cannot be found *anywhere*, the mortgagor should not be entitled to apply to the Court for direction. We propose to omit the words "in the district" in paragraphs 2 and 3 of the section. In paragraph 2, we propose to make it clear that the application for the service of notice shall be made to the Court in which the deposit has been made and not to any other Court. In paragraph 3 we propose to make it clear that the deposit is to be made in the Court in which a suit for redemption could be filed.

Clause 52. *Section 103.* To correct a mere clerical error we propose to insert the words "on or by" after the words "such notice may be served". The latter part of the section has been omitted as being unnecessary.

Clause 53. *Section 106.* It has been held both in England and in India that, in the case of notice to quit, service by post is a recognised mode of service [(1906) 2 K.B.82, I.L.R. 46 Cal. 458]. We, therefore, propose to make an addition to the second paragraph of section 106 that notice under the section may be sent by post to the party who is intended to be bound by it.

Clause 54. *Section 107.* As in the case of sale and mortgage, we propose to provide in this section that all leases of immoveable property shall be registered. We think, however, that an exception must be made in the case of leases from month to month or for any term not exceeding one month. The power of Local Governments to except particular leases from compulsory registration is, however, preserved.

There has been a difference of opinion whether a lease should be executed by both the lessor and the lessee or need only be executed by one of them. The Allahabad High Court hold to the view that a lease must be by deed signed by the lessor and that a unilateral document executed by a lessee alone does not constitute a lease (I. L. R. 26 All. 368, 27 All. 190, 31 All. 276). This view was taken by the Madras and Calcutta High Courts in the earlier cases (I. L. R. 30 Mad. 322, 32 Mad. 532, 14 C.W.N. 73), but was abandoned in Madras in 35 Mad. 95 and in Calcutta in 39 Cal. 1016. The Rangoon and Bombay High Courts adopt the Allahabad view (3 Ran. 379, 27 Bom. L. R. 626). It is desirable that a lease containing, as it usually does,

covenants both on the part of the lessor and lessee, should be executed by both the lessor and the lessee. The first paragraph of the proposed new section 107 introduces this requirement.

Clause 55. *Section 108, sub-section (h).*

The use of the words "during the continuance of the lease" in section 108, sub-section (*h*), has given rise to a conflict of judicial opinion (I. L. R. 38 Mad. 710 and the cases considered there). In English law the 'time of removal' is not certain. "It has been said to extend 'to' such further period of possession by the tenant as he holds the premises under a right still to consider himself as tenant', or as he holds them 'in the capacity of a tenant'—a period which has been described as an *excrescence* or an *enlargement* of the term. It has also been said that possibly this may intend a tenancy at sufferance, but at any rate not after the landlord has determined it by a re-entry, or by the issue of a writ in ejectment" (Foa on Landlord and Tenant, p. 784, 6th Edn.). We think it desirable to remove all uncertainty regarding the tenant's right of removal. We think it would be consistent with justice if the tenant is allowed to remove his fixtures so long as he is in possession of the property even though the tenancy has come to an end. This would make the period certain, and it is immaterial whether the tenant vacates voluntarily or is compelled to vacate by process of law. The landlord does not suffer, because if the tenant is in wrongful possession, the landlord will be entitled to damages. If the tenant is in rightful possession, he obviously ought to have the right to remove his fixtures. In either case the certainty of the period would work less hardship than the present uncertainty.

It may be said that a dishonest tenant may take advantage of the proposed rule and keep the landlord out of possession for an indefinite period. But such a tenant can do so whether he has fixtures or not, and in either event the landlord has his remedy in damages.

Clause 55— *contd. Section 108, sub-section (o).*

Sub-section (*o*) of section 108 provides that the lessee must not fell timber or pull down or damage buildings, but does not make a distinction between timber or buildings belonging to a lessor and those belonging to a lessee. To make this point clear we propose to add the words "belonging to a lessor" after the word "buildings".

Clause 56. *Section 111, clause (g).*

Clause (*g*) of section 111 relates to the determination of a lease by forfeiture and provides for two cases in which forfeiture can be enforced. Under sub-head (1) forfeiture can be enforced—(*a*) if the lessee breaks an express condition in a lease which provides that on its breach the lessor may re-enter, and (*b*) if the lessee breaks an express condition on the breach of which the lease shall become void. The provision under (*b*) is not in accordance with the well-established principle of English law that a lessee cannot re-enter on the breach of any condition in a lease unless there is an express stipulation to that effect. The same view has been followed in India (I. L. R. 17 Cal. 826). The words in clause (*g*) "or the lease shall become void" should therefore be omitted.

Section 111, as it stands, does not provide for the case of forfeiture by reason of the adjudication of the lessee as insolvent. It is provided by section 12 *inter alia* that where property is transferred subject to a condition making any interest therein reserved or given to or for the benefit of any person, to cease on his becoming insolvent, such condition is void. At the same time it is provided in the second paragraph of the section that nothing therein contained applies to a condition in a lease for the benefit of the lessor or those claiming under him. The result is that if a lease contains a condition that on the lessee becoming insolvent the lease shall determine, the condition is valid. Such a condition would not, however, operate as a determination of the lease or have the effect of forfeiture under section 111 as it now stands. It is, therefore, desirable to make express provision that if the lessee is adjudicated an insolvent and the lease provides that a lessor may re-enter on the happening of that event, the lease is determined by forfeiture.

Under sub-section (*g*) of section 111, which provides also for forfeiture in the case of the denial of the lessor's title, it has been held that the lessor must do something showing his intention to determine the lease before actually filing a suit for ejectment (I. L. R. 47 All. 348, 45 Cal. 469). As there has been some difference of opinion whether the mere institution of a suit amounts to such an act (I. L. R. 42 Bom. 195) it is necessary to clear up the point. Before a suit in ejectment is filed, the lessee must know that the lessor has decided to determine the lease and does not waive his right to do so.

Clause 57. *Proposed new section 114A.*

As the Transfer of Property Act stands, the only case in which relief against forfeiture is provided for is non-payment of rent—in section 114 of the Act. Considerable hardship has been caused in cases where forfeiture accrues on breach of an express condition which provides that on breach thereof the lessor may re-enter, although the breach may be capable of easy remedy. This defect does not exist in the English law where there was provision made by the Conveyancing Act of 1881 for relief against forfeiture in such cases. These provisions of the Conveyancing Act are reproduced in the English Law of Property Act, 1925, section 146. We think it desirable that similar provisions, suitable to Indian conditions, should be introduced in the Transfer of Property Act, and we have accordingly added section 114A.

Clause 58. *Section 119.*

This section relates to the rights of a party deprived of the thing received in exchange, but does not provide for the rights of transferees from such party. We propose to amend it on the lines of section 109 of the Indian Contract Act.

Further, the section, as it stands, gives a right to the transferee to claim compensation or the return of the thing transferred by him. Obviously, the thing transferred by him cannot be returned to him unless the other party is in possession of it. To provide for this we have at the end of the new section added the words "if still in the possession of such other party".

Clause 59. *Section 128.*

The scope of this section is made clear by the addition of the word "liabilities" after the word "debts". A donee should be liable to the extent of the property in his hands not only for the debts of the donor, but also for his other liabilities (Hunter's Introduction to Roman Law, p. 150).

Clause 60. *Section 129.*

Apart from the provisions of section 123, section 129 saves all rules of Hindu and Buddhist law relating to gifts. The provisions of Chapter VII relating to gifts are based on general principles and do not conflict with the rules of Hindu or Buddhist law. The Government of Burma does not object to the omission of the word "Buddhist" from the section. We propose to omit the reference to Hindu and Buddhist law.

Clause 61. *Section 130.*

The words "notwithstanding anything contained in section 123" were inserted in the section by the Transfer of Property (Amendment) Act, XXXVIII of 1925. The object was to give effect to representations made by insurance companies that it involved considerable hardship when a gift was to be made of a life policy, as, under section 123, such a gift could only be made by a registered instrument. Doubts, however, have arisen whether these words applied to a gift of an actionable claim by a Muhammadan. In a recent Bombay case it was contended that the words applied only to those cases where, prior to the amending Act, a gift of moveables was required to be effected by a registered instrument under section 123; and, as section 123 did not apply to a Muhammadan gift, those words did not apply to Muhammadan gifts. This view was given effect to by the High Court of Bombay. We do not think it desirable that a gift of an actionable claim by Muhammadans should be exempted from the operation of the present rule which requires a writing in the case of a gift of an actionable claim. In fact, in a large majority of cases a gift of an actionable claim is in fact made by a writing, as in the case of gifts of life policies. To remove the doubt caused by the words "notwithstanding anything contained in section 123" we propose to omit them and insert instead the words "whether with or without consideration" after the words "The transfer of an actionable claim."

Clause 62.

In this clause the provisions of the Bill which are not to have retrospective operation are specified.

THE TRANSFER OF PROPERTY (AMENDMENT) SUPPLEMENTARY BILL.

[THE MARRIED WOMEN'S PROPERTY ACT (III OF 1874).]

Clause 2. *Section 8.*

Section 10 of the Transfer of Property Act embodies what is known as the principle of 'restraint on anticipation.' Before sections 4 and 44 of the Indian Succession Act, 1865, were enacted, under the Common Law the property of a woman became, on her marriage, the property of her husband, but property could be separately settled on her by means of the intervention of trustees. The Married Women's Property Act, 1874, provided that she could hold her wages and earnings as separate property. Section 8 of that Act, which relates to post-nuptial debts of married women, provides that if any person enters into a contract with a married woman possessed of separate property on the faith of being satisfied out of that property, such person is entitled to sue and to the extent of the separate property to recover what he might have received if she had been unmarried. Section 10 of the Transfer of Property Act, 1882, provides that property can be transferred to a married woman restraining her from alienating or charging it during coverture. The question, therefore, arises whether a creditor of a married woman having property which she is restrained from alienating has a right to enforce his claim against it by virtue of section 8 of the Married Women's Property Act; in other words, whether that section has been affected by the provision in section 10 of the Transfer of Property Act. In a Calcutta case (I. L. R. 12 Cal. 522), the question was answered in favour of the creditor and the view was expressed that section 10 of the Transfer of Property Act left untouched the provision in the Married Women's Property Act. This view was doubted in Bombay (I. L. R. 11 Bom. 348) and was not followed in Madras (I. L. R. 30 Mad. 378). It was correctly pointed out in the Bombay case that section 8 of the Married Women's Property Act was not intended to make a condition as to restraint on alienation invalid if it was valid under the Transfer of Property Act. It only declares the liability of a married woman for a debt contracted after marriage to be the same as for a debt contracted before marriage; it does not declare that her property subject to restraint is liable as if she were unmarried. To make this point clear, we propose to introduce an exception in section 8 of the Married Women's Property Act in conformity with the provisions of section 10 of the Transfer of Property Act, 1882.

[THE SPECIFIC RELIEF ACT (I OF 1877).]

Clause 3. *Section 30A.*

For the reasons stated in the notes under the proposed section 53A of the Transfer of Property Act, we propose to add a section in Chapter II of the Specific Relief Act.

[THE CODE OF CIVIL PROCEDURE (V OF 1908).]

Clause 4. *Order XXXIV.*

This Order relates to mortgage suits and its provisions were originally in the Transfer of Property Act (sections 85 to 99), but were transferred to the Civil Procedure Code in

1908. The amendment of the Transfer of Property Act, particularly the provisions relating to mortgages, necessitates the amendment of rules 2 to 8, 10, 11 and 15 of the Order.

Rule 2. We propose to make the following amendments in this rule, *viz.* :—

(1) It should be expressly stated that the decree passed under this rule is "preliminary."

(2) In clause (*a*) of the present rule, the Court is merely directed to take an account of what would be due to the plaintiff on account of (*a*) principal and interest on the mortgage and (*b*) the costs of the suit. Under sections 72 and 76 of the Transfer of Property Act, a mortgagee is authorised to spend money for certain necessary purposes in connection with the mortgage security. Under section 63A of the Transfer of Property Act, as proposed to be added, a mortgagee is allowed to spend money for improvements in certain circumstances. The above provisions also provide that the money so spent by a mortgagee should be added to the principal money. Clause (*a*) is, therefore, amended to make it clear that in taking an account sums spent by a mortgagee for necessary costs, charges and expenses in respect of the mortgage-security, together with interest thereon, must be taken into account.

(3) Clause (*a*) of the present rule 2 provides that the account of the sum due to the plaintiff will be taken up to the date fixed for payment in the preliminary decree. The date so fixed is to be within 6 months from the date of the decree. Clause (*b*), however, which relates to the declaration by a Court of the amount due to a mortgagee, merely provides that the amount due at the date of the decree is to be declared. Although clause (*c*) provides that the Court has to fix a date for the payment of the amount so declared within six months, no provision is made for awarding costs, charges and expenses incurred by a mortgagee in respect of the mortgage security subsequent to the date of the declaration or the decree. This seems anomalous. There is no reason why a mortgagee should lose subsequent costs, charges and expenses where the Court declares the amount. The scheme of Order XXXIV of the Civil Procedure Code is to draw a clear distinction between a preliminary and a final decree; rule 2 is amended to make it clear that the amount to be declared or found due on taking accounts should be up to the date of the preliminary decree. The defendant will then be in a position to know what sum he has to pay in order to claim redemption. Care is taken to provide in clause (*c*) of sub-rule (1) of the amended rule that after tendering the amount so declared or found to be due, the defendant has to pay the amount which the Court may adjudge for subsequent interest and subsequent costs, charges and expenses. Rules 10 and 11 have been amended to empower a Court to adjudge the amount due in respect of such interest and costs.

(4) Although clause (*a*) of this rule refers to the date fixed for payment of the amount found to be due on taking accounts, clause (*c*) refers to the date, within six months from the date of the declaration of the amount due by the Court under

clause (*b*). This appears to be an error. The date fixed for payment must be within six months from the date when the Court declares the amount due or, where it directs an account to be taken, from the date when such account is confirmed by the Court. Our amendment makes this clear.

(5) As the mortgagor or any other person seeking redemption has to bear all costs and expenses of the redemption, in clause (*c*) of sub-rule (1) it is made clear that the cost of re-conveyance or re-transfer by the mortgagee on payment of the amount due by the mortgagor shall be borne by the mortgagor or such other person.

(6) The proviso to sub-rule (2) to rule 3 provides for the extension of the time fixed for payment in the final decree. The power of the Court to extend the time fixed for payment is well recognised and is exercised at any time before a final decree for foreclosure is passed. The proper place for this provision is in the rule relating to the preliminary decree. The proviso is, therefore, placed in rule 2 as sub-rule (2). The expression "postpone the day" in this proviso has been replaced by the words "extend the time" to make it clear that the time can be extended even after the expiry of the period once fixed. Sub-rule (2) also makes it clear that the extension of the time fixed for payment must be subject to such terms as the Court may fix. It is not fair that after the plaintiff has obtained a decree for payment of the amount due on the mortgage and when the payment has been already postponed for six months, the plaintiff should be made to wait for payment for a further period without getting compensation. A defendant who applies for an extension of time must be put on terms before his application is granted

(7) As clauses (*a*) and (*b*) of sub-rule (1) will provide for the adjudication of the amount due to a mortgagee till the date of the preliminary decree, in sub-rule (1) clause (*c*) it is made clear that after the payment of that amount the defendant is bound to pay subsequent costs and subsequent interest due to the plaintiff till the date of actual payment, which may be on or before the date fixed in the preliminary decree or such other date to which the time for payment may have been extended under sub-rule (2). It has been well established that the mortgagee can add to the mortgage-money the amount spent by him between the passing of the preliminary decree and the final decree (I. L. R. 44 Cal. 448).

(8) It has been held that the right of a mortgagor to redeem the mortgaged property subsists till a final decree for foreclosure is passed (I. L. R. 27 Cal. 705). Default in payment on the day originally fixed in the preliminary decree for payment or on the day to which the time for payment may have been extended by the Court does not *ipso facto* extinguish the mortgagor's right of redemption. It is open to a mortgagor to apply for extension of time till a final decree for foreclosure has been passed, and he can do so even after the expiry of the period once fixed (I. L. R. 39 Mad. 882, 28 Bom. 102). Clause (*d*) of rule 2, as at present worded, is not consistent

with the above rulings. It provides that, if payment, as provided in the rule, is not made, the defendant will be debarred from all right to redeem the property. In sub-rule (2) of the amended rule, therefore, it is made clear that, on non-payment of the amount due, the plaintiff will have only a right to *apply for* a decree for foreclosure. We propose to make it clear that the right of the plaintiff to file an application arises not only when the amount adjudged due in the preliminary decree is not paid in full, but also if any portion of the sums for subsequent costs and subsequent interest remains to be paid.

(9) Rules 2 to 8 of Order XXXIV do not specifically provide for decrees in suits for foreclosure or sale in which, besides the mortgagor, other persons who are entitled to redeem, such as subsequent mortgagees or persons subrogated to their rights, are joined as parties. This omission was sought to be remedied by providing forms for decrees in such suits—Forms No. 9 to 11 in Appendix D to the Code. Under Order XLVIII, rule 1, of the Civil Procedure Code forms are not binding and can be varied by the Courts. An express provision in Order XXXIV itself is necessary to give full statutory force to the forms. As such cases will be of varied type and cannot all be anticipated, it will suffice to enact in Order XXXIV that in such cases the rights of the parties will be regulated in accordance with the forms given in the Appendix, with such variations as the circumstances of the case may require. Provisions to that effect are embodied in sub-rule (3) of rule 2 and sub-rule (3) of rule 4. In a redemption suit by a mortgagor such difficulties will not arise Consequential amendments have been made in rules 7 and 8.

Clause 4— *contd.* ***Rule 3.***

We propose to amend this rule in accordance with the alterations made in rule 2. It is expressly stated that the decree made under this rule is final. For the reasons stated in paragraph (5) above, it is made clear in this rule that the payment by the mortgagor can be made at any time till the final decree for foreclosure is actually passed. It is also made clear that on payment of the amount declared or found to be due in the preliminary decree, together with the amount due for the subsequent costs and subsequent interest, the mortgagee can, on the appl cation of the mortgagor, be ordered to re-convey or re-transfer the mortgaged property. The provision regarding the application by a mortgagor has been added to avoid d fficulties which arise in such cases as I L. R. 50 Bom 730. Owing to the absence of words to that effect in the original rule 8, the Court found it difficult to hold what article of limitation applied to a final decree on payment by the mortgagor. In sub-rule (3) of the proposed rule it is provided that on foreclosure the liability of the defendant, not only in respect of the mortgage but for the costs of the suit also, is discharged and extinguished. The effect of a final decree for foreclosure is to vest the mortgaged property absolutely in the mortgagee and to extinguish not only the debt due on the mortgage but all liability arising in respect of the suit brought to enforce it.

It is desirable that foreclosure, which is an exceptional remedy, should extinguish *in toto* the whole of the liability of the mortgagor.

Clause 4 contd. Rule 4.

We propose to amend this rule, which relates to a preliminary decree for sale, on the lines of rule 2. As by the amendment in the Transfer of Property Act it is proposed to allow the remedy of foreclosure only in the cases of a mortgage by conditional sale and an anomalous mortgage providing the remedy of foreclosure, the power of the Court to grant the alternative relief of sale can only be exercised in the case of such an anomalous mortgage. By the very nature of the mortgage by conditional sale the Court cannot order a sale of the property. We propose to amend clause (2) by stating clearly that it applies only to an anomalous mortgage which provides for foreclosure. Sub-rule (3) is added to rule 4 on the same lines as rule 2 (3). It provides for a case where, besides, the mortgagor, there are other parties in a suit for sale.

It should, however, be noted that in the case of a decree for sale there is no reason why the Court should extend the time for payment. Even after the sale is held, there is an opportunity to a mortgagor to redeem before the confirmation of the sale. No necessity, therefore, exists for empowering Courts to enlarge the time before passing a final decree for sale (I. L. R. 20 All. 354).

Clause 4— contd. Rule 5.

Section 89 of the Transfer of Property Act, which was replaced by rule 5 of Order XXXIV, Civil Procedure Code, contained at the end the words "and thereupon the defendant's right to redeem and the security shall both be extinguished". These words gave rise to the view that an order absolute under the section had the effect of extinguishing the rights arising out of the mortgage and substituting for them rights under the decree and the mortgagor could not redeem after the order absolute was made (*Het Ram* v. *Shadi Ram 45 I. A. 130*, *Matru Mal* v. *Durga Kunwar* 47 I. A. 71). To avoid this result the words quoted above which occurred in section 89 were omitted in the corresponding rule 5 of Order XXXIV. No doubt is, therefore, left that the right of a mortgagor to redeem is not extinguished by the mere passing of a final decree (42 All. 517, *see* also *Sukhi* v. *Gulam Safdar* 48 I. A. 465, at p. 472). We propose to lay it down definitely that the right of a mortgagor to redeem subsists till the confirmation of the sale held in execution of the decree passed against him under rules 4 or 7. We have, however, made a provision for compensating the purchaser when a mortgagor seeks to redeem after the sale has taken place but before it is confirmed.

Clauses 4 and 5. Rules 6 and 8A.

The words 'any such sale' in rule 6 and its position after rules 3 to 5 led to the view being taken that the personal decree for the balance of the amount due to a mortgagor after the sale can only be passed in a suit by a mortgagee for sale, and not in a redemption suit by a mortgagor, although in a redemption decree in default of payment by the mortgagor a sale of the mortgaged property can be ordered. In

I. L. R. 42 Cal. 294, it is held that as this rule does not require an application by a mortgagee for the passing of a personal decree for the balance of the mortgage-money, no period of limitation applies for claiming such relief. This view is not followed by other Courts. (I. L. R. 40 All. 551). This point is made clear by introducing the words "on application by the plaintiff" in rule 6, and the words "on application by the defendant" in rule 8A.

Clause 6. *Rule 10.*

Rule 10, as it stands, refers to the subsequent costs of the suit only. In finally adjusting the amount the Court has also to take into consideration other costs, charges and expenses which the mortgagee may have incurred since the date of the preliminary decree. The mortgagee must be entitled to the amount so spent. (I. L. R. 44 Cal. 448). Rule 10 is, therefore, amended to empower the Court to take such sums into consideration. After the account is once taken or the amount declared in a preliminary decree, it is necessary that the power of the Court to take into account sums spent subsequently should be expressly recognised.

Clause 6— *contd. Rule 11.*

We have proposed that the provisions of rule 11 which lay down the principle of "redeem up and foreclose down" should be embodied in the new section 94 of the Transfer of Property Act. This rule should, therefore, be omitted.

There being no specific rule as to interest, we propose that a new rule should be framed dealing exclusively with interest and this rule we propose to number as 11.

Under section 2 of the Usury Laws Repeal Act (XXVIII of 1855), in any suit in which interest is recoverable the amount is to be adjusted or decreed by the Court at the rate (if any) agreed upon by the parties. Again, this provision is subject to the provisions of the Usurious Loans Act, 1918, and section 74 of the Indian Contract Act allowing the Court to reduce the rate if in its opinion it is penal or exorbitant. Under section 3 of Act XXVIII of 1855 it is at the discretion of the Court to vary the rate agreed upon if it decides to allow further interest on the amount adjudged or decreed to be due. When no such rate has been fixed, the Court can award interest at the rate it deems reasonable. It was at one time thought that the Court was not competent to award interest after the date fixed for payment in a mortgage deed. It is, however, now well established that, even if there is no covenant for the payment of interest after the period fixed in the deed, interest can still be awarded by way of damages or under the Interest Act (XXXII of 1839); the rate allowed is, generally the same as that stipulated in the deed (L. R. 25 I. A. 9). As observed by the Privy Council, the scheme of the provisions in Order XXXIV of the Civil Procedure Code is that a general account should be taken once for all and an aggregate amount be stated in the decree for principal, interest and costs due on a fixed day and that, after the expiration of that day, if the property is not redeemed, the matter should

pass from the domain of contract to that of judgment and the rights of the parties should thenceforth depend not on the contract or the bond, but on the directions in the decree (L. R. 34 I. A. 9, at p. 21, 54 I. A. 1). Up to the day fixed for payment in the preliminary decree in a mortgage suit, interest is generally allowed at the contract rate and thereafter up to the day of realization or actual payment it is entirely at the discretion of the Court to allow it at such rate as it deems reasonable (I. L. R. 20 Cal. 360, 21 Mad. 364, 20 Bom. 744, 23 I. A. 138). The result of the above decisions has been embodied in the new rule 11.

The absence of any provision in Order XXXIV and corresponding old sections 85 to 99 of the Transfer of Property Act regarding post-diem interest has also led to a curious divergence of views. Some Courts held that the portion of the decree which awards such interest is to be treated as a decree for the payment of money and executed as such (I. L. R. 17 All. 581, 18 All. 316). This view, however, has not been adopted by other Courts which held that it must be treated as part of the mortgage-money and is to be recoverable out of the mortgaged property in the same way as the principal and the costs of the suit (I. L. R. 21 Cal. 274, 18 Mad. 248, 24 Cal. 766). This provision is intended to put an end to that divergence. It is proposed to provide that such interest is part of the mortgage-money.

No change has been effected in rules 9 or 12 to 14.

FORMS.

Clause 8. We propose to substitute new Forms for Forms 3 to 11 for decrees in mortgage suits appearing in Appendix D to the Code of Civil Procedure. Under Order XLVIII, rule 1, of the Civil Procedure Code, the Court has to follow the Forms with such variations as the circumstances of the case require. The present Form No. 3 in Appendix D does not correspond to rule 2 of Order XXXIV under which it purports to have been made. It does not provide for directions for taking accounts but merely refers to the declaration of the amount due by the Court. Separate Forms Nos. 3 and 3A are, therefore, framed for preliminary decrees for foreclosure in which accounts are directed to be taken and in which the amount due is declared by the Court. The Forms follow the amendments made in rules 2 and 3. So also Form No. 4 for a final decree for foreclosure is substituted for Form No. 10. It has been framed to conform to Forms Nos. 3 and 3A. Similarly Forms Nos. 5, 5A, 7 to 7C are framed for preliminary decrees for sale and redemption. They follow the amended rules 4 to 7.

Forms Nos. 7D to 7F have been added, to provide for a final decree in a suit for foreclosure, sale or redemption, when the mortgagor pays the amount of the decree.

Form No. 8 is for a final decree under rules 6 and 8A and is substituted for the original Form No. 11. It is amended in accordance with the amendments made in rules 6 and 8A.

Form No. 9 takes the place of the present Form No. 6. It provides for a case where, in a suit for foreclosure or sale, besides the mortgagor a subsequent mortgagee is joined as a defendant. The form sets out in detail the respective and relative rights of all parties as required in rules 2 (*3*) and 4 (*3*). The practice of allowing successive periods of redemption when there are several mortgages is falling into disuse even in England and the usual course now is to give only one period of redemption, more particularly when the mortgaged property is likely to deteriorate (Ghose on Mortgage, Vol. I p. 639, 5th Edn.). The present Form No. 6 allows six months for redemption to a subsequent mortgagee and then three months further to the mortgagor. There is no reason why a period longer than the ordinary period of 6 months should be allowed for redemption and the mortgagee be made to wait for his money, merely because the mortgagor has chosen to create further incumbrances. In Form No. 9 only one period of redemption is allowed to all defendants.

Forms Nos. 10 and 11 take the place of the existing Forms Nos. 7 and 8 and have been framed in accordance with the amendments in rules 3 to 8. In Form No. 11 the principle of one period of redemption is strictly adhered to.

[THE INDIAN REGISTRATION ACT (XVI OF 1908).]

Clause 9.
Section 17(1)(c).

It has been held by the High Court of Bombay that an assignment of a mortgage decree for Rs. 100 or upwards requires registration under section 17, sub-section (*1*), clause (*b*), of the Indian Registration Act. The reason given is that assignment gives the assignee the right to sell immoveable property covered by the decree, and the right to sell an immoveable property is a right or interest in such property (1 Bom. 267. *See* also 11 Bom. L. R. 356). On the other hand, it has been held by the High Courts of Calcutta and Allahabad, that such an assignment does not require registration, the reason being that the assignment is not of any immoveable property, but of the decree itself, and the decree, though it be upon a mortgage deed, can in no sense be regarded as immoveable property. Further, it has been said by these Courts that the assignment does not *by itself create* an interest in immoveable property (23 Cal. 450, 6 C. W. N. 5, 12 C. W. N. 625, 13 All. 89, 91, 35 All. 524).

We do not think that there is any warrant for construing the words "which purport or operate to create" in clause (*b*) of the section in the sense "which in themselves purport or operate to create." We think that the correct view is the one that is taken by the High Court of Bombay, and, to give effect to that view, we have inserted

in section 17, sub-section (*1*), the following as clause (*e*) :—

(*e*) Non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property.

We also propose to bring clause (*d*) of section 17 (*1*) of the Registration Act into line with the amendment proposed in section 107 of the Transfer of Property Act. As under section 107 all leases, except leases from month to month, will have to be registered, the words "from year to year.....yearly rent" should be omitted and all leases except those from month to month or for any term not exceeding one month should be made compulsorily registrable.

Clause 9— *contd.* *Section 17 (2) (vi).*

Section 17, sub-section (*2*), clause (*vi*), provides that nothing in clauses (*b*) and (*c*) of sub-section (*1*) shall apply to decrees or orders of Courts or to awards. It has been brought to our notice that the exemption of decrees and orders of Court from registration without any exception has given rise to great hardship, especially in the case of consent decrees relating to immoveable property. It is provided by Order XXIII, rule 3 of the Code of Civil Procedure that where a suit has been adjusted by any lawful compromise, the Court shall order such compromise to be recorded and shall pass a decree in accordance therewith so far as it relates to the suit. Prior to the ruling of the Judicial Committee in 46 I. A. 240 there was a conflict of opinion whether the Court had power under Order XXIII, rule 3 to include in the decree immoveable properties which did not relate to the suit. It was held in some cases that a Court had the power to do so and that the decree even if it included matters outside the scope of the suit did not require registration. On the other hand, it was held in a large majority of cases that a Court had not the power to include in its decree immoveable property outside the scope of the suit, and that even if the Court did include such property in its decree, the application for the consent decree required registration as to that part thereof which related to such property. It has now been held by the Judicial Committee in 46 I. A. 240 that the proper method of carrying out the terms of Order XXIII, rule 3, is for the decree to recite the whole of the compromise and then to conclude with an order relative to that part that was the subject of the suit, or it could introduce the compromise in a Schedule to the decree; but that in either case, although the operative part of the decree will be properly confined to the actual subject matter of the suit, the decree taken as a whole would include the compromise. In that case their Lordships went on to say: "Turning now to the Indian Registration Act of 1908, and considering the meaning of the word 'decree' in section 17, sub-section (*2*), clause (*vi*), this must be read in connection with the purpose of the statute, which is to provide a method of public registration of documents, and there is, therefore, no reason why a limit should be imposed upon the meaning of the word so as to confine it to the operative portion

only of the decree ". The result is that since the Privy Council ruling, it is not compulsory to register that portion of the compromise or decree which relates to immoveable properties outside the scope of the suit. This has created considerable difficulties. It is, therefore, proposed that the exemption of decrees and orders from registration should not apply to decrees and orders expressed to be made on a compromise. Non-registration of awards affecting immoveable property creates the same hardship as in the case of compromise decrees and orders. We have, therefore, altered section 17, sub-section (*2*), clause (*vi*), as follows :—

> " Any decree or order of a Court except a decree or order expressed to be made on a compromise."

Clause 9— *contd.* *Section 48.*

We propose to make it clear in this section that, those transactions only which can validly be made by an oral agreement and by the delivery of possession according to the provisions of any law for the time being in force, cannot be supplanted by subsequent transactions made by registered instruments.

So also a mortgage by deposit of title deeds, which is valid under section 59 of the Transfer of Property Act and will not be in writing and, therefore, will not be made by a registered instrument, will have to be excepted. It has been established that, as equitable mortgages are recognised under the Transfer of Property Act, they cannot be supplanted by a subsequent mortgage relating to the same property although the latter may be registered (I. L. R. 33 Cal 410).

Clause 9— *contd.* *Section 49.*

Section 49 enacts that a document which is required to be registered, and is not registered, cannot be received in evidence. It has been held by the Judicial Committee that such documents, although not admissible for the purpose of proving the transaction purported to have been effected by them, are admissible in evidence for collateral purposes, such as for ascertaining the nature of possession (I. L. R. 43 Mad. 244 P. C.). In giving effect to the doctrine of part performance when transactions are not complete owing to the omission of registration, it is necessary that Courts should be empowered to admit them in evidence for the purpose of proving part performance. A proviso has accordingly been added to the section.

[THE INDIAN SUCCESSION ACT (XXXIX OF 1925).]

Clause 10. *Sections 115—117.*

The proposed amendments in these sections are consequential upon those proposed to be made in sections 15, 16 and 18 of the Transfer of Property Act.

Clause 11.

This clause provides that the Supplementary Bill will not have retrospective operation.

Clause 12.

For the reasons stated in the note under clause 8 of the main Bill, this clause provides for the repeal of three Acts mentioned in Schedule II.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

Further to amend the Transfer of Property Act, 1882, for certain purposes; and Annexure.

(Mr. W. T. M. Wright, M.L.A.).

H305LD—200—7-9-27—GIPS

[To be introduced in the Legislative Assembly.]

A

BILL

TO

Supplement the Transfer of Property (Amendment) Act, 192 .

WHEREAS by reason of the passing of the Transfer of Property (Amendment) Act, 192 , of 192 .
it is expedient that certain amendments should be made in the Married Women's Property Act, III of 1874.
1874, the Specific Relief Act, 1877, the Code of Civil I of 1877.
Procedure, 1908, the Indian Registration Act, V of 1908.
1908, and the Indian Succession Act, 1925; It XVI of 1908.
is hereby enacted as follows:— XXXIX of 1925.

1. (*1*) This Act may be called the Transfer of Property (Amendment) Supplementary Act, 192 .

Short title and commencement.

(*2*) It shall come into force on the first day of January, 1929.

2. For the proviso to section 8 of the Married Women's Property Act, 1874, the following proviso shall be substituted, namely:— III of 1874.

Amendment of section 8, Act III of 1874.

"Provided that nothing herein contained shall—

(*a*) entitle such person to recover anything by attachment and sale or otherwise out of any property which has been transferred to a woman or for her benefit on condition that she shall have no power during her marriage to transfer or charge the same or her beneficial interest therein, or

(*b*) affect the liability of a husband for debts contracted by his wife's agency, expressed or implied."

3. After section 30 of the Specific Relief Act, 1877, the following heading and section shall be inserted, namely:— I of 1877.

Insertion of new section 30A in Act I of 1877.

"(*k*) *Part Performance.*

30A. Subject to the provisions of this Chapter, where a contract to lease immoveable property is made in writing signed by the parties thereto or on their behalf, either party may, notwithstanding that the contract, though required to be registered, has not been registered, sue the other for specific performance of the contract if—

Specific performance in case of part performance of contract to lease.

(*a*) where specific performance is claimed by the lessor, he has delivered possession of the property to the lessee in part performance of the contract; and

(*b*) where specific performance is claimed by the lessee, he has in part performance of the contract taken possession of the property, or, being already in possession, continues in possession in part performance of the contract, and has done some act in furtherance of the contract;

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

This section applies to contracts to lease executed after the first day of January, 1929."

4. In Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, for rules 2 to 8 the following rules shall be substituted, namely :—

V of 1908.

Substitution of new rules for rules 2 to 8, Order XXXIV, Schedule I, Act V of 1908.

"2. (*1*) In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a preliminary decree—

Preliminary decree in foreclosure suit.

(*a*) ordering that an account be taken of what was due to the plaintiff at the date of such decree for—

(*i*) principal and interest on the mortgage,

(*ii*) the costs of suit, if any, awarded to him, and

(*iii*) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage-security together with interest thereon; or

(*b*) declaring the amount so due at that date; and

(*c*) directing—

(*i*) that, if the defendant pays into Court the amount so found or declared due on or before such date as the Court may fix within six month from the date on which the Court confirms and countersigns the account taken under clause (*a*), or from the date on wh ch such amount is declared in Court under clause (*b*), as he case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges, and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the plaintiff shall deliver up to the defendant, or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendan at his cos free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property, and

(*ii*) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay within such time as the Court may fix, the amount adjudged due in respect of subsequent

costs, charges, expenses and interest, the plaintiff shall be entitled to apply for a final decree debarring the defendant from all right to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, extend the time fixed for the payment of the amount found or declared due under sub-rule (1), or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3) Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9 or No. 10, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

Final decree in foreclosure suit

3. (1) Where, before a final decree debarring the defendant from all right to redeem the mortgaged property has been passed, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 2, the Court shall, on application made by the defendant in this behalf, pass a final decree—

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,

and, if necessary,—

(b) ordering him to re-transfer at the cost of the defendant the mortgaged property as directed in the said decree,

and, also, if necessary,—

(c) ordering him to put the defendant in possession of the property.

(2) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree declaring that the defendant and all persons claiming through or under him are debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property.

(3) On the passing of a final decree under sub-rule (2), all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.

Preliminary decree in suit for sale.

4. (1) In a suit for sale, if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect mentioned in clauses (a), (b) and (c) (i) of sub-rule (1) of rule 2 and further directing that, in default of the defendant paying as therein mentioned, the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof be sold, and

the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest and the balance, if any, be paid to the defendant or other persons entitled to receive the same.

Power to decree sale in foreclosure suit.

(2) In a suit for foreclosure in the case of an anomalous mortgage, if the plaintiff succeeds, the Court may, at the instance of any party to the suit or of any other person interested in the mortgage-security or the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.

(3) Where, in a suit for sale or a suit for foreclosure in which sale is ordered, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree referred to in sub-rule (1) shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9, No. 10 or No. 11, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

Final decree in suit for sale.

5. (1) Where, on or before the day fixed or at any time before the confirmation of a sale made in pursuance of a final decree passed under sub-rule (3) of this rule, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 4, the Court shall, on application made by the defendant in this behalf, pass a final decree—

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,

and, if necessary,—

(b) ordering him to transfer the mortgaged property as directed in the said decree,

and, also, if necessary,—

(c) ordering him to put the defendant in possession of the property.

(2) Where the mortgaged property or part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass a final decree under sub-rule (1) of this rule, unless the defendant in addition to the amount mentioned in sub-rule (1) deposits in Court for payment to the purchaser a sum equal to five per cent. of the amount of the purchase-money paid into Court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent. thereof.

(3) Where payment in accordance with sub-rule (1) of rule 4 has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree directing that the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale be dealt with in the manner provided in sub-rule (7) of rule 4.

Recovery of balance due on mortgage in suit for sale.

6. Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the plaintiff, the Court, on application by him, may, if the balance is otherwise legally recoverable from the defendant personally, pass a decree for such amount.

Preliminary decree in redemption suit.

7. (1) In a suit for redemption, if the plaintiff succeeds, the Court shall pass a preliminary decree—

(a) ordering that an account be taken of what was due to the defendant at the date of such decree for—

(i) principal and interest on the mortgage,

(ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage-security, together with interest thereon; or

(b) declaring the amount so due at that date; and,

(c) directing—

(i) that, if the plaintiff pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the defendant shall deliver up to the plaintiff, or to such person as the plaintiff appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the plaintiff at his cost free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, where the defendant claims by derived title, by those under whom he claims, and shall also, if necessary, put the plaintiff in possession of the property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the plaintiff

fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the defendant shall be entitled to apply for a final decree—

(*a*) in the case of a mortgage other than an usufructuary mortgage, a mortgage by conditional sale or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, that the mortgaged property be sold, or

(*b*) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid, that the plaintiff be debarred from all right to redeem the property.

(*2*) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, extend the time fixed for the payment of the amount found or declared due under sub-rule (*1*) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

Final decree in redemption suit.

8. (*1*) Where, before a final decree debarring the plaintiff from all right to redeem the mortgaged property has been passed, or before the confirmation of a sale held in pursuance of a final decree passed under sub-rule (*3*) of this rule, the plaintiff makes payment into Court of all amounts due from him under sub-rule (*1*) of rule 7, the Court shall, on application made by the plaintiff in this behalf, pass a final decree—

(*a*) ordering the defendant to deliver up the documents referred to in the preliminary decree,

and, if necessary,—

(*b*) ordering him to re-transfer at the cost of the plaintiff the mortgaged property as directed in the said decree,

and, also, if necessary,—

(*c*) ordering him to put the plaintiff in possession of the property.

(*2*) Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub-rule (*3*) of this rule, the Court shall not pass a final decree under sub-rule (*1*) of this rule, unless the plaintiff in addition to the amount mentioned in sub-rule (*1*) deposits in Court for payment to the purchaser a sum equal to five per cent. of the amount of the purchase-money paid into Court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent. thereof.

(*3*) Where payment in accordance with sub-rule (*1*) has not been made, the Court shall, on application made by the defendant in this behalf,—

(*a*) in the case of a mortgage by conditional sale or of such an anomalous mortgage

as is hereinbefore referred to in rule 7, pass a final decree declaring that the plaintiff and all persons claiming under him are debarred from all right to redeem the mortgaged property and, also, if necessary, ordering the plaintiff to put the defendant in possession of the mortgaged property ; or

(b) in the case of any other mortgage, not being an usufructuary mortgage, pass a final decree that the mortgaged property or a sufficient part thereof be sold and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same."

Insertion of new rule 8A in Order XXXIV, Schedule I, Act V of 1908.

5. In Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, after rule 8 the following rule shall be inserted, namely :— V of 1908.

"8A. Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the defendant, the Court, on application by him, may, if the balance is otherwise legally recoverable from the plaintiff personally, pass a decree for such amount."

Recovery of balance due on mortgage in suit for redemption.

Substitution of new rules for rules 10 and 11 of Order X, XIV, Schedule I, Act V of 1908.

6. In Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, for rules 10 and 11 the following rules shall be substituted, namely :— V of 1908.

"10. In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption, the Court shall, unless, in the case of costs of the suit the conduct of the mortgagee has been such as to disentitle him thereto, add to the mortgage-money such costs of the suit and other costs, charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure, sale or redemption up to the time of actual payment.

Costs of mortgagee subsequent to decree.

11. In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely :—

Payment of interest.

(a) interest up to the date on or before which payment of the amount found or declared due is under the preliminay decree to be made by the mortgagor or other person redeeming the mortgage—

(i) on the principal amount found or declared due on the mortgage,—at the rate fixed in the mortgage-deed or, if no

rate has been so fixed, at such rate as the Court deems reasonable,

(*ii*) on the amount of the costs of the suit awarded to the mortgagee,—at such rate as the Court deems reasonable from the date of the preliminary decree, and

(*iii*) on the amount adjudged due to the mortgagee, for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage-money, —at the rate fixed in the mortgage-deed, or, if no rate has been so fixed, at nine per cent. per annum; and

(*b*) subsequent interest up to the date of realization or actual payment at such rate as the Court deems reasonable—

(*i*) on the aggregate of the principal sums specified in clause (*a*) and of the interest thereon as calculated in accordance with that clause; and

(*ii*) on the amount adjudged due to the mortgagee in respect of such further costs, charges and expenses as may be payable under rule 10."

Substitution of new rule for rule 15, Order XXXIV, Schedule I, Act V of 1908.

7. In Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, for rule 15, the following rule shall be substituted, namely:— V of 1908.

"15. All the provisions contained in this Order which apply to a simple mortgage shall, so far as may be, apply to a charge within the meaning of section 100 of the Transfer of Property Act, 1882." IV of 1882.

Charges.

Substitution of new Forms for Forms 3 to 11 in Appendix D, Schedule I, Act V of 1908.

8. For Forms 3 to 11 in Appendix D to the First Schedule to the Code of Civil Procedure, 1908, the Forms set forth in Schedule I shall be substituted. V of 1908.

Amendment of Act XVI of 1908

9. (*1*) In sub-section (*1*) of section 17 of the Indian Registration Act, 1908,— XVI of 1908.

(*a*) In clause (*c*), the word "and" shall be omitted and in clause (*d*), for the words "from year to year, or for any term exceeding one year or reserving a yearly rent" the words "except leases from month to month or for any term not exceeding one month; and" shall be substituted; and

(*b*) after clause (*d*) the following clause shall be added, namely:—

"(*e*) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property:"

(2) In clause (*m*) of sub-section (2) of the same section, for the words "and any award" the words "except a decree or order expressed to be made on a compromise" shall be substituted.

(3) In section 48 of the same Act, after the words "or followed by delivery of possession" the following words shall be added, namely :—

"and the same constitutes a valid transfer under any law for the time being in force :

Provided that a mortgage by delivery of documents of title to immoveable property which is valid under section 59 of the Transfer of Property Act, 1882, shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property." IV of 1882.

(4) To section 49 of the same Act the following proviso shall be added, namely :—

"Provided that an unregistered document affecting immoveable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, and as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882. IV of 1882. I of 1877. IV of 1882.

10. (1) In section 115 of the Indian Succession Act, 1925,— Amendment of Act XXXIX of 1925 XXXIX of 1925.

(*a*) for the words "wholly void" the words "void in regard to those persons only and not in regard to the whole class" shall be substituted ;

(*b*) in *Illustration* (*i*), for the words "; and, as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void" the following words shall be substituted, namely :—

"and in regard to those who do not attain the age of 25 within 18 years after A's death, but is operative in regard to the other children of A."; and

(*c*) in *Illustration* (*ii*), for the words "the mention of B, C and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void" the following words shall be substituted, namely :—

"Although the mention of B, C and D does not prevent the bequest from being regarded as a bequest to a class, it is not wholly void. It is operative as regards any of the children B, C or D, who attains the age of 25 within 18 years after A's death".

(2) For section 116 of the same Act the following section shall be substituted, namely :—

"116. Where by reason of any of the rules contained in sections 113 and 114, any bequest in favour of a person or of a class of persons is void in regard to such person or the whole of such class,

Bequest to take effect on failure of prior bequest.

any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void."

(3) For section 117 of the same Act and the *Illustrations* thereto, the following section shall be substituted, namely :—

"117. (1) Where the terms of a will direct that the income arising from any property shall be accumulated either wholly or in part during any period longer than a period of eighteen years from the death of the testator, such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the aforesaid period and at the end of such period of eighteen years the property and income thereof shall be disposed of as if the period during which the accumulation has been directed to be made has elapsed.

Effect of direction for accumulation

(2) This section shall not affect any direction for accumulation for the purpose of—

(*i*) the payment of the debts of the testator or any other person taking any interest under the will, or

(*ii*) the provision of portions for children or remoter issue of the testator or of any other person taking any interest under the will, or

(*iii*) the preservation or maintenance of any property bequeathed ;

and such direction may be made accordingly."

11. Nothing in this Act shall be deemed to affect—

Saving.

(*a*) the terms or incidents of any transfer or disposition of property made or effected before the first day of January, 1929 ;

(*b*) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date ;

(*c*) any right, title, obligation or liability already acquired, accrued or incurred before such date ;

(*d*) any remedy or proceeding in respect of such right, title, obligation or liability ; or

(*e*) anything done in the course of any proceeding pending in any Court on the aforesaid date ;

and any such remedy or proceeding may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

12. The enactments mentioned in Schedule II are hereby repealed to the extent specified in the fourth column thereof.

Repeal.

SCHEDULE I.

(See section 8.)

FORM No. 3.

Preliminary decree for foreclosure.

(Order XXXIV, rule 2.—Where accounts are directed to be taken.)

(TITLE.)

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following:—

(*i*) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed as provided in the mortgage-deed or, if no rate has been so fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(*ii*) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received;

(*iii*) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate fixed in the mortgage-deed or, if no rate has been so fixed, at nine per cent. per annum);

(*iv*) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (*ii*) or adjudged due under clause (*iv*) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (*iii*) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(*i*) that the defendant do pay into Court on or before the day of , or any later date up to which time for payment may be extended by the Court the said sum of Rs. and the sum of Rs. for the costs of the suit awarded to the plaintiff;

(*ii*) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff shall be at liberty to apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

FORM No. 3A.

Preliminary decree for foreclosure.

(Order XXXIV, rule 2.—Where the Court declares the amount due.)

(TITLE.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and

expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security together with interest thereon, and the sum of Rs. for the costs of this suit awarded to the plaintiff, making in all the sum of Rs. .

2. And it is hereby ordered and decreed as follows :—

(*i*) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court the said sum of Rs. ;

(*ii*) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property

FORM No. 4.

Final decree for foreclosure.

(Order XXXIV, rule 3.)

(TITLE.)

Upon reading the preliminary decree passed in this suit on the day of

and further orders (if any) dated the
day of and
the application of the plaintiff dated
the day of
for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the said mortgage:

It is hereby ordered and decreed that the defendant and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned;* [and (*if the defendant be in possession of the said mortgaged property*) that the defendant shall deliver to the plaintiff quiet and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the defendant up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

FORM No. 5.

Preliminary decree for sale.

(Order XXXIV, rule 4.—Where accounts are directed to be taken.)

(TITLE.)

This suit coming on this day, etc., It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following:—

(*i*) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed as provided in the mortgage-deed or, if no such rate has been so fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(*ii*) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received;

(*iii*) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate fixed in the mortgage-deed or, if no such rate has been fixed, at nine per cent. per annum);

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*Words not required to be deleted.

(*iv*) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (*ii*) or adjudged due under clause (*iv*) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (*iii*) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(*i*) that the defendant do pay into Court on or before the day of the said sum of Rs. and the sum of Rs. for the costs of the suit awarded to the plaintiff;

(*ii*) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realized by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realized by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

FORM No. 5A.

Preliminary decree for sale.

(Order XXXIV, rule 4.—When the Court declares the amount due.)

(TITLE.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security together with interest thereon, and the sum of Rs. for the costs of the suit awarded to the plaintiff, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows :—

(i) that the defendant do pay into Court on or before the day of the said sum of Rs. ;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realized by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

5. And it is hereby further ordered and decreed that, if the money realized by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to

him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

FORM No. 6.

Final decree for sale.

(Order XXXIV, rule 5.)

(TITLE.)

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any) dated the day of and the application of the plaintiff dated the day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the mortgage:

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold, and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realized by such sale shall be paid into the Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the plaintiff for such costs of the suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

FORM No. 7.

Preliminary decree for redemption where on default of payment by mortgagor an order for foreclosure is made.

(Order XXXIV, rule 7.—Where accounts are directed to be taken.)

(TITLE.)

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to

as the Commissioner to take the accounts following :—

(*i*) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed as provided in the mortgage-deed or, if no rate has been so fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(*ii*) an account of the income of mortgaged property received up to this date by the defendant or by any other person by order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;

(*iii*) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate fixed in the mortgage-deed or, if no rate has been so fixed at nine per cent. per annum);

(*iv*) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. It is hereby further ordered and decreed that any amount received under clause (*ii*) or adjudged due under clause (*iv*) above, together with interest thereon, shall be adjusted against any sums paid by the defendant under clause (*iii*) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(*i*) that the plaintiff do pay into Court on or before the day of , or any later date up to which time for payment may be extended by the Court the said sum of Rs. and the sum of Rs. for the costs of the suit awarded to the defendant;

(*ii*) that, on such payment, and on payment thereafter before such date as the Court

may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant shall be at liberty to apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such direction as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

FOR N A

Preliminary decree for redemption where on default of payment by mortgagor an order for sale is made.

(Order XXXIV, rule 7.—Where accounts are directed to be taken).

(TITLE).

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following :—

(*i*) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed as provided in the mortgage-deed or, if no rate has been so fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(*ii*) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by the order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;

(*iii*) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate fixed in the mortgage-deed or, if no rate has been so fixed, at nine per cent. per annum);

(*iv*) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (*ii*) or adjudged due under clause (*iv*) above, together with interest thereon, shall first be adjusted against any sums paid by the defendant under clause (*iii*) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(*i*) that the plaintiff do pay into Court on or before the day of , or any later date up to which time for payment may be extended by the Court the said sum of Rs. and the sum of Rs. for the costs of the suit awarded to the defendant;

(*ii*) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall,

if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realized by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realized by such sale shall not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

FORM No. 7B.

Preliminary decree for redemption where on default of payment by mortgagor an order for foreclosure is made.

(Order XXXIV, rule 7.—Where the Court declares the amount due.)

(TITLE.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal the sum of Rs. . for costs,

charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Rs. for the costs of the suit awarded to the defendant, making in all the sum of Rs

2. And it is hereby ordered and decreed as follows :—

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court the said sum of Rs.

that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims, and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

FORM No. 7C.

Preliminary decree for redemption where on default of payment by mortgagor an order for sale is made.

(Order XXXIV, rule 7.—Where the Court declares the amount due.)

(TITLE.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the defendant

on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Rs. for the costs of this suit awarded to the defendant, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows :—

(*i*) that the plaintiff do pay into Court on or before the day of or any later date up to which time the payment may be extended by the Court the said sum of Rs. ;

(*ii*) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property to the plaintiff free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property ; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold ; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realized by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under

rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to the same.

5. And it is hereby further ordered and decreed that, if the money realized by such sale shall not be sufficient for the payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such direction as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

FORM No. 7D.

Final decree for foreclosure in a redemption suit on default of payment by mortgagor.

(Order XXXIV, rule 8.)

(TITLE.)

Upon reading the preliminary decree in this suit on the day of and further orders (if any) dated the day of , and the application of the defendant dated the day of for a final decree and after hearing the parties and it appearing that the payment as directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage:

It is hereby ordered and decreed that the plaintiff and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned* [and (*if the plaintiff be in possession of the said mortgaged property*) that the plaintiff shall deliver to the defendant quiet and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the plaintiff up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

FORM No. 7E.

Final decree for sale in a redemption suit on default of payment by mortgagor.

(Order XXXIV, rule 8.)

(TITLE.)

Upon reading the preliminary decree passed in this suit on the day of

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* Words not required to be deleted.

and further orders (if any) dated the day of , and the application of the defendant dated the day of , for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage;

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realized by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which a Court may have adjudged due to the defendant for such costs of this suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with the subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

FORM No. 7F.

Final decree in a suit for foreclosure, sale or redemption where the mortgagor pays the amount of the decree.

(Order XXXIV, rules 3, 5 and 8.)

(TITLE.)

This suit coming on this day for further consideration and it appearing that on the day of the mortgagor or the same being a person entitled to redeem has paid into Court all amounts due to the mortgagee under the preliminary decree dated the day of ; It is hereby ordered and decreed that—

(*i*) the mortgagee do execute a deed of reconveyance of the property in the aforesaid preliminary decree mentioned in favour of the mortgagor* [or, as the case may be, who has redeemed the property] or an acknowledgment of the payment of the amount due in his favour;

(*ii*) the mortgagee do bring into Court all documents in his possession and power relating to the mortgaged property in the suit.

2. And it is hereby further ordered and decreed that, upon the mortgagee executing the deed of reconveyance or acknowledgment in the manner as aforesaid,—

(*i*) the said sum of Rs. be paid out of Court to the mortgagee;

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*Words not required to be deleted.

(*ii*) the said deeds and documents brought into the Court be delivered out of Court to the mortgagor *[or the person making the payment] and the mortgagee do, when so required, concur in registering, at the cost of the mortgagor *[or other person making the payment], the said deed of reconveyance or the acknowledgment in the office of the Sub-Registrar of ; and

(*iii*) *[if the mortgagee, plaintiff or defendant, as the case may be, is in possession of the mortgaged property] that the mortgagee do forthwith deliver possession of the mortgaged property in the aforesaid preliminary decree mentioned to the mortgagor *[or such person as aforesaid who has made the payment].

FORM No. 8.

Decree against mortgagor personally for balance after the sale of the mortgaged property.

(Order XXXIV, rules 6 and 8A.)

(TITLE.)

Upon reading the application of the mortgagee (the plaintiff or defendant, as the case may be) and reading the final decree passed in the suit on the day of , and the Court being satisfied that the net proceeds of the sale held under the aforesaid final decree amounted to Rs. and have been paid to the applicant out of the Court on the day of and that the balance now due to him under the aforesaid decree is Rs. ;

And whereas it appears to the Court that the said sum is legally recoverable from the mortgagor (plaintiff or defendant, as the case may be) personally:

It is hereby ordered and decreed as follows:—

that the mortgagor (plaintiff or defendant, as the case may be) do pay to the mortgagee (defendant or plaintiff, as the case may be) the said sum of Rs. with further interest at the rate of six per cent. per annum from the day of (the date of payment out of Court referred to above) up to the date of realization of the said sum, and the costs of this application.

FORM No. 9.

Preliminary decree for foreclosure or sale.

[Plaintiff..... 1st Mortgagee.

vs.

Defendant No. 1 .....Mortgagor.

Defendant No. 2..... 2nd Mortgagee.]

(Order XXXIV, rules 2 and 4.)

(TITLE.)

The suit coming on this day, etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated

* Words not required to be deleted.

up to this day of
is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) incurred by the plaintiff in respect of the mortgage-security with interest thereon and the sum of Rs. for the costs of this suit awarded to the plaintiff, making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due to defendant No. 2 in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit.)

2. It is further declared that the plaintiff is entitled to payment of the amount due to him in priority to defendant No. 2 *[or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively :—].

3. And it is hereby ordered and decreed as follows :—

(*i*) (*a*) that defendants or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to the plaintiff ; and

(*b*) that defendant No. 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to defendant No. 2 ; and

(*ii*) that, on payment of the sum declared to be due to the plaintiff by defendants or either of them in the manner prescribed in clause (*i*) (*a*) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant No. ....(who has made the payment), or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit

* Words not required to be deleted.

and shall, if so required, deliver up to the defendant No. (who has made the payment) quiet and peaceable possession of the said property.

(Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared to be due to defendant No. 2 with such variations as may be necessary having regard to the nature of his mortgage.)

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid of the amount due to the plaintiff, the plaintiff shall be at liberty to apply to the Court for a final decree—

(*i*) *[*in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale*] that the defendants jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the plaintiff quiet and peaceable possession of the said property; or

(*ii*) *[*in the case of any other mortgage*] that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and

(*iii*) *[*in the case where a sale is ordered under clause 4 (ii) above*] that the money realized by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale), in payment of the amount payable to the plaintiff under this decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may adjudge due to the plaintiff in respect of such costs of this suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and that if any balance be left, it shall be paid to the defendant No. 1 or other persons entitled to receive the same; and

(*iv*) that, if the money realized by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them, as the case may be, shall be at liberty

* Words not required to be deleted.

(when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed—

(*a*) that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in the payment of the said amount, defendant No. 2 shall be at liberty to apply to the Court to keep the plaintiff's mortgage alive for his benefit and to apply for a final decree (*in the same manner as the plaintiff might have done under clause 4 above*)—

*[(*i*) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to defendant No. 2 quiet and peaceable possession of the said property;]

or

*[(*ii*) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;]

and (*b*) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further ordered and decreed *[*in the case where a sale is ordered under clause 5 above*]—

(*i*) that the money realized by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by defendant No. 2 in respect of the plaintiff's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to defendant No. 2 in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of this suit and such costs, charges

* Words not required to be deleted.

and expenses as may be payable to defendant No. 2 under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other persons entitled to receive the same; and

(*ii*) that, if the money realized by such sale shall not be sufficient for payment in full of the amount due in respect of the plaintiff's mortgage or defendant No. 2's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

FORM No. 10.

Preliminary decree for redemption of prior mortgage and foreclosure or sale on subsequent mortgage.

[Plaintiff.....2nd Mortgagee,

vs.

Defendant No. 1.....Mortgagor,

Defendant No. 2.....1st Mortgagee.]

(Order XXXIV, rules 2, 4 and 7.)

(TITLE.)

The suit coming on this day, etc.; It is hereby declared that the amount due to defendant No. 2 on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by defendant No. 2 in respect of the mortgage-security with interest thereon and the sum of Rs. for the costs of this suit awarded to defendant No. 2, making in all the sum of Rs.

(*Similar declarations to be introduced with regard to the amount due from defendant No. 1 to the plaintiff in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit.*)

2. It is further declared that defendant No. 2 is entitled to payment of the amount due to him in priority to the plaintiff *[or (if there are several

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*Words not required to be deleted.

subsequent mortgagees) that the several parties hereto are entitled in the follow.rg order to the payment of the sums due to them respectively :—].

3. And it is hereby ordered and decreed as follows :—

(*i*) (*a*) that the plaintiff or defendant No. 1 or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to defendant No. 2 ; and

(*b*) that defendant No. 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to the plaintiff ; and

(*ii*) that, on payment of the sum declared due to defendant No. 2 by the plaintiff and defendant No. 1 or either of them in the manner prescribed in clause (*i*) (*a*) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under ruler 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, defendant No. 2 shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or defendant No. 1 (whoever has made the payment), or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff or defendant No. 1 (whoever has made the payment) quiet and peaceable possession of the said property.

(Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared due to the plaintiff with such variations as may be necessary having regard to the nature of his mortgage.)

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid, of the amount due to defendant No. 2, defendant No. 2

shall be at liberty to apply to the Court that the suit be dismissed or for a final decree—

(*i*) *[*in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale*] that the plaintiff and defendant No. 1 jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the defendant No. 2 quiet and peaceable possession of the said property; or

(*ii*) *[*in the case of any other mortgage*] that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and

(*iii*) *[*in the case where a sale is ordered under clause 4 (ii) above*] that the money realized by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to defendant No. 2 under the decree and any further orders that may be passed in this suit and in payment of the amount which the Court may adjudge due to defendant No. 2 in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908; and that the balance, if any, shall be applied in payment of the amount due to the plaintiff and that, if any balance be left, it shall be paid to defendant No. 1 or other person entitled to receive the same; and

(*iv*) that, if the money realized by such sale shall not be sufficient for payment in full of the amounts due to defendant No. 2 and the plaintiff, defendant No. 2 or the plaintiff or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed,—

(*a*) that, if the plaintiff pays into Court to the credit of this suit the amount adjudged

*Words not required to be deleted.

due to defendant No. 2, but defendant No. 1 makes default in the payment of the said amount, the plaintiff shall be at liberty to apply to the Court to keep defendant No. 2's mortgage alive for his benefit and to apply for a final decree (*in the same manner as the defendant No. 2 might have done under clause 4 above*)—

*[(*i*) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property;] or

*[(*ii*) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;]

and (*b*) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further ordered and decreed (*in the case where a sale is ordered under clause 5 above*)—

(*i*) that the money realized by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by the plaintiff in respect of defendant No. 2's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to the plaintiff in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other person entitled to receive the same; and

* Words not required to be deleted.

(*ii*) that, if the money realized by such sale shall not be sufficient for payment in full of the amount due in respect of defendant No. 2's mortgage or the plaintiff's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

FORM No. 11.

Preliminary decree for sale.

[Plaintiff—Sub or derivative mortgagee,

vs.

Defendant No. 1.—Mortgagor.

Defendant No. 2.—Original mortgagee.]

(Order XXXIV, rule 4.)

(TITLE.)

This suit coming on this day, etc.; It is hereby declared that the amount due to defendant No. 2 on his mortgage calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon and the sum of Rs. for the costs of the suit awarded to defendant No. 2, making in all the sum of Rs.

(*Similar declarations to be introduced with regard to the amount due from defendant No. 2 to the plaintiff in respect of his mortgage*)

2. And it is hereby ordered and decreed as follows:—

(*i*) that defendant No. 1 do pay into Court on or before the said day of or any later date up to which time for payment may be extended by the Court the said sum of Rs. due to defendant No. 2;

(*Similar declarations to be introduced with regard to the amount due to the plaintiff, defendant No. 2 being at liberty to pay such amount*)

(*ii*) that, on payment of the sum declared due to defendant No. 2 by defendant No. 1 in the manner prescribed in clause 2 (*i*) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV,

of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff and defendant No. 2 shall bring into Court all documents in their possession or power relating to the mortgaged property in the plaint mentioned, and all such documents (except such as relate only to the sub-mortgage) shall be delivered over to defendant No. 1, or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the property to defendant No. 1 free from the said mortgage clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims and free from all liability arising from the mortgage or this suit and shall, if so required, deliver up to defendant No. 1 quiet and peaceable possession of the said property ; and

(*iii*) that, upon payment into the Court by defendant No. 1 of the amount due to defendant No. 2, the plaintiff shall be at liberty to apply for payment to him of the sum declared due to him together with any subsequent costs of the suit and other costs, charges and expenses, as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 ; and that the balance, if any, shall then be paid to defendant No. 2 , and that if the amount paid into the Court be not sufficient to pay in full the sum due to the plaintiff, the plaintiff shall be at liberty (if such remedy is open to him by the terms of the mortgage-deed or is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 for the amount of the balance.

3. And it is further ordered and decreed that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, the plaintiff shall bring into the Court all documents, etc. (*as in sub-clause* (*ii*) *of clause 2*).

4. And it is hereby further ordered and decreed that, in default of payment by defendants Nos. 1 and 2 as aforesaid, the plaintiff may apply to the Court for a final decree for sale, and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold ; and that for the purposes of such sale the plaintiff and defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

5. And it is hereby further ordered and decreed that the money realized by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount due to the plaintiff as

specified in clause 1 above with such costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and that, if any balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same.

6. And it is hereby further ordered and decreed that, if the money realized by such sale shall not be sufficient for payment in full of the amounts payable to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them, as the case may be, shall be at liberty (if such remedy is open under their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 or defendant No. 1 (as the case may be) for the amount of the balance.

7. And it is hereby further ordered and decreed that, if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in payment of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court for a final decree for foreclosure or sale (as the case may be)—(*declarations in the ordinary form to be introduced according to the nature of defendant No. 2's mortgage and the remedies open to him thereunder*).

8. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

SCHEDULE II.

(*See section 12.*)

ENACTMENTS REPEALED.

1	2	3	4
Year.	No.	Short title.	Extent of repeal.
		(a) *Act of the Governor General in Council:*	
1916	XV	The Hindu Disposition of Property Act, 1916.	The whole.
		(b) *Act of the Indian Legislature:*	
1921	VIII	The Hindu Transfers and Bequests (City of Madras) Act, 1921.	The whole.
		(c) *Act of the Governor of Fort St. George in Council:*	
1914	I	The Hindu Transfers and Bequests Act, 1914.	The whole.

STATEMENT OF OBJECTS AND REASONS.

The Bill is sufficiently explained in the Report of the Special Committee printed as an accompaniment to the Statement of Objects and Reasons of the Transfer of Property (Amendment) Bill.

The 17th August, 1927.

W. T. M. WRIGHT.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Supplement the Transfer of Property (Amendment) Act, 192 ; and Annexure.

(Mr. W. T. M. Wright, M.L.A.).

H299LD—200—6-9-27—GIPS

[As introduced in the Legislative Assembly.]

A

BILL

TO

Repeal and amend certain provisions of the Indian Criminal Law Amendment Act, 1908, and the Code of Criminal Procedure, 1898.

WHEREAS it is expedient to amend certain provisions of the Indian Criminal Law Amendment Act, 1908, and of section 491 of the Code of Criminal Procedure, 1898; It is hereby enacted as follows:— XIV of 19 V of 1898.

1. This Act may be called the Criminal Law Repealing and Amending Act, 192 .

Short title.

2. Sub-clause (*b*) of clause (*2*) of section 15 of the Indian Criminal Law Amendment Act, 1908 (hereinafter referred to as the said Act), is hereby repealed. XIV of 19

Amendment of section 15, Act XIV of 1908.

3. After section 16 of the said Act the following section shall be inserted, namely:—

Insertion of new section 16A in Act XIV of 1908

"16A. Any person deeming himself aggrieved by an order of the Governor General in Council declaring such association to be unlawful, and any person convicted under the provisions of section 17 may appeal to the High Court on the ground that the declaration should never have been made."

Appeal to the High Court.

4. In sub-section (*3*) of section 491 of the Code of Criminal Procedure, 1898, after the words "Nothing in this section applies to persons" the following shall be inserted, namely:— V of 1898.

Amendment of section 491, Act V of 1898.

"other than British subjects".

STATEMENT OF OBJECTS AND REASONS.

(1) By Resolution No. 533-Political, dated the 21st March, 1921, a Committee was appointed to examine certain repressive laws. The Committee issued its report in the course of which it recommended their repeal but counselled for the nonce the retention of Part II of the Indian Criminal Law Amendment Act, 1908, adding that it may be possible for the Government to undertake the necessary legislation for their repeal during the Delhi Session of 1922. (*See* paragraph 26, subpara. 2, of the Report). As the Government did not undertake the necessary legislation, I introduced a Bill for the repeal of Part II of the Indian Criminal Law Amendment Act. It was passed on the 23rd September, 1924, by 71 to 40 votes, the Government opposing it. The Bill was next sent to the Council of State for their concurrence, but that body has rejected it. It is proposed, for the present, to introduce this revised measure in the hope that it might be acceptable to Government.

The 10th December, 1926.

(2) The provisions of section 491 of the Code of Criminal Procedure are in the nature of Habeas Corpus controlled in England by the Habeas Corpus Act of 1679, the operatoin of which can only be temporarily suspended by the Legislature on the ground of urgent political necessity. (*See* 10 Halsbury's Laws of England, s. 98, p. 44.) The Habeas Corpus Act merely re-enacts the 29th section of the Magna Charta which provides that no person shall be taken or imprisoned unless by lawful judgment of his Peers or the law of the land. "The King", said Chief Justice Markam, "cannot arrest a man upon suspicion of felony or treason, as any of his subjects may, because if he should wrong a man by such arrest, he can have no remedy against him." [*See* Hallam's Constitutional History of Engalnd, Ch. VII, p. 274 (Ward Lock & Co.).] In England, the Habeas Corpus Act is a bulwark of the people's liberties. Its corresponding provisions in this country should give at least the British subjects in India a similar protection.

H. S. GOUR.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Repeal and amend certain provisions of the Indian Criminal Law Amendment Act, 1908, and the Code of Criminal Procedure, 1898; and Annexure.

(*Sir Hari Singh Gour, M.L.A.*)

M190LD—300—5-8-27—GIPS

(AS PASSED BY THE LEGISLATIVE ASSEMBLY AND AMENDED BY THE COUNCIL OF STATE.)

A

BILL

Further to amend the Societies Registration Act, 1860, for certain purposes.

WHEREAS it is expedient further to amend the Societies Registration Act, 1860, for certain purposes hereinafter appearing; It is hereby enacted as follows :— XXI of 1860.

1. This Act may be called the Societies Registration (Amendment) Act, 192 .

Short title.

2. In the preamble to and in section 20 of the Societies Registration Act, 1860, after the words "the diffusion of useful knowledge" the words "the diffusion of political education" shall be inserted. XXI of 1860.

Amendment of section 20, Act XXI of 1860.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

Further to amend the Societies Registration Act, 1860.

As passed by the Legislative Assembly and amended by the Council of State.

GIPD—530 LD—22-2-27—450.

[As introduced in the Legislative Assembly.]

BILL

to

Make provision to enable volunteer police forces to be constituted temporarily and employed locally for the purpose of preserving the public peace and protecting persons and property, and to define the powers and duties of such police.

WHEREAS it is expedient to make provision to enable volunteer police forces to be constituted temporarily and employed locally for the purpose of preserving the public peace and protecting persons and property, and to define the powers and duties of such police; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Volunteer Police Act, 192 .

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(*3*) The Local Government may, by notification in the local official Gazette, direct that this Act shall come into force in the province, or any part thereof specified in the notification, on such date as may be so specified.

Interpretation.

2. (*1*) In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "district" means any area which is a district for the purposes of the Code of Criminal Procedure, 1898; V of 1898.

(*b*) "prescribed" means prescribed by rules made under this Act; and

(*c*) "Superintendent of Police" means the chief officer of police in a district other than a Presidency-town or the Rangoon Town District.

(*2*) In the Presidency-towns and the Rangoon Town District, the powers and duties under this Act of the District Magistrate and of the Superintendent of Police shall be exercised by the Commissioner of Police and references to those officers shall be construed as references to the Commissioner of Police.

Constitution of district volunteer police force.

3. (*1*) The District Magistrate of any district may, for the better preservation of the public peace and protection of the inhabitants of, and property in, the district, direct the constitution, for such period as he may fix, of a volunteer police force for the district or any part thereof and call for volunteers therefor in such manner as he thinks fit.

(*2*) The District Magistrate or, in any district other than a Presidency-town or the Rangoon Town District, a Magistrate authorised by him in this behalf, may appoint to the volunteer police force any person fit and willing to be appointed

thereto and assign to him any rank in the volunteer police force not superior to that of an inspector:

Provided that, in a district other than a Presidency-town or the Rangoon Town District, no person shall be appointed to the volunteer police force or have any rank assigned to him therein save on the recommendation of, or with the concurrence of, the Superintendent of Police.

(3) Every police officer duly appointed to the volunteer police force shall receive on his appointment a certificate in the prescribed form signed by the District Magistrate, which shall entitle him to exercise all the powers and functions and have all the privileges of a volunteer police officer under this Act.

(4) The District Magistrate may, from time to time, extend the period fixed under sub-section (1) and, notwithstanding that the period so fixed or any period by which it has been extended has not expired, may at any time order that the volunteer police force be disbanded.

Duties of volunteer police.

4. A member of the volunteer police force shall not be employed otherwise than in the district in which he has been appointed and for the purpose of preserving the public peace and protecting the inhabitants of, and property in, that district or, where the force has been constituted for a part only of the district, that part, and no volunteer police officer shall be required to take any part in the investigation of any offence or the prosecution of any person for an offence or to perform any duty other than such as the Local Government may by rules made under this Act prescribe as a duty ancillary to the purposes aforesaid or to any of them.

Powers of volunteer police.

5. Every volunteer police officer shall, for the purposes of the execution of his duties as such police officer, have all the powers, privileges and protection of a regular police officer appointed under the Police Act, 1861, or any other law for the time being in force in the district regulating the powers of the regular police force employed therein:

V of 1861.

Provided that no volunteer police officer not expressly empowered in this behalf by the Superintendent of Police shall exercise control over, or be entitled to issue orders to, any regular police officer or have any of the powers of an officer in charge of a police-station.

Control.

6. Every volunteer police officer shall, in the execution of his duty, act under the direction and control of the Superintendent of Police of the district in which he is appointed, and shall be bound to carry out all lawful orders of any volunteer police officer superior to him in rank, and of any regular police officer to whom he is, under the orders of the Superintendent of Police, subordinate:

Provided that no volunteer police officer shall be subordinate to, or in any way subjected to the control of, any regular police officer inferior in rank to a sub-inspector, unless such regular police officer is in charge of a police-station.

Regulations.

7. The Superintendent of Police may, subject to the control of the District Magistrate, make regulations to provide for the organisation, training and equipment of the volunteer police force.

Power to resign.

8. Any volunteer police officer may resign his office after giving to the Superintendent of Police such notice as may be prescribed.

Power to promote, reduce, discharge or dismiss.

9. The Superintendent of Police may, at his discretion, promote to any rank not superior to that of an inspector, or reduce in rank, discharge or dismiss, any volunteer police officer, and any volunteer police officer so discharged or dismissed shall deliver up to the Superintendent of Police or such authority as the Superintendent of Police may appoint the certificate issued to him under section 3 and his equipment.

Penalties

10. Every volunteer police officer who is guilty of any violation of duty or wilful breach or negligence of any rule, regulation or lawful order made by any competent authority, or who withdraws himself from the duties of his office without having given the prescribed notice of his intention to resign therefrom or otherwise without the permission of a competent authority or refuses to give up his certificate or equipment when discharged or dismissed, shall be punishable, on conviction by a Presidency Magistrate or Magistrate of the first class, with fine which may extend to one hundred rupees.

Allowances and compensation.

11. (*1*) Every volunteer police officer shall be entitled to an allowance on account of expenses necessarily incurred in the execution of his duty and, if without any default on his own part he contracts any illness or sustains any injury in the execution of his duty, he, or, if he dies from the effect of an illness or injury so contracted or sustained, his dependants, shall be entitled to compensation on such scale as may be prescribed.

(*2*) If any question arises as to the amount of the allowance to be granted to a volunteer police officer in respect of expenses incurred in the execution of his duty, it shall be referred to the District Magistrate, whose decision shall be final and shall not be questioned in any Court.

Control of Local Government.

12. All powers and duties under this Act of the District or any other Magistrate or of the Superintendent of Police shall be respectively exercised and performed subject to any general or special orders of the Local Government.

Power to makes rules.

13. The Local Government may make rules consistent with this Act to provide for all or any of the following matters, namely :—

(*a*) the form of certificate to be issued to members of a volunteer police force under section 3;

(*b*) the duties which volunteer police officers may be required to perform under this Act;

(*c*) the allowances and scales of compensation payable to volunteer police officers or their dependants under section 11; and

(*d*) any other matter which is to be or may be prescribed or in respect of which the Local Government considers that provision should be made to give effect to this Act.

STATEMENT OF OBJECTS AND REASONS.

The Government of India have had under consideration the provision of means for employing men of good will, on suitable occasions and under suitable conditions, in the preservation of law and order. It has been represented to them that not enough has been done to enable citizens of this country to assist the cause of the public peace, to which, it is suggested, they are less indifferent than is commonly considered the case. Accordingly, with a view to encouraging the growth of a civic sense, Government have in the Bill devised means of enabling the public to co-operate if they so desire with the regular police force.

2. Occasions have arisen in the past when the police force in districts has been subjected to almost intolerable strain or even reduced to a state of exhaustion. The possibility of the recurrence of such occasions in the future cannot be disregarded, and Government, therefore, while attaching importance to the educational value of co-operation by private citizens in assisting in the maintenance of law and order, desire also to provide for a material accession of strength as occasion may require and the good will of citizens may facilitate.

3. The Bill, therefore, empowers District Magistrates in those provinces in which the Local Government may have brought it into force, and under the general and special control of that Government, to constitute temporary volunteer police forces for use within the district. It also enables similar action to be taken in Presidency-towns. It is necessary to proceed by way of legislation in order to invest volunteer police officers with statutory powers, duties and privileges.

4. The volunteer character of the force is secured by provisions for appointment of only such persons as are fit and willing to be appointed, and it will be maintained by the provision for voluntary resignation, subject to due notice. In order to throw the force open to all classes in the community, middle-aged and young, educated and uneducated, the Bill provides for the entertainment of police officers of various ranks and not merely constables. All appointments will be honorary, but provision is made for allowances for out-of-pocket expenses, and for compensation for illness or injury.

5. The purposes for which the force will be entertained are the preservation of the public peace, the protection of the inhabitants and the security of property in the part of the country where it is appointed. The duties of volunteer police officers will be only those which are strictly ancillary to these purposes, and will not include investigation or prosecution. In the discharge of these duties the volunteer police will have the powers, privileges and protection of a regular police officer appointed under the Police Act, 1861.

6. The scheme to which the Bill gives shape contemplates that the volunteer force should not only include rank and file, but should also find its own officers. It is nevertheless of the essence of the scheme in its educational aspect, and of prime importance for administrative purposes that the force should be closely co-ordinated with the regular police and should be controlled by professional officers. It is proposed to effect these objects by placing the force under the direction and control of the Superintendent of Police and by subjecting every volunteer police officer to the lawful orders of any volunteer police officer superior to him in rank and of any regular police officer to whom he is, under the orders of the Superintendent of Police, subordinate. But the members of the force will not be subject to the control of any subordinate officer of the regular police lower in rank than an officer in charge of a police station.

Provisions regarding discipline are as simple as possible. Departmental punishments will be limited to reduction in rank, discharge or dismissal. Otherwise discipline will be maintained by the imposition of a fine on conviction at a judicial trial.

Dated 23rd March, 1927.

ALEXANDER MUDDIMAN.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Make provision to enable volunteer police forces to be constituted temporarily and employed locally for the purpose of preserving the public peace and protecting persons and property, and to define the powers and duties of such police; and Annexure.

The Governor General has been pleased to accord the sanction required by clause (i) of section 67(2) of the Government of India Act.

L. GRAHAM,

Secy. of the Legislative Assembly.

(*The Honourable Sir Alexander Muddiman.*)

GIPD—852 LD—30-3-27—850.

[As introduced in the Legislative Assembly.]

A

BILL

TO

Amend the Indian Bar Councils Act, 1926, for certain purposes.

WHEREAS it is expedient to amend the Indian Bar Councils Act, 1926, for the purposes hereinafter appearing; It is hereby enacted as follows :— XXXVIII of 1926.

Short title.

1. This Act may be called the Indian Bar Councils (Amendment) Act, 1927.

Amendment of section 8, Act XXXVIII of 1926.

2. In section 8 of the Indian Bar Councils Act, 1926 (hereinafter referred to as the said Act), sub-sections (*3*), (*4*) and (*5*) shall be renumbered as sub-sections (*5*), (*6*) and (*7*), respectively, and after sub-section (*2*) the following sub-sections shall be inserted, namely :— XXXVIII of 1926.

"(*3*) Entries in the roll shall be made in the order of seniority, and such seniority shall be determined as follows, namely :—

(*a*) all such persons as are referred to in clause (*a*) of sub-section (*2*) shall be entered first in the order in which they were respectively entitled to seniority *inter se* immediately before the date on which this section comes into force in respect of the High Court; and

(*b*) the seniority of any other person admitted to be an advocate of the High Court under this Act after that date shall be determined by the date of his admission or, if he is a barrister, by the date of his admission or the date on which he was called to the Bar, whichever date is earlier :

Provided that, for the purposes of clause (*b*), the seniority of a person who before his admission to be an advocate was entitled as of right to practise in another High Court shall be determined by the date on which he became so entitled.

(*4*) The respective rights of pre-audience of advocates of the High Court shall be determined by seniority :

Provided that the Advocate General shall have pre-audience over all other advocates, and King's Counsel shall have pre-audience over all advocates except the Advocate General."

Amendment of section 9, Act XXXVIII of 1926.

3. In sub-section (*4*) of section 9 of the said Act, after the words "any such application" the words "or to prescribe the conditions under which such persons shall be entitled to practise or plead" shall be inserted.

STATEMENT OF OBJECTS AND REASONS.

The Select Committee on the Indian Bar Council's Bill (which was passed as Act XXXVIII of 1926) inserted in clause 8 of that Bill the following provisions to regulate seniority and pre-audience among advocates :—

(1) Entries in the roll shall be made in the order of seniority and the seniority of each advocate shall be determined by the date of his admission to be an advocate or, in the case of a person referred to in clause (*a*) of sub-section (*2*), by the date on which he was admitted to be an advocate, vakil or pleader, as the case may be, of the High Court.

(*2*) Subject to any special orders which the High Court may think fit to make in individual cases, the respective rights of pre-audience of advocates of the High Court shall be determined by seniority :

Provided that the Advocate General shall have pre-audience over all other advocates, and King's Counsel shall have pre-audience over all advocates except the Advocate General.

These provisions were omitted from the Bill as finally enacted on the understanding that they would be circulated for opinion. This has now been done. The opinions received disclose a lack of unanimity. On the whole, however, the majority of the High Courts prefer that, subject to the preservation of rights existing at the time that the Bar Councils Act comes into force, seniority and pre-audience should be regulated in accordance with the recommendations in paragraphs 18 and 21 of the Indian Bar Committee's report which may be summarised as follows :—

"Both on the appellate and original sides, advocates who are barristers should take precedence *inter se* according to the dates of call to the Bar, advocates who are not barristers according to the dates on which they became entitled to practise in a High Court, and a member of the former class should take precedence over another advocate only if he was called to the Bar before the other became entitled to practise in a High Court. An advocate of one High Court enrolling in another should take precedence from the date he was first entitled to practise in a High Court, and a barrister who was only called to the Bar after admission to practise in a High Court should take precedence from the date of admission to practise in a High Court."

The Bill gives effect to these recommendations. The opportunity has been taken to make a small amendment in sub-section (*4*) of section 9 of the Act of 1926, in consequence of criticisms during the debate in the Legislative Assembly on the 2nd September, 1926.

ALEXANDER MUDDIMAN.

NEW DELHI ;

The 23rd March 1927.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Amend the Indian Bar Councils Act, 1926, for certain purposes; and Annexure.

(The Honourable Sir Alexander Muddiman.)

M192LD—250—6.8.'27—GIPS

LEGISLATIVE DEPARTMENT.

We, the undersigned, Members of the Select Committee to which the Bill further to amend the Indian Merchant Shipping Act, 1923, was referred, have considered the Bill and the papers noted below and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto :—

1. Letter from the Secretary to the Chamber of Commerce, Bombay, No. 3254-298, dated the 26th November, 1926.

2. Letter from the Secretary to the Bengal Chamber of Commerce, Calcutta, No. 12—1927, dated the 3rd-4th January, 1927.

3. Letter from the Secretary to the Government of Bombay, General Department, No. 5918-13-C., dated the 6th January, 1927.

4. Letter from the Deputy Secretary to the Government of Bengal, Political Department, No. 702-P., dated the 14th January, 1927.

We have made several drafting alterations in the Bill to which it is unnecessary to refer in detail, and we now proceed to deal with other alterations which we have made, or the desirability of which we have discussed.

We considered very carefully the advisability of providing that the price of tickets should in no case be reduced below the price communicated to the Pilgrim Officer under sub-section (*1*) of the proposed new section 209B, which under sub-section (*3*) of the same section as originally framed must be reproduced in the advertisement. We have eventually decided that it would be not only unfair to the ship-owner to restrict in this manner his right of bargaining but would also be detrimental to the interests of pilgrims, many of whom may in the case of a half-filled ship be able to secure accommodation at reduced rates. We think that the only objection advanced to the practice of reducing fares, namely, that pilgrims may hang back in the hope of a reduction, is met by the provision which the Bill makes for ensuring that the ship shall start on a fixed date. We have accordingly inserted in sub-section (*1*) of the proposed new section 209B the word 'maximum' before the word 'price' and have provided that the advertised price shall not be in excess of the price notified to the Pilgrim Officer. At the same time the Bill as originally drafted provides no penalty for the sale of tickets at a reduced price, and sub-section (*4*) of the proposed new section therefore requires no alteration other than an amendment consequential upon that made in sub-section (*3*).

We have rejected a proposal that the period which should elapse between the advertised date of sailing and the departure of a ship should be incorporated in the Act itself as we consider that this must be left to rules, as already provided in the Bill; and we have rejected a suggestion that power should be given to shipping companies to advertise a general programme some time before the opening of the pilgrim season as we think that such advertisements might bring pilgrims to the ports an unnecessarily long time before the dates eventually fixed for departure of those ships or in numbers for which accommodation might not be immediately available.

Under sub-section (*1*) of the proposed new section 209C, a ship which, having been delayed for several days in its departure from the port from which it commences its voyage, is delayed in its departure from its next port of call by a proportionate period would be liable to pay compensation twice over to pilgrims who were embarked at the port of departure, for what is really only a single period of delay. This is clearly unreasonable and we have added a proviso to the sub-section to meet this particular case.

We consider it inequitable to require, under sub-section (*4*) of the proposed new section 209C, the master, owner or agent of the pilgrim ship to bear the costs of a reference if he is unsuccessful and at the same time not to give him any right to recover costs if he succeeds. We have accordingly deleted from this sub-section all reference to costs.

We agree with a representation made to us that, in the event of inability to despatch a ship on the advertised date of sailing, the owner or agent should be entitled, with the permission of the Pilgrim Officer, to substitute another similar ship of not less carrying capacity than the ship advertised. A provision of this kind will not only be beneficial to the ship-owner, but will obviously tend to further the purpose of the Bill by obviating inconvenience to pilgrims. The new section 209D which we propose is designed to permit of such substitution.

Finally, we are of opinion that it is not possible to exempt the port of Calcutta from the provisions of the Bill. We realise the risk that the opening of Calcutta as a pilgrim port may become inoperative owing to the unwillingness of ship-owners to provide steamers under the conditions imposed by the Bill but we prefer that risk to the certainty that pilgrims will otherwise be delayed for long periods whilst bookings are being filled.

2. The Bill was published in the Gazette of India, dated the 6th November, 1926.

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

J. W. BHORE.
GHAZANFAR ALI.
F. W. ALLISON.
W. S. J. WILLSON.*
ABDUL QAIYUM.
SARABHAI N. HAJI.
MD. YAKUB.
MOHAMMAD SHAFEE.†
A. H. NATIQUE.
A. SUHRAWARDY.
FAZAL I. RAHIMTULLA.
MD. ISMAIL KHAN.

The 26th March, 1927.

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* Subject to qualification, *vide* my speech on the motion for reference to Select Committee.

† I sign this report subject to an amendment in section 2, clause 3, that instead of "within such time as may be prescribed" the words "not less than thirty days" be inserted.

MD. SHAFEE,—24-3-27.

[AS AMENDED BY THE SELECT COMMITTEE.]

(Words printed in italics indicate the amendments suggested by the Select Committee.)

A

BILL

Further to amend the Indian Merchant Shipping Act, 1923.

WHEREAS it is expedient further to amend the Indian Merchant Shipping Act, 1923, for the purpose hereinafter appearing; It is hereby enacted as follows:— XXI of 1923.

Short title and commencement.

1. (*1*) This Act may be called the Indian Merchant Shipping (Amendment) Act, 1927.

(2) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

Insertion of new sections 209B, 209C and 209D in Act XXI of 1923.

2. After section 209A of the Indian Merchant Shipping Act, 1923 (hereinafter referred to as the said Act), the following sections shall be inserted, namely:— XXI of 1923.

Notice of sailing of pilgrim ship.

"209B. (*1*) The master, owner or agent of any ship which is intended to sail on a voyage as a pilgrim ship from any port or place in British India shall, before advertising such ship for the conveyance of pilgrims or offering to convey any pilgrim by such ship or selling or permitting any person to sell a *passage* ticket to any pilgrim for conveyance by such ship, supply to the prescribed officer (hereinafter referred to as the Pilgrim Officer) at the port or place from which the ship is to commence the voyage, and at each port or place in British India at which it is to touch for the purpose of embarking pilgrims, full particulars as to the class, tonnage and age of the ship, the maximum number of *passage* tickets of each class to be issued, the *maximum* price of each class of ticket, the date on which the ship *is to* sail from that port or place, the ports, if any, at which it *is to* touch, the place of its destination, and the probable date of its arrival thereat.

(*2*) The master, owner or agent shall supply to the Pilgrim Officer, within three days from the date of demand, such further *information* in regard to the matters mentioned in sub-section (*1*) as that officer may in writing demand from him.

(*3*) Within such time as may be prescribed before the date of the sailing of any such ship from any port or place in British India, the master, owner or agent of the ship shall advertise at such port or place in such manner as may be prescribed—

(*a*) the place of destination of the ship,

(*b*) the proposed date of sailing from that port or place which shall be the date communicated to the Pilgrim Officer under sub-section (*1*), and

(*c*) the price of each class of *passage* tickets, which shall *not* be *in excess of* the price communicated to the Pilgrim Officer under sub-section (*1*).

(*4*) Any master, owner or agent who—

(*a*) without reasonable cause, the burden of proving which shall lie upon him, fails or refuses to supply any particulars *or information* which he is by or under this section required to supply or supplies false particulars *or information*, or

(*b*) advertises any ship for the conveyance of pilgrims, or offers to convey pilgrims by any ship, or sells or promises or permits any person to sell passage tickets to pilgrims for conveyance by any ship, without having first supplied *the* particulars required by *sub-section* (*1*) and in accordance with the provisions *of that sub-section*, or

(*c*) advertises a date of sailing from any port or place other than the date communicated to the Pilgrim Officer at that port or place under sub-section (*1*), *or advertises* a price for *passage* tickets at that port or place *in excess of the* price *so* communicated, or

(*d*) offers to convey pilgrims by any ship from any port or place in British India or sells or promises or permits any person to sell passage tickets to pilgrims for conveyance by a ship from any such port or place without having made advertisement, as required by sub-section (*3*), of the matters specified in that sub-section, or

(*e*) sells or permits any person to sell to any pilgrim any passage ticket at a price in excess of the price communicated to the Pilgrim Officer under sub-section (*1*),

shall be punishable with fine which may extend to two thousand rupees.

Compensation for delay in sailing.

209C. (*1*) If the pilgrim ship fails to proceed from any port or place on the date advertised under sub-section (*3*) of section 209B as the date of sailing therefrom, the master, owner or agent shall become liable to pay as compensation to each pilgrim who has paid his passage money on or before such date the sum of one rupee for each completed day during which the sailing of the ship is delayed after that date :

Provided that such compensation shall not be payable in respect of any period during which the departure of the ship is impossible owing to any cause not arising from the act or default of the master, owner or agent, and the burden of proving such cause shall lie on such master, owner or agent :

Provided, further, that, where compensation has been paid or has become payable to any pilgrim in respect of delay in the sailing of the ship from any port or place and the sailing of the ship from any other port or place is thereafter delayed beyond the date advertised in that behalf, the pilgrim shall be entitled to compensation only in respect of any period by which the duration of such further delay exceeds the duration of the delay in respect of which he has already received or become entitled to compensation.

(2) In the event of such failure, the master, owner or agent shall be bound forthwith to inform the Pilgrim Officer at the port or place at which the delay occurs of the number of *passage* tickets of each class which have been issued for the voyage on or before the advertised date of sailing.

(3) Any sum payable as compensation under sub-section (1) shall be paid on behalf of the pilgrims entitled thereto to the Pilgrim Officer at the port or place at which the delay occurs on receipt by the master, owner or agent of a notice from that officer specifying the sum payable, and that officer shall, in such manner as may be prescribed, pay to each such pilgrim the compensation paid in respect of his detention :

Provided that, if an objection is made by the master, owner or agent that the sum specified in any such notice or any part of such sum is not payable by him, the sum paid or, as the case may be, the balance thereof remaining after payment to the pilgrims entitled thereto of compensation the right to which is not in dispute, shall be held in deposit until the objection has been decided :

Provided, further, that, if for any reason the compensation due to any pilgrim cannot be paid to him at the time of embarkation or at or before the time of his disembarkation at the port of his destination, the sum so remaining unpaid shall be made over to such authority administering any fund maintained for the assistance of pilgrims as the Local Government may, by general or special order, designate in this behalf.

(4) If the master, owner or agent objects that the sum specified in the notice issued under sub-section (3) or any part thereof is not payable by him, he may, at the time of payment of such sum, give to the Pilgrim Officer notice of his objection, together with a statement of the grounds thereof, and the Pilgrim Officer shall *thereupon* either cancel or modify the aforesaid notice in accordance with the objection and refund the sum held in deposit under sub-section (3), or refer the objection for decision to a Presidency Magistrate or a Magistrate of the first class exercising jurisdiction in the port or place at which the ship is delayed ; the decision of the Magistrate on such reference shall be final, and there shall be refunded to the master, owner or agent any amount allowed to him by such decision.

(5) On the failure of any pilgrim ship to proceed from any port or place on the date advertised under sub-section (3) of section 209B as the date of sailing therefrom, the Pilgrim Officer at that port or place shall forthwith give notice of such failure to the officer authorised to grant port-clearance to ships thereat, and such officer shall refuse port-clearance to the pilgrim ship until the master, owner or agent produces to him a certificate of the Pilgrim Officer that all sums payable by way of compensation under this section up to the day on which the ship is to proceed have been paid.

Substitution of ships.

209D. Notwithstanding anything contained in section 209B or section 209C, where any ship which has been advertised under sub-section (3) of section 209B for the conveyance of pilgrims has been or is likely to be delayed beyond the advertised date of sailing, the owner or

agent may, with the permission in writing of the Pilgrim Officer, substitute for it any other ship which is of the same class and is, capable of carrying not less than the same number of pilgrims of each class, and on such permission being given the advertisement shall be deemed to have been made in respect of the ship so substituted and all the provisions of those sections shall apply accordingly in respect of such ship."

Amendment of section 213, Act XXI of 1923.

3. In sub-section (*1*) of section 213 of the said Act, after clause (*qq*) the following clause shall be inserted, namely :—

" (*qqq*) the manner in which the proposed date of sailing shall be advertised under section 209B; the appointment of Pilgrim Officers for the purposes of that section and sections 209C *and 209D*; the manner in which payment shall be made under section 209C to pilgrims and to the Pilgrim Officer; and the procedure to be followed by masters, owners or agents and by Pilgrim Officers and Magistrates in proceedings under that section;".

Repeals.

4. Sections 11, 12, 12A and 12B of the Protection of Pilgrims Act, 1887, and sections 11 and 12 of the Protection of Muhammadan Pilgrims Act, 1896, are hereby repealed.

Bom. Act II of 1887.

Ben. Act I of 1896.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

Report of the Select Committee on the Bill further to amend the Indian Merchant Shipping Act, 1923, with the as amended.

GIPD—834 LD—2-3-27—750.

[To be introduced in the Legislative Assembly.]

A

BILL

TO

Repeal certain enactments.

WHEREAS it is expedient that certain enactments specified in the Schedule which are spent or have otherwise become unnecessary, or have ceased to be in force otherwise than by express specific repeal, should be expressly and specifically repealed;

It is hereby enacted as follows:—

1. This Act may be called the Repealing Act, 192 . Short title.

2. The enactments specified in the Schedule are hereby repealed to the extent mentioned in the fourth column thereof. Repeal of certain enactments.

3. The repeal by this Act of any enactment shall not affect any Act or Regulation in which such enactment has been applied, incorporated or referred to, Savings

and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office, or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognised or derived by, in or from any enactment hereby repealed,

nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

THE SCHEDULE.

(See section 2.)

Year.	No.	Short title	Extent of Repeal.	Explanation.
		Acts of the Governor-General in Council.		
1871	XXIII	The Pensions Act, 1871	So much of the Schedule as relates to Bengal Regulation I of 1804	Bengal Regulation I of 1804 was totally repealed by Act XXIX of 1871
1872	I	The Indian Evidence Act, 1872.	So much of the Schedule as relates to Acts— XV of 1852 XIX of 1853 II of 1855 XXV of 1861	These Acts have been repealed
1874	XIV	The Scheduled Districts Act, 1874.	All entries in the Second Schedule except those relating to Act XXXVII of 1855 and Act X of 1857	The Scheduled Districts Act, 1874, has not been brought into force in the Sonthal Parganas where Act XXXVII of 1855 and Act X of 1857 are still in force Section 2 and the Second Schedule of the Scheduled Districts Act are spent except as regards these two Acts only. This necessitates the retention of section 2 and the Second Schedule in the form proposed
1874	XV	The Laws Local Extent Act, 1874	So much of the First Schedule as relates to Acts— XXVI of 1836 XIX of 1841 XX of 1847 XXX of 1852 VI of 1864 XXI of 1865 V of 1866 XV of 1869 I of 1870	These Acts have been repealed
			So much of the Second Schedule as relates to Acts— IX of 1846 XXI of 1855 VIII of 1856 XXVII of 1860, and to Madras Regulation V of 1816	Ditto This Regulation has been repealed.
			In the Third Schedule, in the entry against Bombay Regulation II of 1827 the words "sections 47 to 54 (inclusive) and section 56 (pleaders)"	These sections have been repealed.
1882	XV	The Presidency Small Cause Court Act, 1882	So much of the First Schedule as relates to Act X of 1877	Act X of 1877 has been repealed
1891	XII	The Amending Act, 1891	So much of the Second Schedule as relates to Acts— I of 1859 X of 1865 V of 1881 XIV of 1883	These Acts have been repealed.
1897	V	The Amending Act, 1897.	So much of the Third Schedule as relates to Acts— XXXII of 1850, and XIX of 1871	These Acts have been repealed.
1897	XIV	The Indian Short Titles Act, 1897	So much of the Schedule as relates to Acts— XIX of 1841 XXVII of 1841 XX of 1847 XXVII of 1857 XXXIV of 1858 XXXV of 1858 XXXVI of 1858 XLVII of 1860 XVI of 1864 XVII of 1864 XXI of 1864 I of 1870 II of 1877	These Acts have been repealed

Year.	No.	Short title.	Extent of Repeal.	Explanation.
		Acts of the Governor General in Council—contd.		
1897	XIV	The Indian Short Titles Act, 1897.	So much of the Schedule as relates to Acts—	
			I of 1884 ..	These Act have been repealed.
			XV of 1885 ..	
			XVIII of 1886 ..	
			VI of 1887 ..	
			X of 1888 ..	
			II of 1890 ..	
			XIX of 1890 ..	
			VII of 1894 ..	
			III of 1896 ..	
			VII of 1896 ..	
1898	XIII	The Burma Laws Act, 1898	In sub-section (*1*) of section 1, the word "and" and sub-section (*2*) of the same section.	Commencement clause Spent.
			So much of the First Schedule as relates to Acts—	
			XX of 1847 ..	These Acts have been repealed.
			XXX of 1852 ..	
			XXXV of 1858 ..	
			XXXVI of 1858 ..	
			XVI of 1863 ..	
			VI of 1864 ..	
			X of 1865 ..	
			XXI of 1865 ..	
			III of 1867 ..	
			V of 1869 ..	
			XV of 1869 ..	
			XX of 1869 ..	
			XXIII of 1870 ..	
			II of 1874 ..	
			V of 1875 ..	
			XI of 1876 ..	
			II of 1877 ..	
			XI of 1877 ..	
			XV of 1877 ..	
			I of 1879 ..	
			III of 1879 ..	
			XI of 1879 ..	
			XX of 1879 ..	
			XXI of 1879 ..	
			V of 1881 ..	
			VI of 1882 ..	
			XII of 1882 ..	
			XIV of 1882 ..	
			XVIII of 1882 ..	
			XX of 1882 ..	
			VI of 1884 ..	
			XVI of 1884 ..	
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			XIII of 1889 ..	
			V of 1893 ..	
			IX of 1895 ..	
			XII of 1895 ..	
			XII of 1896 ..	
			IX of 1897 ..	
			XII of 1897 ..	
			II of 1898 ..	
			So much of the Third Schedule as relates to—	
			Act XVIII of 1882 ..	These have been repealed
			Act XXII of 1883 ..	
			Reg. V of 1887 ..	
			Reg. I of 1896 ..	
			So much of the Fourth Schedule as relates to—	
			Act III of 1892 ..	Ditto.
			Act XI of 1894 ..	
			Act XVIII of 1895 ..	
			Reg. I of 1891 ..	
			Reg. IV of 1894 ..	
1899	XIII	The Glanders and Farcy Act, 1899.	In sub-section (*1*) of section 2 the words "either generally or in respect of any local area"	These words were virtually repealed by Act XII of 1910.

Year.	No.	Short title.	Extent of Repeal.	Explanation.
		Acts of the Governor General in Council—contd.		
1901	XI	The Amending Act, 1901 .	In the First Schedule— In Part I— the entries relating to Madras Regulations VII of 1808 and V of 1816. In Part II— the entries relating to Acts— XXI of 1855 .. XXVII of 1857 XXX of 1865 . In Part III— the entries relating to— Mad Act 8 of 1865 " " 5 of 1866 . " " 2 of 1871 " " 7 of 1871 . " " 3 of 1886 " " 3 of 1890 . " " 1 of 1892 " " 2 of 1898 " " 1 of 1899 " " 3 of 1900	These Madras Regulations have been repealed. These Acts have been repealed. Ditto.
1900	X	The Indian Census Act, 1900.	The whole	Spent
1903	I	The Amending Act, 1903 .	In Part II of the First Schedule, the entry relating to Act VII of 1876.	Act VII of 1876 has been repealed
1910	XVI	The Indian Census Act, 1910.	The whole . .	Spent.
1911	II	The Indian Patents and Designs Act, 1911	Section 80 . ..	Repealing provision. Spent.
1911	VIII	The Indian Army Act, 1911	Section 127 and Schedule ..	Ditto.
1911	X	The Prevention of Seditious Meetings Act, 1911.	Section 9	Ditto.
1913	II	The Official Trustees' Act, 1913.	Section 33 and Schedule .	Ditto
1913	III	The Administrator General's Act, 1913.	Section 60 and Schedule ..	Ditto.
1914	III	The Indian Copyright Act, 1914.	Section 15 and the Second Schedule.	Repeal of prior enactments. Spent.
1914	IV	The Decentralization Act, 1914.	In Part I of the Schedule, the entries relating to— Act II of 1896 .. Act VI of 1900 . Act VIII of 1901 Act XVI of 1903 .	These Acts have been repealed.
1914	VIII	The Indian Motor Vehicles Act, 1914.	Section 19 and Schedule ..	Repeal of prior enactments. Spent.
1914	IX	The Local Authorities Loans Act, 1914.	Section 9 and Schedule II ..	Ditto.
1914	X	The Repealing and Amending Act, 1914.	Sections 3 and 4 .. The Second Schedule ..	Repeal of prior enactments and savings. Spent.
1914	XVII	The Second Repealing and Amending Act, 1914.	Sections 3 and 4 .. .. The Second Schedule ..	Repeal of prior enactments. Spent.
1915	I	The Emergency Legislation Continuance Act, 1915.	The whole ..	Expired.

Year.	No.	Short title.	Extent of Repeal.	Explanation.
		Acts of the Governor General in Council—contd.		
1915	VI	The Indian Patents and Designs (Temporary Rules) Act, 1915.	The whole	Expired.
1915	XI	The Repealing and Amending Act, 1915.	Sections 3 and 4	Repeal of prior enactment and savings. Spent.
			The Second Schedule ..	
1915	XIV	The Enemy Trading Act, 1915.	The whole	Expired.
1916	III	The Foreigners' (Trial by Court-martial) Act, 1916.	The whole	Expired.
1916	IV	The Indian Tariff (Amendment) Act, 1916.	Section 5 and Schedule II ..	Repealing provisions. Spent.
1916	X	The Enemy Trading Act, 1916.	The whole	Expired.
1916	XI	The Import and Export of Goods Act, 1916.	The whole	Expired.
1916	XIV	The Indian Bills of Exchange Act, 1916.	The whole	Expired.
1917	I	The Inland Steam-Vessels Act, 1917.	Section 75 and Schedule II..	Repealing provisions. Spent.
1917	V	The Destruction of Records Act, 1917.	Section 6 and the Schedule..	Do
1917	IX	The Indian Bill of Exchange (Amendment) Act, 1917.	The whole	Expired.
1917	XXII	The Gold (Import) Act, 1917.	The whole	Expired.
1917	XXIV	The Repealing and Amending Act, 1917.	Sections 3 and 4	Repealing provisions and savings. Spent.
			The Second Schedule ..	
1918	XI	The Indian Army (Amendment) Act, 1918.	Section 26 and the Schedule	Repealing provisions. Spent.
1918	XIV	The Gold Coinage Act, 1918	The whole	Expired.
1918	XV	The Enemy Trading Orders (Validation) Act, 1918.	The whole	Expired.
1918	XVII	The Indian Non-ferrous Metal Industry Act, 1918.	The whole	Expired.
1919	III	The Motor Spirit (Duties) Amendment Act, 1919.	The whole	Repealing enactment. Spent.
1919	XII	The Poisons Act, 1919 ..	Section 10	Repealing provisions. Spent.
1919	XVIII	The Repealing and Amending Act, 1919.	Sections 3 and 4 and the Second Schedule.	Repealing provisions. Spent.
1920	IV	The Indian Census Act, 1920.	The whole	Expired.
1920	V	The Provincial Insolvency Act, 1920.	In section 69, the words "by the Court" where they occur for the second time.	Consequential on the amendment of section 70 by Act IX of 1926.
			In Schedule I, the entry relating to section 69.	
			Sub-section (*1*) of section 83 and Schedule III.	Repealing provisions. Spent.

Year.	No.	Short title.	Extent of Repeal.	Explanation.
		Acts of the Governor General in Council—concld		
1920	X	The Indian Securities Act, 1920.	Section 25	Repealing provision. Spent.
1920	XX	The Indian Army (Suspension of Sentences) Act, 1920.	Section 10 . .	Do.
1920	XXVIII	The Indian Patents and Designs (Temporary Rules) Amendment Act, 1920	The whole .	Expired
1920	XXX	The Rouble Note Act, 1920.	The whole .	Expired.
1920	XXXI	The Repealing and Amending Act, 1920.	Sections 3 and 4 . ..	Repealing provisions and savings. Spent.
			So much of the First Schedule as relates to Act XVII of 1914.	Due on proposed repeal of Schedule II of Act XVII of 1914.
			The Second Schedule ..	Repealing provisions. Spent
1920	XXXVI	The Indian Coinage (Amendment) Act, 1920.	The whole . ..	This Act has been virtually repealed by S. 2 of Act IV of 1927
1920	XXXVII	The Indian Army (Amendment) Act, 1920	Section 10 .	Repealing provision. Spent.
1920	XXXVIII	The Devolution Act, 1920.	In the First Schedule the entries relating to—	
			Act XIII of 1879 „ XIV of 1891 . . „ II of 1896 . „ VI of 1900 . „ VIII of 1901 „ XVI of 1903 . Regulation V of 1892 . Regulation I of 1896 . Bengal Act III of 1899 U P Act II of 1901 .. U P. Act III of 1906	These have been repealed
			Section 3 and the Second Schedule	Repealing provisions. Spent
1920	XLVII	The Imperial Bank of India Act, 1920	Section 34 and Schedule III.	Do.
1920	XLIX	The Auxiliary Force Act, 1920.	Section 36 and Schedule II.	Do.
		Acts of the Indian Legislature.		
1921	IV	The Import and Export of Goods (Amendment) Act, 1921.	The whole .	Expired.
1921	XI	The Indian Works of Defence (Amendment) Act, 1921.	Section 4 .	Repealing provisions Spent
1921	XVI	The Indian Penal Code (Amendment) Act, 1921	Section 4	Do.
1921	XVII	The Cattle trespass (Amendment) Act, 1921.	Section 3 .	Do
1922	II	The Indian Factories (Amendment) Act, 1922.	Section 33 and Schedule II Sub-section (3) of section 14.	Do This sub-section is now obsolete
1922	IV	The Special Laws Repeal Act, 1922.	The whole .	Spent.
1922	V	The Indian Criminal Law Amendment Repealing Act, 1922.	The whole . .	Repealing measure Spent.
1922	VII	The Indian Emigration Act, 1922.	Section 33	Repealing provisions Spent.
1922	XI	The Indian Income-tax Act, 1922.	Section 68 and the Schedule.	Do
1922	XII	The Indian Finance Act, 1922.	Sub-section (3) of section 1 Sub-section (2) of section 3. Sections 4, 7 and 8 Schedules II and III	Spent. Repealing and superseded provisions Spent.

Year.	No.	Short title.	Extent of Repeal.	Explanation.
		Acts of the Indian Legislature—contd.		
1923	IV	The Indian Mines Act, 1923.	Section 50 and Schedule ..	Repealing provisions. Spent.
1923	V	The Indian Boilers Act, 1923	Section 35 and Schedule ..	Do.
1923	VI	The Cantonments (House-Accommodation) Act, 1923.	Section 39 and Schedule ..	Do.
1923	XI	The Repealing and Amending Act, 1923.	Sections 3 and 4 and the Second Schedule	Repealing provisions. Spent.
1923	XII	The Criminal Law Amendment Act, 1923.	Sections 4, 8, 10, 20 and 26 ..	Repealing provisions. Spent.
1923	XVIII	The Code of Criminal Procedure (Amendment) Act, 1923	Sections 129 and 163 ..	Do.
1923	XIX	The Indian Official Secrets Act, 1923.	Section 16	Do.
1923	XXI	The Indian Merchant Shipping Act, 1923.	Section 296 and Schedule V.	Do.
1923	XXVIII	The Indigo Cess (Repealing) Act, 1923.	The whole	Repealing Act. Spent
1923	XXXVII	The Code of Criminal Procedure (Second Amendment) Act, 1923.	Section 6	Repealing provisions. Spent.
1924	II	The Cantonments Act, 1924.	Section 292 and Schedule VI.	Do.
1924	IV	The Central Board of Revenue Act, 1924	In the Schedule, the entry relating to Act II of 1896	This Act (II of 1896) has been repealed.
1924	VI	The Criminal Tribes Act, 1924.	Section 30 and the Second Schedule.	Repealing provisions. Spent.
1924	VII	The Repealing and Amending Act, 1924.	Sections 3, 4 and the Second Schedule.	Repealing provisions. Spent.
1924	VIII	The Sea-Customs (Amendment) Act, 1924.	The whole	Repealing enactment. Spent.
1925	III	The Workmen's Breach of Contract (Repealing) Act, 1925.	The whole	Do.
1925	IV	The Indian Soldiers (Litigation) Act, 1925.	Section 15	Do.
1925	XIII	The Indian Finance Act, 1925.	Sub-section (*3*) of section 1. Sections 2, 4, 6 and 7. Schedules II and III.	Sections 2 and 4 expired, and section 6 superseded, and section 7 rendered unnecessary.
1925	XIV	The Indian Tariff (Amendment) Act, 1925.	In the Schedule, entries Nos. 12, 13, 14 and 23.	Due on passing of Act III of 1927 which has superseded the items to which these entries relate.
1925	XIX	The Provident Funds Act, 1925.	Section 10 and Schedule ..	Repealing provisions. Spent.
1925	XXVII	The Opium (Amendment) Act, 1925.	Section 4	Do.
1925	XXXVI	The Indian Ports (Amendment) Act, 1925.	Sub-section (*2*) of section 2 .	Do.
1925	XXXVII	The Repealing and Amending Act, 1925	Sections 3 and 4 and the Second Schedule.	Repealing provisions. Spent.
1925	XXXIX	The Indian Succession Act, 1925.	Section 392 and Schedule IX.	Do.
1926	II	The Code of Criminal Procedure (Amendment) Act, 1926.	Section 2 ..	Do.

Year.	No.	Short title.	Extent of Repeal.	Explanation.
		Acts of the Indian Legislature—contd.		
1926	IV	The Guardians and Wards (Amendment) Act, 1926.	Sections 4 and 5	Repealing provisions. Spent.
1926	VII	The Indian Naturalization Act, 1926.	Section 15 and Schedule ..	Do.
1926	VIII	The Steel Industry (Amendment) Act, 1926.	The whole .. .	The principal Act (14 of 1924) has been repealed.
1926	XIX	The Indian Finance Act, 1926.	Sub-section (3) of section 1 ..	Spent.
			Sections 2 and 4	Expired.
			Section 3	Repealing provision. Spent.
			Section 5	Superseded by Act 5 of 1927.
1926	XXI	The Legal Practitioners (Fees) Act, 1926.	Section 6	Repealing provision. Spent.
1926	XXII	The Code of Civil Procedure (Second Amendment) Act, 1926.	Section 3	Do.
1926	XXX	The Negotiable Instruments (Interest) Act, 1926.	Section 3	Do.
1926	XXXIX	The Provincial Insolvency (Amendment) Act, 1926.	Section 7	Do
1927	III	The Steel Industry (Protection) Act, 1927.	Section 4 .. .	Do.
1927	X	The Repealing and Amending Act, 1927.	Sections 3 and 4 and the Second Schedule	Repealing provisions and savings. Spent.
		Acts made by the Governor General under section 67-B of the Government of India Act.		
1923	..	The Indian Finance Act, 1923.	Sub-section (3) of section 1 ..	Spent.
			Sections 4 and 6 .. .	Expired
			Section 5 .. .	Superseded by corresponding provision of the Indian Finance Act, 1924.
			Schedules II and III.	
1924	.	The Indian Finance Act, 1924.	Sub-section (3) of section 1 Sections 4, 5 and 6. Schedules II and III.	Spent and superseded.
		Regulations.		
1877	III	The Ajmer Laws Regulation, 1877.	Section 2 and Schedule I ..	Repealing provisions. Spent.
1887	X	The Upper Burma Stamps and Limitation Regulation, 1887.	In sub-section (2) of section 1, the word "and"; and sub-section (3) of the same section.	Commencement clause. Spent.
1889	III	The Upper Burma Land and Revenue Regulation, 1889.	Section 2	Repealing section. Spent.
1893	IX	The Ajmer Amending Regulation, 1893.	In sub-section (2) of section 1, the word "and"; and sub-section (3) of the same section.	Commencement clause Spent.
1895	IV	The Ajmer Village Sanitation Regulation, 1895.	In sub-section (2) of section 1, the word "and", and sub-section (3) of the same section	Do.
1896	V	The Chin Hills Regulation, 1896.	So much of the Schedule as relates to Regulation V of 1895.	Regulation V of 1895 has been repealed.
1898	III	The Upper Burma Land and Revenue Regulation (1889) Amendment Regulation, 1898.	In sub-section (2) of section 1, the word "and"; and sub-section (3) of the same section.	Commencement clause. Spent.
			Section 4.	Sub-section (3) of section 31 of Regulation III of 1889 which was amended by the section has been replaced by a new sub-section.

Year.	No.	Short title.	Extent of Repeal.	Explanation.
		Regulations—contd.		
1900	II	The Hazara (Upper Tanawal) Regulation, 1900.	In sub-section (*1*) of section 1, the word "and"; and sub-section (*2*) of the same section.	Commencement clause. Spent.
1901	IV	The Frontier Murderous Outrages Regulation, 1901.	In sub-section (*1*) of section 1, the word "and"; and sub-section (*2*) of the same section.	Do.
			Section 16	Repealing provision. Spent.
1901	VII	The North-West Frontier Province Law and Justice Regulation, 1901.	Sub-section (*3*) of section 1 ..	Commencement clause. Spent.
			Section 5 and Schedule III ..	Repealing provisions. Spent.
1903	II	The Peshawar Canals (Amendment) Regulation, 1903.	The whole	The principal Regulation has been repealed.
1908	III	The Sonthal Parganas Settlement (Amendment) Regulation, 1908.	Sections 3 and 6	Repealing sections. Spent.
1909	II	The North-West Frontier Province Law and Justice (Amendment) Regulations, 1909.	The whole	Repealing enactment. Spent.
1910	III	The Aden Arms (Sea-traffic) Regulation, 1910.	Section 14	Repealing provision. Spent.
1910	IV	The Sonthal Parganas Rural Police Regulation, 1910.	Section 26	Do.
1911	III	The Hazara Forest Regulation, 1911.	Section 58	Do.
1911	IV	The Coorg Land and Revenue (Amendment) Regulation, 1911.	Section 3	Do.
1913	II	The British Baluchistan Laws Regulation, 1913.	Section 6 and Schedule II ..	Do.
			So much of Schedule I as relates to—	
			Act XXX of 1852 ..	These Acts have been repealed.
			Act X of 1865	
			Act XXI of 1865 ..	
			Act XX of 1869 ..	
			Act II of 1874	
			Act XI of 1879	
			Act V of 1881	
			Act VI of 1882	
			Act XV of 1889 ..	
			Act XII of 1895 ..	
			Act IV of 1900	
			Act VII of 1901 ..	
			Act I of 1904	
			Act III of 1907 ..	
1913	III	The Angul Laws Regulation, 1913.	Section 75	Repealing provision. Spent.
			In the Schedule, the entries relating to—	
			Bengal Regulation X of 1804	These have been repealed.
			Act XI of 1857 ..	
			Act II of 1874	
			Act V of 1881	
			Act IX of 1897 ..	
			Act II of 1910	
1914	II	The Ajmer Repealing and Amending Regulation, 1914.	In section 1, the words "Repealing and".	Repealing provisions. Spent.
			Sub-section (*2*) of section 2.	
			Part II of the Schedule. ..	
1915	I	The Excise Regulation, 1915	Section 70 and Schedule ..	Repealing provisions. Spent.

Year.	No.	Short title.	Extent of Repeal.	Explanation.
		Regulations—concld.		
1916	I	The Arakan Hill District Laws Regulation, 1916.	So much of Schedule I as relates to—	
			Act XXX of 1852 ..	These Acts have been repealed.
			Act XII of 1882 ..	
			Act VI of 1884 ..	
			Act II of 1886 ..	
			Act XV of 1889 ..	
			Act XII of 1896 ..	
			Act II of 1910 ..	
			Section 15 and Schedule II ..	Repealing provisions. Spent.
1920	III	The Coorg Noxious Weeds (Repealing) Regulation, 1920	The whole	Repealing enactment. Spent.
1922	II	The Kachin Hill Tribes (Amendment) Regulation, 1922.	The whole	Repealing enactment. Spent.
1922	III	The Chin Hills (Amendment) Regulation, 1922.	The whole	Do.
1923	I	The Arakan Hill District Laws (Amendment) Regulation, 1923.	Sub-section (2) of section 1.	Commencement clause. Spent.
			Section 3.	Repealing clause. Spent.
1923	III	The North-West Frontier Province Law and Justice (Amendment) Regulation, 1923.	The whole	Repealing enactment. Spent.
1924	I	The North-West Frontier Pre-emption (Repealing) Regulation, 1924.	The whole	Do.
1925	I	The Burma (Frontier Districts) Criminal Justice Regulation, 1925.	Section 4	Repealing clause. Spent.
1926	I	The Laccadive Islands and Minicoy (Amendment) Regulation, 1926.	Sections 3 and 5	Do.
1926	IV	The North-West Frontier Province Law and Justice (Amendment) Regulation, 1926.	Sub-section (1) of section 5 ..	Do.
1926	IX	The Ajmer Courts Regulation, 1926.	Section 30 and Schedule ..	Do.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to repeal certain enactments which are spent or have otherwise become unnecessary or have ceased to be in force otherwise than by express specific repeal. It is the practice to remove from the Statute-book obsolete enactments from time to time and as a new edition of the Unrepealed General Acts is passing through the Press it is desirable that the necessary elimination should be made now Brief reasons for the proposed repeals are given in the fifth column of the Schedule annexed to the Bill.

W. T. M. WRIGHT.

The 15th August 1927.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Repeal certain enactments; and Annexture.

The Governor General has been pleased to accord the sanction required by clause (*iii*) of Section 67 (2) of the Government of India Act.

W. T. M. WRIGHT,

Secretary of the Legislative Assembly.

(*Mr. W. T. M. Wright, M.L.A.*)

H245LD—650—16-8-27—GIPS

[As introduced in the Legislative Assembly.]

BILL

Further to amend the Indian Divorce Act for a certain purpose.

WHEREAS it is expedient further to amend the Indian Divorce Act for the purpose hereinafter appearing; It is hereby enacted as follows :— IV of 1869.

1. This Act may be called the Indian Divorce (Amendment) Act, 1927.

Short title.

2. After section 17 of the Indian Divorce Act IV of 1869. the following section shall be inserted, namely :—

Insertion of new section 17A in Act IV of 1869.

"17A. The Governor General in Council may appoint for each High Court of Judicature established by Letters Patent an officer who shall, within the jurisdiction of the High Court for which he is appointed, have the like right of showing cause why a decree for the dissolution of marriage should not be made absolute or should not be confirmed, as the case may be, as is exercisable in England by the King's Proctor, and the Governor General in Council may make rules regulating the manner in which the right shall be exercised and all matters incidental to, or consequential on, such exercise."

Appointment of officer to exercise duties of King's Proctor.

STATEMENT OF OBJECTS AND REASONS.

Under sub-section (*4*) of section 1 of the Indian and Colonial Divorce Jurisdiction Act, 1926 (16 & 17 Geo. 5, Ch. 40), proceedings before a High Court in India, in exercise of the jurisdiction conferred by that Act, are to be conducted in accordance with rules made by the Secretary of State in Council of India with the concurrence of the Lord Chancellor. These rules are required to provide *inter alia* for conferring on such officials as may be appointed for the purpose within the jurisdiction of each High Court the like right of showing cause why a decree *nisi* should not be made absolute as is exercisable in England by the King's Proctor under sections 181 and 182 of the Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. 5, Ch. 49). These provisions apply in cases where the parties concerned are British subjects domiciled in England or in Scotland. The Bill proposes to make provision in the Indian Divorce Act for the appointment of an official to perform similar functions in respect of persons domiciled in India.

The 16th March, 1927.

A. P. MUDDIMAN.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

Further to amend the Indian Divorce Act, for a certain purpose; and Annexure.

(The Honourable Sir Alexander Muddiman.)

N 196LD—300—6-8-27—GIPS

[To be introduced in the Legislative Assembly.]

A

BILL

Further to amend the Code of Civil Procedure, 1908, for a certain purpose.

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1908, for the purpose hereinafter appearing; It is hereby enacted as follows:— V of 1908.

Short title.

1. This Act may be called the Code of Civil Procedure (Second Appeals) Act, 192 .

Amendment of Order XLII in the First Schedule to Act V of 1908.

2. In order XLII in the First Schedule to the Code of Civil Procedure, 1908,— V of 1908.

(*a*) in rule 1, before the words "The rules" the words "Subject to the provisions of this Order" shall be inserted; and

(*b*) after rule 1 the following rule shall be added, namely:—

Security for costs in certain second appeals.

"2. Where the decree from which a second appeal is preferred affirms the decision of the Court by which the original decree was passed, the High Court shall, unless it dismisses the appeal under the procedure prescribed in rule 11 of Order XLI, require the appellant to deposit, in cash or Government securities, security to such amount as the Court thinks fit for the costs of the appeal and shall not call upon the respondent to appear and answer the appeal until such security has been furnished, and, if such security is not furnished within such time as the Court orders, the Court shall reject the appeal:

Provided that the High Court may dispense with such security in any case in which it is of opinion that the decision from which the appeal is preferred is on the face of it contrary to law or some usage having the force of law."

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

STATEMENT OF OBJECTS AND REASONS.

In order to protect the interests of a respondent in a second appeal in the matter of recouping his costs, the Civil Justice Committee recommended that in every second appeal to the High Court the appellant should deposit in Court by way of security for the respondent's costs, in cash or in Government promissory notes, a definite sum being the amount of any costs awarded against him in the lower Courts *plus* the amount at which the respondent, if successful, could tax his pleader's fee under the High Court rules. The opinions of Local Governments and High Courts and of the authorities consulted by them vary from complete acceptance of the Committee's recommendation to complete rejection, but a considerable body of opinion is in favour of restricting the proposal to second appeals from concurrent judgments only, subject to the following conditions :—

(1) that the High Court should have power to dispense with security for costs when the judgment appealed from is on the face of it erroneous in law, or when a subsequent decision of the High Court or of the Privy Council has modified or altered the law ;

(2) that security should be required only on admission of the appeal under Order XLI of the Code of Civil Procedure ;

(3) that security should be limited to costs of the second appeal in the High Court ; and

(4) that security should be furnished only in cash or Government securities.

These restrictions appear to be desirable, and it is considered that the proposal in its restricted form will ensure sufficient protection to a respondent in a second appeal. The Bill gives effect to the proposal.

The 21st January, 1927.

ALEXANDER MUDDIMAN.

269 LD—[illegible]

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

Further to amend the Code of Civil Procedure, 1908, for a certain purpose; and Annexure.

(*The Hon'ble Sir Alexander Muddiman.*)

GIPD—269 LD—24-1-27—650

[As introduced in the Legislative Assembly.]

A

BILL

TO

Amend section 96 of the Code of Civil Procedure, 1908, for a certain purpose.

WHEREAS it is expedient to amend section 96 of the Code of Civil Procedure, 1908, for the purpose hereinafter appearing; It is hereby enacted as follows :— V of 1908.

Short title.

1. This Act may be called the Code of Civil Procedure (Amendment) Act, 192 .

Amendment of section 96, Act V of 1908.

2. To section 96 of the Code of Civil Procedure, 1908, the following sub-section shall be added, namely :— V of 1908.

"(4) No appeal shall lie from the decision of any Court the pecuniary limits of whose jurisdiction exceed two thousand rupees, or of any other Court specially designated in this behalf by the Local Government, determining under section 47 an objection by a judgment-debtor to the execution of a decree for money on the ground that the decretal amount has been paid or adjusted in whole or in part, if the amount claimed to have been paid or adjusted does not exceed, in the case of such first-mentioned Court, five hundred rupees, or, in the case of such other Court, two hundred rupees."

STATEMENT OF OBJECTS AND REASONS.

In paragraph 2 of Chapter 30 of their Report the Civil Justice Committee recommend *inter alia* that in cases where orders in execution of money decrees are passed under section 47 of the Code of Civil Procedure, 1908, on pleas by the judgment-debtor that payment or part payment had been made, there should be no appeal from such orders when passed by specially empowered Munsifs or corresponding officers up to a limit of Rs. 200, and by Subordinate Judges or corresponding officers up to a limit of Rs. 500. The Bill seeks to give effect to this recommendation by an amendment of section 96 of the Code. As the Code, however, does not provide for the classification of subordinate Courts, a limit of Rs. 2,000 has been adopted to indicate the difference between the two classes of Courts with final jurisdiction.

The 10th March 1927.

A. P. MUDDIMAN.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Amend section 96 of the Code of Civil Procedure, 1908, for a certain purpose; and Annexure.

(The Honourable Sir Alexander Muddiman.)

M193LD—300—6-8-27—GIPS

[To be introduced in the Legislative Assembly.]

A

BILL

TO

Repeal certain enactments.

WHEREAS it is expedient that certain enactments specified in the Schedule which are spent or have otherwise become unnecessary, or have ceased to be in force otherwise than by express specific repeal, should be expressly and specifically repealed ;

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Repealing Act, 192 .

Repeal of certain enactments.

2. The enactments specified in the Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

Savings.

3. The repeal by this Act of any enactment shall not affect any Act or Regulation in which such enactment has been applied, incorporated or referred to ;

and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing ;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office, or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognised or derived by, in or from any enactment hereby repealed ;

nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

THE SCHEDULE.

(*See section 2.*)

Year.	No.	Short title.	Extent of Repeal.	Explanation.
		Acts of the Governor-General in Council.		
1871	XXIII	The Pensions Act, 1871	So much of the Schedule as relates to Bengal Regulation I of 1804	Bengal Regulation I of 1804 was totally repealed by Act XXIX of 1871.
1872	I	The Indian Evidence Act, 1872.	So much of the Schedule as relates to Acts— XV of 1852 XIX of 1853 II of 1855 XXV of 1861.	These Acts have been repealed
1874	XIV	The Scheduled Districts Act, 1874	All entries in the Second Schedule except those relating to Act XXXVII of 1855 and Act X of 1857	The Scheduled Districts Act, 1874, has not been brought into force in the Sonthal Parganas where Act XXXVII of 1855 and Act X of 1857 are still in force Section 2 and the Second Schedule of the Scheduled Districts Act are spent except as regards these two Acts only. This necessitates the retention of section 2 and the Second Schedule in the form proposed
1874	XV	The Laws Local Extent Act, 1874	So much of the First Schedule as relates to Acts— XXVI of 1836 .. XIX of 1841 XX of 1847 XXX of 1852 .. VI of 1864 .. XXI of 1865 .. V of 1866 .. XV of 1869 .. I of 1870 ..	These Acts have been repealed.
			So much of the Second Schedule as relates to Acts— IX of 1846 .. XXI of 1855 .. VIII of 1856 .. XXVII of 1860, and to Madras Regulation V of 1816	Ditto. This Regulation has been repealed.
			In the Third Schedule, in the entry against Bombay Regulation II of 1827 the words "sections 47 to 54 (inclusive) and section 56 (pleaders)"	These sections have been repealed.
1882	XV	The Presidency Small Cause Court Act, 1882	So much of the First Schedule as relates to Act X of 1877	Act X of 1877 has been repealed
1891	XII	The Amending Act, 1891	So much of the Second Schedule as relates to Acts— I of 1859 .. X of 1865 .. V of 1881 .. XIV of 1883 ..	These Acts have been repealed.
1897	V	The Amending Act, 1897	So much of the Third Schedule as relates to Acts— XXXII of 1850, and XIX of 1871.	These Acts have been repealed.
1897	XIV	The Indian Short Titles Act, 1897.	So much of the Schedule as relates to Acts— XIX of 1841 .. XXVII of 1841 .. XX of 1847 .. XXVII of 1857 .. XXXIV of 1858 XXXV of 1858 .. XXXVI of 1858 .. XLVII of 1860 .. XVI of 1864 .. XVII of 1864 .. XXI of 1864 .. I of 1870 .. II of 1877 ..	These Acts have been repealed

Year.	No.	Short title.	Extent of Repeal.	Explanation.
		Acts of the Governor General in Council—contd.		
1897	XIV	The India Short Titles Act, 1897.	So much of the Schedule as relates to Acts—	
			I of 1884 ..	These Act have been repealed.
			XV of 1885 ..	
			XVIII of 1886 ..	
			VI of 1887 ..	
			X of 1888 ..	
			II of 1890 ..	
			XIX of 1890 ..	
			VII of 1894 ..	
			III of 1896 ..	
			VII of 1896 ..	
1898	XIII	The Burma Laws Act, 1898	In sub-section (*1*) of section 1, the word "and" and sub-section (*2*) of the same section.	Commencement clause Spent.
			So much of the First Schedule as relates to Acts—	
			XX of 1847 ..	These Acts have been repealed.
			XXX of 1852 ..	
			XXXV of 1858 ..	
			XXXVI of 1858 ..	
			XVI of 1863 ..	
			VI of 1864 ..	
			X of 1865 ..	
			XXI of 1865 ..	
			III of 1867 ..	
			V of 1869 ..	
			XV of 1869 ..	
			XX of 1869 ..	
			XXIII of 1870 ..	
			II of 1874 ..	
			V of 1875 ..	
			XI of 1876 ..	
			II of 1877 ..	
			XI of 1877 ..	
			XV of 1877 ..	
			I of 1879 ..	
			III of 1879 ..	
			XI of 1879 ..	
			XX of 1879 ..	
			XXI of 1879 ..	
			V of 1881 ..	
			VI of 1882 ..	
			XII of 1882 ..	
			XIV of 1882 ..	
			XVIII of 1882 ..	
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			XX of 1887 ..	
			V of 1888 ..	
			VI of 1889 ..	
			XI of 1889 ..	
			XIII of 1889 ..	
			V of 1893 ..	
			IX of 1895 ..	
			XII of 1895 ..	
			XII of 1896 ..	
			IX of 1897 ..	
			XII of 1897 ..	
			II of 1898 ..	
			So much of the Third Schedule as relates to—	
			Act XVIII of 1882 ..	These have been repealed.
			Act XXII of 1883 ..	
			Reg. V of 1887 ..	
			Reg. I of 1896 ..	
			So much of the Fourth Schedule as relates to—	
			Act III of 1892 ..	Ditto.
			Act XI of 1894 ..	
			Act XVIII of 1895 ..	
			Reg. I of 1891 ..	
			Reg. IV of 1894 ..	
1899	XIII	The Glanders and Farcy Act, 1899.	In sub-section (*1*) of section 2 the words "either generally or in respect of any local area."	These words were virtually repealed by Act XII of 1910.

Year.	No.	Short title.	Extent of Repeal.	Explanation.
		Acts of the Governor General in Council—contd.		
1901	XI	The Amending Act, 1901	In the First Schedule— In Part I— the entries relating to Madras Regulations VII of 1808 and V of 1816. In Part II— the entries relating to Acts— XXI of 1855 XXVII of 1857 XXX of 1865 In Part III— the entries relating to— Mad Act 8 of 1865 " " 5 of 1866 " " 2 of 1871 " " 7 of 1871 " " 3 of 1886 " " 3 of 1890 " " 1 of 1892 " " 2 of 1898 " " 1 of 1899 " " 3 of 1900	These Madras Regulations have been repealed. These Acts have been repealed. Ditto.
1900	X	The Indian Census Act, 1900.	The whole	Spent
1903	I	The Amending Act, 1903	In Part II of the first Schedule, the entry relating to Act VII of 1876	Act VII of 1876 has been repealed.
1910	XVI	The Indian Census Act, 1910	The whole	Spent.
1911	II	The Indian Patents and Designs Act, 1911.	Section 80	Repealing provision. Spent.
1911	VIII	The Indian Army Act, 1911.	Section 127 and Schedule	Ditto.
1911	X	The Prevention of Seditious Meetings Act, 1911.	Section 9	Ditto.
1913	II	The Official Trustees' Act, 1913.	Section 33 and Schedule	Ditto.
1913	III	The Administrator General's Act, 1913.	Section 60 and Schedule	Ditto.
1914	III	The Indian Copyright Act, 1914.	Section 15 and the Second Schedule.	Repeal of prior enactments. Spent
1914	IV	The Decentralization Act, 1914.	In Part I of the Schedule, the entries relating to— Act II of 1896 Act VI of 1900 Act VIII of 1901 Act XVI of 1903	These Acts have been repealed.
1914	VIII	The Indian Motor Vehicles Act, 1914.	Section 19 and Schedule	Repeal of prior enactments. Spent.
1914	IX	The Local Authorities Loans Act, 1914.	Section 9 and Schedule II	Ditto.
1914	X	The Repealing and Amending Act, 1914.	Sections 3 and 4 The Second Schedule	Repeal of prior enactments and savings. Spent.
1914	XVII	The Second Repealing and Amending Act, 1914.	Sections 3 and 4 The Second Schedule	Repeal of prior enactments. Spent.
1915	I	The Emergency Legislation Continuance Act, 1915.	The whole	Expired.

Year.	No.	Short title.	Extent of Repeal.	Explanation.
		Acts of the Governor General in Council—contd.		
1915	VI	The Indian Patents and Designs (Temporary Rules) Act, 1915.	The whole	Expired.
1915	XI	The Repealing and Amending Act, 1915.	Sections 3 and 4	Repeal of prior enactment and savings. Spent.
			The Second Schedule ..	
1915	XIV	The Enemy Trading Act, 1915.	The whole	Expired.
1916	III	The Foreigners' (Trial by Court-martial) Act, 1916.	The whole	Expired.
1916	IV	The Indian Tariff (Amendment) Act, 1916.	Section 5 and Schedule II ..	Repealing provisions. Spent.
1916	X	The Enemy Trading Act, 1916.	The whole	Expired.
1916	XI	The Import and Export of Goods Act, 1916.	The whole	Expired.
1916	XIV	The Indian Bills of Exchange Act, 1916.	The whole	Expired.
1917	I	The Inland Steam-Vessels Act, 1917.	Section 75 and Schedule II..	Repealing provisions. Spent.
1917	V	The Destruction of Records Act, 1917.	Section 6 and the Schedule..	Do
1917	IX	The Indian Bill of Exchange (Amendment) Act, 1917.	The whole	Expired.
1917	XXII	The Gold (Import) Act, 1917.	The whole	Expired.
1917	XXIV	The Repealing and Amending Act, 1917.	Sections 3 and 4	Repealing provisions and savings. Spent.
			The Second Schedule ..	
1918	XI	The Indian Army (Amendment) Act, 1918.	Section 26 and the Schedule	Repealing provisions. Spent.
1918	XIV	The Gold Coinage Act, 1918	The whole	Expired.
1918	XV	The Enemy Trading Orders (Validation) Act, 1918.	The whole	Expired.
1918	XVII	The Indian Non-ferrous Metal Industry Act, 1918.	The whole	Expired.
1919	III	The Motor Spirit (Duties) Amendment Act, 1919.	The whole	Repealing enactment. Spent.
1919	XII	The Poisons Act, 1919 ..	Section 10	Repealing provisions. Spent.
1919	XVIII	The Repealing and Amending Act, 1919.	Sections 3 and 4 and the Second Schedule.	Repealing provisions. Spent.
1920	IV	The Indian Census Act, 1920.	The whole	Expired.
1920	V	The Provincial Insolvency Act, 1920.	In section 69, the words "by the Court" where they occur for the second time.	Consequential on the amendment of section 70 by Act IX of 1926.
			In Schedule I, the entry relating to section 69.	
			Sub-section (*1*) of section 83 and Schedule III.	Repealing provisions. Spent.

Year.	No.	Short title.	Extent of Repeal.	Explanation.
		Acts of the Governor General in Council—contd		
1920	X	The Indian Securities Act, 1920.	Section 25	Repealing provision. Spent.
1920	XX	The Indian Army (Suspension of Sentences) Act, 1920.	Section 10 .. .	Do.
1920	XXVIII	The Indian Patents and Designs (Temporary Rules) Amendment Act, 1920.	The whole .	Expired
1920	XXX	The Rouble Note Act, 1920.	The whole .	Expired.
1920	XXXI	The Repealing and Amending Act, 1920.	Sections 3 and 4	Repealing provisions and savings Spent.
			So much of the First Schedule as relates to Act XVII of 1914.	Due on proposed repeal of Schedule II of Act XVII of 1914.
			The Second Schedule ..	Repealing provisions. Spent
1920	XXXVI	The Indian Coinage (Amendment) Act, 1920.	The whole	This Act has been virtually repealed by S. 2 of Act IV of 1927.
1920	XXXVII	The Indian Army (Amendment) Act, 1920	Section 10	Repealing provision. Spent
1920	XXXVIII	The Devolution Act, 1920.	In the First Schedule the entries relating to—	
			Act XIII of 1879 „ XIV of 1891 . . „ II of 1896 .. . „ VI of 1900 . „ VIII of 1901 . . „ XVI of 1903 . Regulation V of 1892 . Regulation I of 1896 Bengal Act III of 1899 .. U P. Act II of 1901 . U. P. Act III of 1906	These have been repealed
			Section 3 and the Second Schedule	Repealing provisions. Spent
1920	XLVII	The Imperial Bank of India Act, 1920.	Section 34 and Schedule III.	Do.
1920	XLIX	The Auxiliary Force Act, 1920.	Section 36 and Schedule II.	Do.
		Acts of the Indian Legislature		
1921	IV	The Import and Export of Goods (Amendment) Act, 1921.	The whole .. .	Expired.
1921	XI	The Indian Works of Defence (Amendment) Act, 1921	Section 4 .	Repealing provisions Spent.
1921	XVI	The Indian Penal Code (Amendment) Act, 1921.	Section 4	Do.
1921	XVII	The Cattle trespass (Amendment) Act, 1921.	Section 3 .. .	Do
1922	II	The Indian Factories (Amendment) Act, 1922.	Section 33 and Schedule II Sub-section (3) of section 14	Do This sub-section is now obsolete
1922	IV	The Special Laws Repeal Act, 1922	The whole .	Spent
1922	V	The Indian Criminal Law Amendment Repealing Act, 1922	The whole . .	Repealing measure. Spent
1922	VII	The Indian Emigration Act, 1922.	Section 33 .	Repealing provisions Spent.
1922	XI	The Indian Income-tax Act, 1922.	Section 68 and the Schedule.	Do
1922	XII	The Indian Finance Act, 1922.	Sub-section (3) of section 1. Sub-section (2) of section 3. Sections 4, 7 and 8 Schedules II and III.	Spent. Repealing and superseded provisions. Spent.

Year.	No.	Short title.	Extent of Repeal.	Explanation.
		Acts of the Indian Legislature—contd.		
1923	IV	The Indian Mines Act, 1923.	Section 50 and Schedule ..	Repealing provisions. Spent.
1923	V	The Indian Boilers Act, 1923.	Section 35 and Schedule ..	Do.
1923	VI	The Cantonments (House-Accommodation) Act, 1923.	Section 39 and Schedule ..	Do.
1923	XI	The Repealing and Amending Act, 1923.	Sections 3 and 4 and the Second Schedule.	Repealing provisions. Spent.
1923	XII	The Criminal Law Amendment Act, 1923.	Sections 4, 8, 10, 20 and 26 ..	Repealing provisions. Spent.
1923	XVIII	The Code of Criminal Procedure (Amendment) Act, 1923.	Sections 129 and 163 ..	Do.
1923	XIX	The Indian Official Secrets Act, 1923.	Section 16	Do.
1923	XXI	The Indian Merchant Shipping Act, 1923.	Section 296 and Schedule V.	Do.
1923	XXVIII	The Indigo Cess (Repealing) Act, 1923.	The whole	Repealing Act. Spent.
1923	XXXVII	The Code of Criminal Procedure (Second Amendment) Act, 1923.	Section 6	Repealing provisions. Spent.
1924	II	The Cantonments Act, 1924.	Section 292 and Schedule VI.	Do.
1924	IV	The Central Board of Revenue Act, 1924.	In the Schedule, the entry relating to Act II of 1896.	This Act (II of 1896) has been repealed.
1924	VI	The Criminal Tribes Act, 1924.	Section 30 and the Second Schedule.	Repealing provisions. Spent.
1924	VII	The Repealing and Amending Act, 1924.	Sections 3, 4 and the Second Schedule.	Repealing provisions. Spent.
1924	VIII	The Sea-Customs (Amendment) Act, 1924.	The whole	Repealing enactment. Spent.
1925	III	The Workmen's Breach of Contract (Repealing) Act, 1925.	The whole	Do.
1925	IV	The Indian Soldiers (Litigation) Act, 1925	Section 15	Do.
1925	XIII	The Indian Finance Act, 1925.	Sub-section (3) of section 1. Sections 2, 4, 6 and 7. Schedules II and III.	Sections 2 and 4 expired, and section 6 superseded, and section 7 rendered unnecessary.
1925	XIV	The Indian Tariff (Amendment) Act, 1925.	In the Schedule, entries Nos. 12, 13, 14 and 23.	Due on passing of Act III of 1927 which has superseded the items to which these entries relate.
1925	XIX	The Provident Funds Act, 1925.	Section 10 and Schedule ..	Repealing provisions. Spent.
1925	XXVII	The Opium (Amendment) Act, 1925.	Section 4	Do.
1925	XXXVI	The Indian Ports (Amendment) Act, 1925.	Sub-section (2) of section 2 ..	Do.
1925	XXXVII	The Repealing and Amending Act, 1925.	Sections 3 and 4 and the Second Schedule.	Repealing provisions. Spent.
1925	XXXIX	The Indian Succession Act, 1925.	Section 392 and Schedule IX.	Do.
1926	II	The Code of Criminal Procedure (Amendment) Act, 1926.	Section 2 ..	Do.

Year.	No.	Short title.	Extent of Repeal.	Explanation.
		Acts of the Indian Legislature—concld.		
1926	IV	The Guardians and Wards (Amendment) Act, 1926.	Sections 4 and 5	Repealing provisions. Spent.
1926	VII	The Indian Naturalization Act, 1926.	Section 15 and Schedule ,,	Do.
1926	VIII	The Steel Industry (Amendment) Act, 1926.	The whole	The principal Act (14 of 1924) has been repealed.
1926	XIX	The Indian Finance Act, 1926.	Sub-section (3) of section 1 ..	Spent.
			Sections 2 and 4	Expired
			Section 3	Repealing provision. Spent.
			Section 5	Superseded by Act 5 of 1927.
1926	XXI	The Legal Practitioners (Fees) Act, 1926.	Section 6 ,, ..	Repealing provision. Spent.
1926	XXII	The Code of Civil Procedure (Second Amendment) Act, 1926.	Section 3	Do.
1926	XXX	The Negotiable Instruments (Interest) Act, 1926.	Section 3	Do.
1926	XXXIX	The Provincial Insolvency (Amendment) Act, 1926.	Section 7	Do
1927	III	The Steel Industry (Protection) Act, 1927.	Section 4 ,, ..	Do.
1927	X	The Repealing and Amending Act, 1927.	Sections 3 and 4 and the Second Schedule.	Repealing provisions and savings. Spent.
		Acts made by the Governor General under section 67-B of the Government of India Act.		
1923	..	The Indian Finance Act, 1923	Sub-section (3) of section 1 ..	Spent.
			Sections 4 and 6 ..	Expired.
			Section 5 ,,	Superseded by corresponding provision of the Indian Finance Act, 1924.
			Schedules II and III. ,,	
1924	..	The Indian Finance Act, 1924.	Sub-section (3) of section 1 Sections 4, 5 and 6. Schedules II and III.	Spent and superseded.
		Regulations.		
1877	III	The Ajmer Laws Regulation, 1877.	Section 2 and Schedule I ..	Repealing provisions. Spent.
1887	X	The Upper Burma Stamps and Limitation Regulation, 1887.	In sub-section (2) of section 1, the word "and"; and sub-section (3) of the same section.	Commencement clause. Spent.
1889	III	The Upper Burma Land and Revenue Regulation, 1889.	Section 2	Repealing section. Spent.
1893	IX	The Ajmer Amending Regulation, 1893.	In sub-section (2) of section 1, the word "and"; and sub-section (3) of the same section.	Commencement clause Spent.
1895	IV	The Ajmer Village Sanitation Regulation, 1895.	In sub-section (2) of section 1, the word "and"; and sub-section (3) of the same section.	Do.
1896	V	The Chin Hills Regulation, 1896.	So much of the Schedule as relates to Regulation V of 1895.	Regulation V of 1895 has been repealed.
1898	III	The Upper Burma Land and Revenue Regulation (1889) Amendment Regulation, 1898.	In sub-section (2) of section 1, the word "and"; and sub-section (3) of the same section.	Commencement clause. Spent.
			Section 4.	Sub-section (3) of section 31 of Regulation III of 1889 which was amended by the section has been replaced by a new sub-section.

Year.	No.	Short title.	Extent of Repeal.	Explanation.
		Regulations—contd.		
1900	II	The Hazara (Upper Tanawal) Regulation, 1900.	In sub-section (*1*) of section 1, the word "and"; and sub-section (*2*) of the same section.	Commencement clause. Spent.
1901	IV	The Frontier Murderous Outrages Regulation, 1901.	In sub-section (*1*) of section 1, the word "and"; and sub-section (*2*) of the same section.	Do.
			Section 16	Repealing provision. Spent.
1901	VII	The North-West Frontier Province Law and Justice Regulation, 1901.	Sub-section (*3*) of section 1 ..	Commencement clause. Spent.
			Section 5 and Schedule III ..	Repealing provisions. Spent.
1903	II	The Peshawar Canals (Amendment) Regulation, 1903.	The whole	The principal Regulation has been repealed.
1908	III	The Sonthal Parganas Settlement (Amendment) Regulation, 1908.	Sections 3 and 6	Repealing sections. Spent.
1909	II	The North-West Frontier Province Law and Justice (Amendment) Regulations, 1909.	The whole	Repealing enactment. Spent.
1910	III	The Aden Arms (Sea-traffic) Regulation, 1910.	Section 14	Repealing provision. Spent.
1910	IV	The Sonthal Parganas Rural Police Regulation, 1910.	Section 26	Do.
1911	III	The Hazara Forest Regulation, 1911.	Section 58	Do.
1911	IV	The Coorg Land and Revenue (Amendment) Regulation, 1911.	Section 3	Do.
1913	II	The British Baluchistan Laws Regulation, 1913.	Section 6 and Schedule II ..	Do.
			So much of Schedule I as relates to—	
			Act XXX of 1852 ..	These Acts have been repealed.
			Act X of 1865	
			Act XXI of 1865 ..	
			Act XX of 1869 ..	
			Act II of 1874	
			Act XI of 1879	
			Act V of 1881	
			Act VI of 1882	
			Act XV of 1889 ..	
			Act XII of 1895 ..	
			Act IV of 1900	
			Act VII of 1901 ..	
			Act I of 1904	
			Act III of 1907 ..	
1913	III	The Angul Laws Regulation, 1913.	Section 75	Repealing provision. Spent.
			In the Schedule, the entries relating to—	
			Bengal Regulation X of 1804	These have been repealed.
			Act XI of 1857 ..	
			Act II of 1874	
			Act V of 1881	
			Act IX of 1897 ..	
			Act II of 1910	
1914	II	The Ajmer Repealing and Amending Regulation, 1914.	In section 1, the words "Repealing and".	Repealing provisions. Spent.
			Sub-section (*2*) of section 2.	
			Part II of the Schedule. ..	
1915	I	The Excise Regulation, 1915	Section 70 and Schedule	Repealing provisions. Spent.

Year.	No.	Short title.	Extent of Repeal.	Explanation.
		Regulations—concld.		
1916	I	The Arakan Hill District Laws Regulation, 1916.	So much of Schedule I as relates to—	
			Act XXX of 1852 ..	These Acts have been repealed.
			Act XII of 1882 ..	
			Act VI of 1884 ..	
			Act II of 1886 ..	
			Act XV of 1889 ..	
			Act XII of 1896 ..	
			Act II of 1910 ..	
			Section 15 and Schedule II ..	Repealing provisions. Spent.
1920	III	The Coorg Noxious Weeds (Repealing) Regulation, 1920.	The whole	Repealing enactment. Spent.
1922	II	The Kachin Hill Tribes (Amendment) Regulation, 1922.	The whole	Repealing enactment. Spent.
1922	III	The Chin Hills (Amendment) Regulation, 1922.	The whole	Do.
1923	I	The Arakan Hill District Laws (Amendment) Regulation, 1923.	Sub-section (2) of section 1.	Commencement clause. Spent.
			Section 3.	Repealing clause. Spent.
1923	III	The North-West Frontier Province Law and Justice (Amendment) Regulation, 1923.	The whole	Repealing enactment. Spent.
1924	I	The North-West Frontier Pre-emption (Repealing) Regulation, 1924.	The whole	Do.
1925	I	The Burma (Frontier Districts) Criminal Justice Regulation, 1925.	Section 4	Repealing clause. Spent.
1926	I	The Laccadive Islands and Minicoy (Amendment) Regulation, 1926.	Sections 3 and 5	Do.
1926	IV	The North-West Frontier Province Law and Justice (Amendment) Regulation, 1926.	Sub-section (*1*) of section 5 ..	Do.
1926	IX	The Ajmer Courts Regulation, 1926.	Section 30 and Schedule ..	Do.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to repeal certain enactments which are spent or have otherwise become unnecessary or have ceased to be in force otherwise than by express specific repeal. It is the practice to remove from the Statute-book obsolete enactments from time to time and as a new edition of the Unrepealed General Acts is passing through the Press it is desirable that the necessary elimination should be made now. Brief reasons for the proposed repeals are given in the fifth column of the Schedule annexed to the Bill.

W. T. M. WRIGHT.

The 15th August 1927.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Repeal certain enactments; and Annexure.

The Governor General has been pleased to accord the sanction required by clause (*iii*) of Section 67 (2) of the Government of India Act.

W. T. M. WRIGHT,

Secretary of the Legislative Assembly.

(*Mr. W. T. M. Wright, M.L.A.*)

H245LD—650—16-8-27—GIPS

[To be introduced in the Legislative Assembly.]

A

BILL

TO

Make provision to enable volunteer police forces to be constituted temporarily and employed locally for the purpose of preserving the public peace and protecting persons and property, and to define the powers and duties of such police.

WHEREAS it is expedient to make provision to enable volunteer police forces to be constituted temporarily and employed locally for the purpose of preserving the public peace and protecting persons and property, and to define the powers and duties of such police; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (*1*) This Act may be called the Volunteer Police Act, 192 .

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(*3*) The Local Government may, by notification in the local official Gazette, direct that this Act shall come into force in the province, or any part thereof specified in the notification, on such date as may be so specified.

Interpretation.

2. (*1*) In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "district" means any area which is a district for the purposes of the Code of Criminal Procedure, 1898; V of 1898.

(*b*) "prescribed" means prescribed by rules made under this Act; and

(*c*) "Superintendent of Police" means the chief officer of police in a district other than a Presidency-town or the Rangoon Town District.

(*2*) In the Presidency-towns and the Rangoon Town District, the powers and duties under this Act of the District Magistrate and of the Superintendent of Police shall be exercised by the Commissioner of Police and references to those officers shall be construed as references to the Commissioner of Police.

Constitution of district volunteer police force.

3. (*1*) The District Magistrate of any district may, for the better preservation of the public peace and protection of the inhabitants of, and property in, the district, direct the constitution, for such period as he may fix, of a volunteer police force for the district or any part thereof and call for volunteers therefor in such manner as he thinks fit.

(*2*) The District Magistrate or, in any district other than a Presidency-town or the Rangoon Town District, a Magistrate authorised by him in this behalf, may appoint to the volunteer police force any person fit and willing to be appointed

thereto and assign to him any rank in the volunteer police force not superior to that of an inspector:

Provided that, in a district other than a Presidency-town or the Rangoon Town District, no person shall be appointed to the volunteer police force or have any rank assigned to him therein save on the recommendation of, or with the concurrence of, the Superintendent of Police.

(3) Every police officer duly appointed to the volunteer police force shall receive on his appointment a certificate in the prescribed form signed by the District Magistrate, which shall entitle him to exercise all the powers and functions and have all the privileges of a volunteer police officer under this Act.

(4) The District Magistrate may, from time to time, extend the period fixed under sub-section (1) and, notwithstanding that the period so fixed or any period by which it has been extended has not expired, may at any time order that the volunteer police force be disbanded.

Duties of volunteer police.

4. A member of the volunteer police force shall not be employed otherwise than in the district in which he has been appointed and for the purpose of preserving the public peace and protecting the inhabitants of, and property in, that district or, where the force has been constituted for a part only of the district, that part, and no volunteer police officer shall be required to take any part in the investigation of any offence or the prosecution of any person for an offence or to perform any duty other than such as the Local Government may by rules made under this Act prescribe as a duty ancillary to the purposes aforesaid or to any of them.

Powers of volunteer police.

5. Every volunteer police officer shall, for the purposes of the execution of his duties as such police officer, have all the powers, privileges and protection of a regular police officer appointed under the Police Act, 1861, or any other law for the time being in force in the district regulating the powers of the regular police force employed therein.: V of 1861.

Provided that no volunteer police officer not expressly empowered in this behalf by the Superintendent of Police shall exercise control over, or be entitled to issue orders to, any regular police officer or have any of the powers of an officer in charge of a police-station.

Control.

6. Every volunteer police officer shall, in the execution of his duty, act under the direction and control of the Superintendent of Police of the district in which he is appointed, and shall be bound to carry out all lawful orders of any volunteer police officer superior to him in rank, and of any regular police officer to whom he is, under the orders of the Superintendent of Police, subordinate:

Provided that no volunteer police officer shall be subordinate to, or in any way subjected to the control of, any regular police officer inferior in rank to a sub-inspector, unless such regular police officer is in charge of a police-station.

Regulations.

7. The Superintendent of Police may, subject to the control of the District Magistrate, make regulations to provide for the organisation, training and equipment of the volunteer police force.

Power to resign.

8. Any volunteer police officer may resign his office after giving to the Superintendent of Police such notice as may be prescribed.

Power to promote, reduce, discharge or dismiss

9. The Superintendent of Police may, at his discretion, promote to any rank not superior to that of an inspector, or reduce in rank, discharge or dismiss, any volunteer police officer, and any volunteer police officer so discharged or dismissed shall deliver up to the Superintendent of Police or such authority as the Superintendent of Police may appoint the certificate issued to him under section 3 and his equipment.

Penalties.

10. Every volunteer police officer who is guilty of any violation of duty or wilful breach or negligence of any rule, regulation or lawful order made by any competent authority, or who withdraws himself from the duties of his office without having given the prescribed notice of his intention to resign therefrom or otherwise without the permission of a competent authority or refuses to give up his certificate or equipment when discharged or dismissed, shall be punishable, on conviction by a Presidency Magistrate or Magistrate of the first class, with fine which may extend to one hundred rupees.

Allowances and compensation.

11. (*1*) Every volunteer police officer shall be entitled to an allowance on account of expenses necessarily incurred in the execution of his duty and, if without any default on his own part he contracts any illness or sustains any injury in the execution of his duty, he, or, if he dies from the effect of an illness or injury so contracted or sustained, his dependants, shall be entitled to compensation on such scale as may be prescribed.

(*2*) If any question arises as to the amount of the allowance to be granted to a volunteer police officer in respect of expenses incurred in the execution of his duty, it shall be referred to the District Magistrate, whose decision shall be final and shall not be questioned in any Court.

Control of Local Government.

12. All powers and duties under this Act of the District or any other Magistrate or of the Superintendent of Police shall be respectively exercised and performed subject to any general or special orders of the Local Government.

Power to makes rules.

13. The Local Government may make rules consistent with this Act to provide for all or any of the following matters, namely :—

(*a*) the form of certificate to be issued to members of a volunteer police force under section 3 ;

(*b*) the duties which volunteer police officers may be required to perform under this Act ;

(*c*) the allowances and scales of compensation payable to volunteer police officers or their dependants under section 11 ; and

(*d*) any other matter which is to be or may be prescribed or in respect of which the Local Government considers that provision should be made to give effect to this Act.

STATEMENT OF OBJECTS AND REASONS.

The Government of India have had under consideration the provision of means for employing men of good will, on suitable occasions and under suitable conditions, in the preservation of law and order. It has been represented to them that not enough has been done to enable citizens of this country to assist the cause of the public peace, to which, it is suggested, they are less indifferent than is commonly considered the case. Accordingly, with a view to encouraging the growth of a civic sense, Government have in the Bill devised means of enabling the public to co-operate if they so desire with the regular police force.

2. Occasions have arisen in the past when the police force in districts has been subjected to almost intolerable strain or even reduced to a state of exhaustion. The possibility of the recurrence of such occasions in the future cannot be disregarded, and Government, therefore, while attaching importance to the educational value of co-operation by private citizens in assisting in the maintenance of law and order, desire also to provide for a material accession of strength as occasion may require and the good will of citizens may facilitate.

3. The Bill, therefore, empowers District Magistrates in those provinces in which the Local Government may have brought it into force, and under the general and special control of that Government, to constitute temporary volunteer police forces for use within the district. It also enables similar action to be taken in Presidency-towns. It is necessary to proceed by way of legislation in order to invest volunteer police officers with statutory powers, duties and privileges.

4. The volunteer character of the force is secured by provisions for appointment of only such persons as are fit and willing to be appointed, and it will be maintained by the provision for voluntary resignation, subject to due notice. In order to throw the force open to all classes in the community, middle-aged and young, educated and uneducated, the Bill provides for the entertainment of police officers of various ranks and not merely constables. All appointments will be honorary, but provision is made for allowances for out-of-pocket expenses, and for compensation for illness or injury.

5. The purposes for which the force will be entertained are the preservation of the public peace, the protection of the inhabitants and the security of property in the part of the country where it is appointed. The duties of volunteer police officers will be only those which are strictly ancillary to these purposes, and will not include investigation or prosecution. In the discharge of these duties the volunteer police will have the powers, privileges and protection of a regular police officer appointed under the Police Act, 1861

6. The scheme to which the Bill gives shape contemplates that the volunteer force should not only include rank and file, but should also find its own officers. It is nevertheless of the essence of the scheme in its educational aspect, and of prime importance for administrative purposes that the force should be closely co-ordinated with the regular police and should be controlled by professional officers. It is proposed to effect these objects by placing the force under the direction and control of the Superintendent of Police and by subjecting every volunteer police officer to the lawful orders of any volunteer police officer superior to him in rank and of any regular police officer to whom he is, under the orders of the Superintendent of Police, subordinate. But the members of the force will not be subject to the control of any subordinate officer of the regular police lower in rank than an officer in charge of a police station.

Provisions regarding discipline are as simple as possible. Departmental punishments will be limited to reduction in rank, discharge or dismissal. Otherwise discipline will be maintained by the imposition of a fine on conviction at a judicial trial.

Dated 23rd March, 1927.

ALEXANDER MUDDIMAN.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Make provision to enable volunteer police forces to be constituted temporarily and employed locally for the purpose of preserving the public peace and protecting persons and property, and to define the powers and duties of such police; and Annexure.

The Governor General has been pleased to accord the sanction required by clause i) of section 67(2) of the Government of India Act.

L. GRAHAM,

Secy. of the Legislative Assembly.

(*The Honourable Sir Alexander Muddiman.*)

GIPD—808 LD—24-3-27—650.

[As introduced in the Legislative Assembly.]

A

BILL

TO

Regulate and improve the Law Reports.

WHEREAS it is expedient to diminish the multitude and expenses of the Law Reports published in India and to improve their quality and to regulate their publications; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (*1*) This Act may be called the Indian Law Reports Act, 192 .

(*2*) It extends to the whole of British India.

(*3*) It shall come into force on the.....

Definition.

2. "Authorised reports" means and includes reports of law cases published by, or under the authority of, the Government of India, or any Provincial Government, or the Court deciding the cases reported, or a Bar Council.

Authority given to only authorised reports.

3. No Court shall allow to be cited, or itself refer to, the report of any case decided after the coming into force of this Act other than a report published in the authorised reports.

Authority of judicial decisions.

4. Nothing herein contained shall be construed to give to any judicial decision any further or other authority than it would have had if this Act had not been passed.

Repeal.

5. The Indian Law Reports Act, 1875, is hereby repealed. XVIII of 1875.

STATEMENT OF OBJECTS AND REASONS.

The ever increasing number of Law Reports in India stands in need of check and proper regulation. All sorts of law journals and reports, good, bad and indifferent, are issued from different places. Mostly the same rulings are sooner or later published in different publications. Sometimes rulings which have ceased to be operative by the force of a subsequent ruling or change of law are published to swell the volume of reports, or to bring them up to the stipulated number of pages. With the same object numerous pages dealing with mere facts which have no bearing on the legal aspect of the case are also published. Sometimes rulings published in one journal are published in another after several months, thus causing confusion and embarrassment. The number and volume of Law Reports is becoming simply scandalous and requires check and regulation.

The 15th November, 1926.

MUHAMMAD YAKUB.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Regulate and improve the Law Reports; and Annexure.

(*Maulvi Muhammad Yakub, M.L.A.*)

M183LD—250—6-8-27—GIPS

[As introduced in the Legislative Assembly.]

A

BILL

Further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898.

WHEREAS it is expedient to make better provision for the protection of children against unlawful intercourse with them during their infancy; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Children's Protection Act, 192 .

Amendment of section 375, Act XLV of 1860.

2. In section 375 of the Indian Penal Code (hereinafter referred to as the said Code), in clause *Fifthly*, for the word "fourteen" the word "sixteen" shall be substituted. XLV of 1860.

Amendment of section 376, Act XLV of 1860.

3. In section 376 of the said Code, the words beginning with "unless the woman raped" and ending with "or with fine, or with both" shall be omitted.

Insertion of new section 376A in Act XLV of 1860.

4. After section 376 of the said Code the following section shall be inserted, namely :—

Illicit married intercourse.

"376A. Whoever has sexual intercourse with his own wife, the wife not being under thirteen years of age and being under fourteen years of age shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Amendment of Schedule II, Act V of 1898.

5. (*1*) In Schedule II to the Code of Criminal Procedure, 1898, in the entry relating to section 376 of the Indian Penal Code— V of 1898. XLV of 1860.

(*a*) the first entry, namely :—

"376	Rape — If the sexual intercourse was by a man with his own wife not being under 12 years of age.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Chief Presidency Magistrate or District Magistrate."

shall be omitted; and

(*b*) in the second entry for the figures "12" the figures "13" shall be substituted.

(*2*) In the same Schedule after the entries relating to section 376 the following entry shall be inserted, namely:—

"376A"	Illicit married intercourse by husband with wife not under 13 and under 14 years of age.	Shall not arrest without warrant.	Summons.	Bailable.	Not compoundable	Imprisonment of either description for 2 years, or with fine, or both.	Presidency Magistrate or Magistrate of the first class."

STATEMENT OF OBJECTS AND REASONS.

In the last Assembly I had given notice of my intention to introduce a Bill designed to protect married and unmarried girls below the age of 15. Subsequently, the Government introduced a similar Bill affording protection to girls below the ages of 13 and 14 within and outside marital relations. During the course of the discussion on this Bill the Hon'ble the Home Member gave an undertaking in the Assembly to circulate those clauses of my Bill which were not covered by the Government Bill. These clauses provided for a new offence of unlawful intercourse.

I have in this Bill sought to protect married girls between 13 and 14 and unmarried girls below 16, prescribing a smaller penalty in the former case. My object in protecting married girls up to 14 is this—

(*a*) It is a fact now sufficiently established that a majority of girls do not attain puberty in this country before that age; and the mere appearance of puberty is not the same thing as the attainment of sufficient physical development to enable them to endure the travails of maternity;

(*b*) Premature cohabitation is responsible for the appallingly high death rate in the case of infants before they are even 12 months old; which in several provinces averages 33 per cent.

(*c*) It weakens the offspring that survive, weakens the mother and is responsible for the high death rate and low vitality of the people addicted to this evil;

(*d*) Early cohabitation is equally detrimental to the married couple; the husband suffers in his education, and so does the wife; while the family has to mourn frequent bereavement and suffers from the illness of its members.

In the case of unmarried girls the last Assembly had no objection to extending the protection to all minors even up to the attainment of their majority.

It is hoped that public opinion is now sufficiently aroused to the evils of early cohabitation and my Bill, if passed, will I hope act as a salutary deterrent upon persons who still remain addicted to a practice highly detrimental to the growth of a healthy and vigorous nation.

DELHI;

The 19th February, 1927.

H. S. GOUR.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

BILL

Further to amend the Indian Penal Code and the Code of Criminal Procedure, 1898; and Annexure.

(Sir Hari Singh Gour, M.L.A.)

M66LD—250—6-8-27—GIPS

[As introduced in the Legislative Assembly.]

A

BILL

TO

Limit the interest charged on loans of various kinds in British India, and to bring the law in conformity to the needs of the people.

WHEREAS it is expedient to limit the interest charged on loans of various kinds in British India, and to bring the law in conformity to the needs of the people; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (*1*) This Act may be called the Interest Act, 19 .

(*2*) It extends to the whole of British India.

(*3*) It shall come into force on.....

Amount of interest.

2. No creditor, whether of a secured or unsecured loan, shall be entitled to recover interest, either payable at one time or by instalments, exceeding the principal amount originally lent or due at the date of suit, whichever is less.

Powers of Court to grant relief in case of excessive interest.

3. Notwithstanding anything hereinbefore said, where in any suit to which this Act applies, whether heard *ex parte* or otherwise, the Court has reason to believe—

(*a*) that the interest is excessive, and

(*b*) that the transaction was, as between the parties thereto, substantially unfair,

the Court may exercise all or any of the following powers, namely, may:—

(*i*) reopen the transaction, take an account between the parties and relieve the debtor of all liability in respect of any excessive interest;

(ii) notwithstanding any agreement purporting to close previous dealings and to create a new obligation, reopen any account already taken between them and relieve the debtor of all liability in respect of any excessive interest and, if anything has been paid or allowed in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;

(iii) set aside either wholly or in part or reverse or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem fit.

Principal in case of bonds executed for arrears.

4. In the case of a bond executed for arrears or principal and interest due on a prior bond, the principal for purposes of this Act is the principal of the prior bond.

Savings.

5. This Act shall not apply to usufructuary mortgages.

Repeals.

6. Provisions of other laws and regulations, so far as they are inconsistent with the provisions of this Act, are hereby repealed.

STATEMENT OF OBJECTS AND REASONS.

The Bill is designed to prevent the accumulation of interest for long periods and thereby save many a debtor from the clutches of covetous and clever creditors.

There is a rule in Hindu Law which is called *Damdoopat*. It is in operation in the Bombay Presidency, Berar and the town of Calcutta, but it is limited in its scope and is applicable only to Hindus. This rule cannot be taken as a purely religious law of the Hindu community; it is laid down only to safeguard the debtors' interests as the Hindu Law sanctions the taking of interest on loans. The Muslim *Shariat* has forbidden to take interests at all and so there could be no occasion for such emergency. Under the circumstances of the heterogenous society of India, it is quite justifiable and necessary that the present Bill be passed for the benefit of a debtor irrespective of the caste, creed and colour. The present Bill is wider in its scope and is more in conformity to the incessant demands and needs of the people of India, and the creditor will not be able to ruin his debtor with his waiting game.

The 15th November, 1926.

The words "by instalments" in clause 2 are added in order to safeguard against the contrivance on the part of the creditors to nullify the effect of the provisions of the Bill by recovering interest on a system of instalments. The clause 3 is embodied to prevent the creditors from making injudicious bargains and is taken from the Usurious Loans Act of 1918.

The Interest Act of 1839 (Act XXXII) and the Usury Repeals Act of 1855 (XXVIII), which are absolutely inconsistent with both the Hindu and Muhammadan Laws on the subject, were passed at a time when the Councils were devoid of Indian representation by their own people and have proved ruinous.

The Usurious Loans Act of 1918, although it gives power to Courts to curtail the rate of interest under certain circumstances and which is also not exercised duly, yet provides no remedy to stop accumulation beyond a certain limit.

MUHAMMAD YAKUB.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Limit the interest charged on loans of various kinds in British India, and to bring the law in conformity to the needs of the people ; and Annexure.

(*Maulvi Muhammad Yakub, M.L.A.*)

M180LD—200—5-8-27—GIPS

[As introduced in the Legislative Assembly.]

A

BILL

Further to amend the Code of Civil Procedure, 1908.

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1908; It is hereby V of 1908.
enacted as follows:—

Short title.

1. This Act may be called the Code of Civil Procedure (Amendment) Act, 192 .

Amendment of section 80, Act V of 1908.

2. To section 80 of the Code of Civil Procedure, 1908, the following *Exceptions* shall be added, namely:— V of 1908.

" *Exception I.*—Where, in the opinion of the Court, irreparable injury might be caused to the plaintiff, if the notice required by the section is insisted upon as a preliminary to the entertainment of the suit, the Court may entertain the suit without such preliminary notice.

Exception II.—Where in any suit the Court directs the Secretary of State for India in Council or a public officer to be added as a party to the suit under Order I, rule 10, the provisions of this section shall not apply, and it shall be sufficient to allow two months' time for the appearance of the Secretary of State for India in Council or such public officer. "

STATEMENT OF OBJECTS AND REASONS.

NOTE ON EXCEPTION I.

Under section 80 of the Code of Civil Procedure, and the corresponding section 424 of the old Code, a distinction has been drawn between suits against the Secretary of State for India in Council, and a suit against a public officer, in respect of any act purporting to be done by such public officer in his official capacity. In the former case the provisions of the section regarding notice were held to be imperative in all classes of suits, whereas in the latter case distinction was drawn, so as to make the notice imperative in certain kinds of suits, for example, suits founded upon tort, and notice was held to be unnecessary in certain other kinds of suits, for example, suits founded on contracts or suits for the purpose of obtaining an injunction. But in 39 M. L. J. 152, their Lordships of the Madras High Court hold that no such distinction can be drawn and that in all cases, whether against the Secretary of State or against a public officer, notice is necessary in all kinds of suits. In holding such a view his Lordship Sadasiva Iyer, J. suggested that the Legislature may be moved to frame an *Exception* to section 80, Code of Civil Procedure. This Bill is intended to set at rest the conflicting decisions of the various High Courts and is in pursuance of his Lordship's suggestion.

NOTE ON EXCEPTION II.

It often happens that a plaintiff brings a suit in the *bona fide* belief that he can get his remedy against a private individual whom he has included as a defendant, and the defendant in such a suit raises the plea that the Secretary of State or a public officer is a necessary party to the suit. In such suits, if the Court orders under Order I, rule 10, that the Secretary of State or the public officer must be brought on record, the plaintiff is bound to amend the plaint by bringing the Secretary of State or public officer on the record. In such cases when the Secretary of State or the public officer is brought on record he raises the technical plea that section 80 is a bar to the maintainability of the suit itself. Thus it works a great hardship on the plaintiff. The object of section 80 is sufficiently served by allowing two months' time in the summons itself for the appearance of the Secretary of State or the public officer.

The 20th December 1926.

C. DURAISWAMI AIYANGAR.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

Further to amend the Code of Civil Procedure, 1908; and Annexure.

(*Mr. C. Duraiswami Aiyangar, M.L.A.*)

M135LD—250—6-8-27—GIPS

[As introduced in the Legislative Assembly.]

A

BILL

Further to amend the Indian Penal Code.

WHEREAS it is expedient further to amend the Indian Penal Code; It is hereby enacted as follows:— XLV of 1860.

Short title and commencement.

1. (*1*) This Act may be called the Indian Penal Code (Amendment) Act, 192 .

(*2*) It shall come into force immediately.

Amendment of section 141, Act XLV of 1860.

2. In section 141 of the Indian Penal Code,— XLV of 1860.

(*i*) for clause "*Third*" the following clause shall be substituted, namely:—

"*Third.*—To commit any offence punishable under Chapters XVI and XVII";

(*ii*) in clause "*Fourth*", for the words "to enforce any right or supposed right" the words "to enforce or defend any right to which a person is not entitled" shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

The Bill is intended to remove the redundancy and ambiguity in two clauses of section 141 of the Indian Penal Code and to set at rest the sharp conflict of decisions between the various High Courts consequent thereupon. In the ensuing Notes on Clauses, reasons are given in support of the amendment.

The 10th December 1926.

H. S. GOUR.

NOTES ON CLAUSES.

Clause 3 (1).—This clause declares an assembly to be unlawful if its common object is "to commit any mischief or criminal trespass, or other offence." Do the words "or other offence" mean *ejusdem generis*? If so, an assembly to commit murder, theft and other offences against the person and property punishable in Chapters XVI and XVII would be excluded. But this was certainly not the intention. On the other hand, if the words "or other offence" include an offence not only punishable under the Penal Code, but also under the special or local law, with imprisonment for at least six months (*see* s. 40), then the sense is obviously too wide. I have elsewhere traced the history of this clause which I have amended in the Bill to mean what the Legislature had really intended (1 Penal Law, 3rd Ed., p. 758, para. 1274).

Clause 3 (2).—This is an important clause and its inapt concluding wording has given rise to a crop of cases. It declares an assembly unlawful if its common object is "to enforce any right or supposed right". The meaning of these words is not clear. In the first place, "any right" includes "a supposed right". Suppose, however, that the two are intended to contrast a real from an imaginary right, then does it prevent the enforcement of a real right by the use of force? If so, the clause contravenes the general exceptions enacted in sections 96—106 which presumably qualify it. The two parts of the Code are really contradictory and it has led to a sharp conflict in the decided cases, reference to which will make this note too long. I have, however, commented on it at greater length elsewhere (1 Penal Law, 3rd Ed., pp. 759—764, paragraphs 1275—1284), and my reasons there given must be my justification for drafting this Bill. I do not consider the retention of "supposed right" happy. For, when a person has no right at all, his supposition is a mere pretext and it has no existence in the eye of the law. The clause was really intended to imply that a person shall not enforce or defend his right to which he is not legally entitled by the use of force. On the other hand, if he has a legal right, its enforcement is legal and safeguarded by the general exceptions (sections 96—106). This is intended to be clarified in the clause as altered in the Bill.

H. S. GOUR.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

Further to amend the Indian Penal Code, and Annexure.

(*Sir Hari Singh Gour, M.L.A.*)

M186LD—250—6-8-27—GIPS

[As introduced in the Legislative Assembly.]

A

BILL

Further to amend the Inland Steam Vessels Act, 1917.

WHEREAS it is expedient further to amend the Inland Steam Vessels Act, 1917; It is hereby I of 1917. enacted as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Inland Steam Vessels (Amendment) Act, 1927.

(*2*) It shall come into force on the first day of January, 1928.

Insertion of new sections 54A and 54B in Act I of 1917.

2. In Chapter VI of the Inland Steam Vessels Act, 1917, after section 54, I of 1917. the following sections shall be inserted, namely:—

Maximum and minimum freights and fares to be fixed.

"54A. The Governor General in Council may, by notification in the Gazette of India, prescribe the maximum and minimum rates of freights and fares which it shall be lawful for the owner of an inland steam vessel to charge for the conveyance of goods and passengers.

Advisory Committees.

"54B. The Local Government may make rules for the appointment of Advisory Committees to advise the owner of an inland steam vessel on questions affecting the interests of passengers, and may prescribe by rules the constitution and functions of such Committees."

STATEMENT OF OBJECTS AND REASONS.

The control exercised by Government over Inland steam vessels carrying on goods and passenger service in this country does not extend to fixing the rates at which they can levy charges on the public. Virtually in the position of monopolists, the inland steamer organisations enjoy unfettered freedom in this matter. In Bengal and Assam where they supply very considerable facilities for transport, their charges are considered to be unduly high. There has been for some time a good deal of local public agitation against this state of things, but to no effect. It seems reasonable that, when Government exercise a certain amount of control over Railways owned and managed by private companies, in the matter of regulation of freights and fares, similar control should be assumed in respect of inland steam vessels also. It is proposed in this Bill to invest Government with authority to fix maximum and minimum freights and fares that can be lawfully charged by inland steamer services, on the analogy of similar authority in regard to Company-managed Railways. While the maximum rates would protect the public against exorbitant demands, the minimum scales to be fixed under the Bill would prevent unfair rate-wars which have in the past defeated indigenous efforts at organising inland steamer service in competition with powerful combines in Bengal.

A second provision in this Bill is to enable Advisory Committees to be constituted and attached to the inland steamer concerns at different important stations, more or less on the lines of Railway Advisory Councils. As matters stand at present, the agents of the monopolist companies running inland steamer services are not in touch with public opinion, and do not pay adequate attention to the grievances of the travelling public.

The 23rd December, 1926.

K. C. NEOGY.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

Further to amend the Inland Steam Vessels Act, 1917; and Annexure.

(Mr. K. C. Neogy, M.L.A.)

M184LD—250—6-8-27—GIPS.

[As introduced in the Legislative Assembly.]

A

BILL

Further to amend the Indian Merchandise Marks Act, 1889.

WHEREAS it is expedient further to amend the Indian Merchandise Marks Act, 1889, for the purpose hereinafter appearing; It is enacted as follows:— IV of 1889.

Short title and commencement.

1. (*1*) This Act may be called the Indian Merchandise Marks (Amendment) Act, 1927.

(*2*) It shall come into force on the first day of January, 1928.

Insertion of new section 12A in Act IV of 1889.

2. After section 12 of the Indian Merchandise Marks Act, 1889, the following section shall be inserted, namely:— IV of 1889.

"12A. (*1*) The Governor General in Council may, by notification in the Gazette of India, prescribe the kind, description or class of goods brought into British India to which a trade description giving the place or country in which they were made or produced shall be applied.

Indication of local origin of imported goods.

(*2*) The Governor General in Council may, after previous publication, make regulations, either general or special, prescribing—

(*a*) the form in which the trade description shall be applied;

(*b*) the manner in which the trade description shall be applied, whether by a mark to be placed upon the goods, or in some other manner; and

(*c*) the time or occasion when the trade description shall be applied, and, in particular, whether the trade description shall be applied on importation only, or also on sale of the goods, either by wholesale or retail, in British India.

(*3*) If a person who is required under this section to apply a trade description to any goods fails to do so or contravenes any regulation made under sub-section (*2*), he shall be punished in the same manner as if he had been guilty of applying a false trade description to goods."

STATEMENT OF OBJECTS AND REASONS.

There is no provision in the existing law in India which can compel the application of a trade description to imported goods. The result is that articles made in foreign countries, without any indication as to their local origin, are sometimes palmed off as Indian manufactures. It is a well known fact that a kind of piece-goods especially manufactured abroad is sometimes sold in India as hand-woven *Khaddar*. Again, cheap hosiery, particularly cotton undershirts, are imported from Japan without any trade description and sold in this country as local manufacture. In such cases, the local origin of goods should be indicated so as to prevent fraud on the consumers, and protect some of the struggling industries of India from unfair competition. It is proposed in this Bill to arm the Governor General in Council with power to specify any imported goods in respect of which the importer or the wholesale or retail dealer, shall be called upon to affix a trade description giving the place of origin thereof. It may be mentioned that the provisions are mainly adapted from the recommendations of a Departmental Committee of the British Government regarding legislative action in the United Kingdom in the interest of certain Empire or British goods.

K. C. NEOGY.

The 23rd December, 1926.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT

A

BILL

Further to amend the Indian Merchandise Marks Act, 1889; and Annexure.

(Mr. K. C. Neogy, M.L.A.)

M182LD—250—6-8-27—GIPS

[To be introduced in the Legislative Assembly.]

A

BILL

Further to amend the Indian Penal Code.

WHEREAS it is necessary to legalise Trade Unions;

And whereas it is expedient to protect the members and office-bearers of such Trade Unions from criminal liability under section 120B of the Indian Penal Code: XLV of 1860.

And whereas it is necessary to protect from criminal liability any two or more persons acting together to do any act in contemplation of furtherance of a trade dispute or in restraint of trade;

And whereas it is expedient further to amend the Indian Penal Code for the purposes hereinbefore appearing; XLV of 1860.

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Indian Penal Code (Amendment) Act, 192 .

Amendment of section 43, Act XLV of 1860.

2. To section 43 of the Indian Penal Code the following proviso shall be added, namely:— XLV of 1860.

"Provided that nothing is illegal if done or procured to be done by two or more persons in contemplation or furtherance of a trade dispute or in restraint of trade, unless it be an offence when committed by one person."

STATEMENT OF OBJECTS AND REASONS.

1. Trade Unions are now organised all the world over as a legitimate method of protecting and furthering the cause of labour. The Trade Unions Act of 1926 is only an instance of the recognition of this principle in India, though only to a limited extent. The said Act, however, protects only such of the Trade Unions, their members and office-bearers as are "registered" under the said Act. It affords no protection to Trade Unions which are not registered.

2. In the infant state of the Trade Union movement in India and even afterwards some Trade Unions may not get themselves registered under the Act. It is, however, absolutely necessary to protect the members and office-bearers of such Trade Unions from the criminal liability for their acts done in contemplation or furtherance of a trade dispute or in restraint of trade. Moreover, under the present unorganised condition of labour in India there will be many cases when two or more persons may combine themselves without forming a Trade Union in furtherance or for the protection of the interests of labour. The actions of such persons also require to be protected from the consequence of section 120B of the Indian Penal Code.

3. Under the existing criminal law, as contained in section 120B of the Indian Penal Code, an agreement between two or more persons to do an illegal act is an offence. The word illegal as defined in section 43 of the Indian Penal Code includes *inter alia* anything which affords a ground for civil action. And an act done by two or more persons in contemplation or furtherance of a trade dispute or in restraint of trade may afford a ground for civil action and thereby would be "illegal" and would come under the criminal conspiracy as defined in section 120B of the Indian Penal Code. Such an act was not considered to be an offence before the Indian Penal Code was amended in 1913. Further, such an act is not an offence under the English law. It is true that under section 196A of the Criminal Procedure Code the previous complaint or authority from the Governor General in Council, the Local Government or some officer empowered by the Governor General in Council is necessary to start the prosecution. But it cannot be denied that under some circumstances it may become difficult for the authorities giving sanction for prosecution to resist the pressure brought to bear upon them by influential employers. Moreover, in this country Government themselves are large employers of labour.

4. It is, therefore, necessary for the protection of the members and office-bearers of unregistered Trade Unions and unorganised workers to amend the existing criminal law and to bring it into line with the English law and with the Indian Criminal Law as it stood before 1913.

5. This object is sought to be achieved by modifying the definition of the term "illegal" by adding a proviso to it at the end of section 43 of the Indian Penal Code as given in clause 2 of the Bill.

The 30th January, 1927.

N. M. JOSHI.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

Further to amend the Indian Penal Code;
and Annexure.

(*Mr. N. M. Joshi, M. L. A.*)

M210LD—11-8-27—650—GIPS

[To be introduced in the Legislative Assembly.]

A

BILL

TO

Ensure a greater supply of cattle to the agriculturists, and to facilitate greater supply of milk to the people.

WHEREAS the prices of agricultural cattle and milk have gone up abnormally high on account of shortage of cattle, due in no small measure to the overseas trade in dry meat;

And whereas as a result thereof, the agriculturist has to undergo great hardships and sufferings, and the people, particularly the vegetarians, have to be content with a limited supply of milk;

And whereas it has been found expedient to reduce the sufferings of the agriculturists and save people from mal-nutrition and its unhappy consequences;

It is hereby enacted as follows:—

Short title and extent.

1. (*1*) This Act may be called The Prevention of Export of Dried Meat Act, 192 .

(*2*) It shall extend to the whole of British India.

Definition.

2. "Cattle" shall mean and include cows, bulls, bullocks, or buffaloes, as well as their young ones.

Offences.

3. Subject to anything otherwise provided for in any part of this Act or by rules made under this Act, it shall be unlawful for any person —

(*a*) to directly or indirectly despatch or attempt to despatch cattle meat by ship, boat, sailing vessel or in any other way from any port or seashore in British India to any destination;

(*b*) to knowingly despatch or carry or attempt to despatch cattle meat by rail, road, conveyance or in any other way from any part of British India to any other part outside British India;

(*c*) to carry on as principal or agent trade in cattle meat for export trade or knowingly to finance such trade; or

(*d*) to do any other act or wilfully cause, allow or permit any other act to be done in contravention of the provisions of this Act or of the rules to be made under this Act:

Exemption.

Provided that it shall not be unlawful to carry dry or fresh cattle meat by steamer or sailing vessel for the *bonâ fide* use of passengers and crew during the outward voyage from the shores of India.

Rule-making power.

4. The Government of India and the Local Governments, in consultation with the Government of India, shall have power to make such rules as may be necessary for the proper working of this Act.

Publication of rules.

5. All such rules shall be published in the official Gazette of the Government by which such are made, and on publication shall have effect as if they were enacted under this Act.

Offences cognizable and bailable.

6. All offences under this Act shall be cognizable and bailable, and shall be triable by a Magistrate of the first class.

Punishment.

7. Any person found guilty of any offences under this Act or under rules made or to be made under this Act or abetment thereof shall be punishable with imprisonment of either description for a term which may extend to six months, or fine, which may extend to one thousand rupees, or both, and forfeiture to His Majesty of the cattle meat, if any, seized.

STATEMENT OF OBJECTS AND REASONS.

India is mainly an agricultural country. Nearly two-thirds of the population depend directly or indirectly upon agriculture ; the bulk of the people are also vegetarians. Cattle are essential to the agriculturists, and milk is essential to the great part of the population. Since the introduction of dry meat export trade in India, an enormous amount of cattle has been slaughtered every year for the purpose of trade. This has naturally and seriously raised the prices of cattle and milk. The agriculturist finds it increasingly difficult to purchase a sufficient number of cattle for his plough. The dearness of milk is not a less serious hardship for the people in general, but its evil results have been most felt in the case of the infants. The number of deaths of infants who die for want of proper nourishment is appalling. The great rise in infant mortality during recent years has been distressing. The object of this Bill is to combat these growing evils to some extent by penalising export trade in cattle meat.

3rd June 1927.

M. S. SESHA AYYANGAR.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Ensure a greater supply of cattle to the agriculturists, and to facilitate greater supply of milk to the people ; and Annexure.

(*Mr. M. S. Shesha Ayyangar, M.L.A.*).

M215LD—13-8-27—650—GIPS

[To be introduced in the Legislative Assembly.]

A

BILL

Further to amend the Code of Civil Procedure, 1908.

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1908; It is hereby V of 1908. enacted as follows :—

Short title and commencement.

1. (*1*) This Act may be called the Code of Civil Procedure (Amendment) Act, 19 .

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

Amendment of section 138, Act V of 1908.

2. In sub-section (*1*) of section 138 of the Code of Civil Procedure, V of 1908. 1908, for the words "and in manner prescribed" the following shall be substituted, namely :—

> "not ordinarily in the form of question and answer, but in that of a narrative, and when completed, shall be read over, in the presence of the Judge and of the witness, and the Judge shall, if necessary, correct the same, and shall sign it."

Repeal of rule 7 of Order XVIII, Act V of 1908.

3. Rule 7 of Order XVIII of the Code of Civil Procedure, 1908, is hereby V of 1908. repealed.

STATEMENT OF OBJECTS AND REASONS.

Section 122 of the Code of Civil Procedure empowers the High Courts to annul, alter or add to all or any of the rules of the First Schedule to the Code, while section 138 empowers the Local Government to direct the Judges, in appealable cases, to take down evidence in the English language. Order XVIII, rule 7 of the First Schedule to the Code, lays down that such evidence shall be taken in the form of a narrative, and when completed shall be read over in the presence of the Judge and of the witness and the Judge shall, if necessary, correct the same, and shall sign it. This procedure, as it stands, has been in vogue since the passing of the first Code of Civil Procedure in 1850, and is necessary to enable the Court of appeal to decide questions of fact on the record of the evidence. But this procedure having been embodied in the First Schedule to the Code of 1908, is now liable to be annulled or altered by the High Court.

The High Court at Calcutta, by a notification published in the Calcutta Gazette of the 24th March 1927, proposes to do away with the recording of evidence, in full, even in appealable cases by providing that a Memorandum of the substance of depositions of witnesses may only be taken down, which need not be read over to the witness. It is doubtful whether the draft rules published in the Calcutta Gazette of the 24th March 1927 on this subject, is consistent with the provisions of the Act as required by section 138 of the Code of Civil Procedure. Even assuming it to be so, it is apprehended, that if the draft rules come into force, it will be tantamount to denial of justice in appealable cases, for if the depositions are not recorded in full but only a Memorandum of their substance is placed in the record, the result will be practically to shut out appeals on questions of facts. A full record of the proceedings and the prospect of an appeal serves as a salutary check upon the subordinate Courts, and the necessity of taking down evidence in full in appealable cases is quite apparent, and any attempt to do away with the same is bound to be viewed with disapproval.

It is therefore necessary that section 138 of the Code of Civil Procedure, should be so amended, that the recording of evidence in appealable cases may not depend upon the rule-making powers of the High Courts, by transferring the provisions about recording of evidence from the First Schedule to the Code of Civil Procedure to the sections of the Act.

AMAR NATH DUTT,
M.L.A.

BURDWAN;

The 15th June, 1927.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

Further to amend the Code of Civil Procedure; and Annexure.

(*Mr. Amar Nath Dutt, M. L. A.*).

M218LD—650—12-8-27—GIPS

[To be introduced in the Legislative Assembly.]

A

BILL

TO

Provide for the protection of Cattle.

WHEREAS the prices of agricultural cattle and milk have gone up abnormally on account of shortage of cattle, due, in no small measure, to the overseas trade in dry meat,

And whereas, as a result thereof, the agriculturist has to undergo great hardships and sufferings and the people, particularly the vegetarians, have to go without milk;

And whereas it has been found expedient to reduce the sufferings of the agriculturists and save the people from mal-nutrition and consequent death;

It is hereby enacted as follows.—

Short title and extent

1. (*1*) This Act may be called the Prevention of Export of Dried Meat Act, 192 .

(*2*) It shall extend to the whole of British India.

Definition

2. "Cattle" shall mean and include cows, bulls, bullocks or buffaloes as well as their young ones.

Offences

3 Subject to anything otherwise provided for in any part of this Act or by rules made under this Act, it shall be unlawful for any person—

(*a*) to directly or indirectly knowingly despatch or attempt to despatch cattle meat by ship, boat, sailing vessel or in any other way from any port or seashore in British India to any destination;

(*b*) to knowingly despatch or carry or attempt to despatch or carry cattle meat by rail, road, conveyance or in any other way from any part of British India to any other part outside British India,

(*c*) to carry on as principal or agent trade in cattle meat for export trade or knowingly to finance such trade; or

(*d*) to do any other act or wilfully cause, allow or permit any other act to be done in contravention of the provisions of this Act or of the rules to be made under this Act:

Exemption.

Provided that it shall not be unlawful to carry dry or fresh cattle meat by steamer or sailing vessel for the *bonâ fide* use of passengers and crew during the outward voyage from the shores of India.

Rule-making power.

4. The Government of India and the Local Governments, in consultation with the Government of India, shall have power to make such rules as may be necessary for the proper working of this Act.

Publication of rules.

5. All such rules shall be published in the official Gazette of the Government by which such are made, and on publication shall have effect as if they were enacted under this Act.

Offences cognizable and bailable.

6. All offences under this Act shall be cognizable and bailable and shall be triable by a Magistrate of the first class.

Punishment.

7. Any person found guilty of any offence under this Act or under rules made or to be made under this Act, or of abetment thereof, shall be punishable with imprisonment of either description for a term which may extend, in the case of first offenders, to six months, or fine which may extend to one thousand rupees, or both, and forfeiture to His Majesty of the cattle meat if any captured; and in the case of other offenders the punishment may extend to imprisonment for two years, or fine which may extend to five thousand rupees, or both, and, in addition, forfeiture of the meat as well as the ship, sailing vessel, boat or any other conveyance by which the attempt is made to carry the meat.

STATEMENT OF OBJECTS AND REASONS.

India is mainly an agricultural country. Nearly two-thirds of the population depend directly or indirectly upon agriculture. The bulk of the people are also vegetarians. Cattle are essential to the agriculturist and milk to the great bulk of the population. Since the introduction of dry meat trade in India an enormous number of cattle has been slaughtered every year for the purpose of trade. This has naturally seriously raised the prices of cattle and milk. The agriculturist finds it increasingly difficult to purchase a sufficient number of cattle for his plough. The dearness of milk is not a less serious hardship upon the people in general, but its evil results have been most felt in the case of infants. The number of deaths of infants who die for want of proper nourishment is appalling. The great rise in infant mortality during recent years has been distressing. The object of this Bill is to combat these growing evils to some extent by penalising export trade in cattle meat.

GANGANAND SINHA.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Provide for the protection of Cattle, and Annexure.

(*Mr. Ganganand Sinha, M.L.A.*).

M216LD—12-8-27—650—GIPS

[To be introduced in the Legislative Assembly.]

A

BILL

TO

Provide for the prevention of export of dried meat.

WHEREAS the prices of agricultural cattle and milk have gone up abnormally on account of shortage of cattle due, in no small measure, to the overseas trade in dry meat,

And whereas, as a result thereof, the agriculturist has to undergo great hardships and sufferings and the people, particularly the vegetarians, have to go without milk,

And whereas it has been found expedient to reduce the sufferings of the agriculturists and save the people from mal-nutrition and consequent death;

It is hereby enacted as follows:—

Short title and extent

1. (*1*) This Act may be called the Prevention of Export of Dried Meat Act, 192

(*2*) It shall extend to the whole of British India.

Definition.

2. "Cattle" shall mean and include cows, bulls, bullocks or buffaloes as well as their young ones.

Offences.

3. Subject to anything otherwise provided for in any part of this Act or by rules made under this Act, it shall be unlawful for any person—

(*a*) to directly or indirectly knowingly despatch or attempt to despatch cattle meat by ship, boat, sailing vessel or in any other way from any port or seashore in British India to any destination;

(*b*) to knowingly despatch or carry or attempt to despatch or carry cattle meat by rail, road, conveyance or in any other way from any part of British India to any other part outside British India,

(*c*) to carry on as principal or agent trade in cattle meat for export trade or knowingly to finance such trade; or

(*d*) to do any other act or wilfully cause, allow or permit any other act to be done in contravention of the provisions of this Act or of the rules to be made under this Act:

Exemption.

Provided that it shall not be unlawful to carry dry or fresh cattle meat by steamer or sailing vessel for the *bonâ fide* use of passengers and crew during the outward voyage from the shores of India.

Rule-making power.

4. The Government of India and the Local Governments, in consultation with the Government of India, shall have power to make such rules

as may be necessary for the proper working of this Act.

Publication of rules.

5. All such rules shall be published in the official Gazette of the Government by which such are made, and on publication shall have effect as if they were enacted under this Act.

Offences cognizable and bailable.

6. All offences under this Act shall be cognizable and bailable, and shall be triable by a Magistrate of the first class.

Punishment.

7. Any person found guilty of any offences under this Act or under rules made or to be made under this Act or of abetment thereof shall be punishable with imprisonment of either description for a term which may extend, in the case of first offenders, to six months, or fine, which may extend to one thousand rupees, or both, and forfeiture to His Majesty of the cattle meat, if any, captured, and in the case of other offenders the punishment may extend to imprisonment for two years, or fine, which may extend to five thousand rupees, or both, and, in addition, forfeiture of the meat as well as the ship, sailing vessel, boat or any other conveyance by which the attempt is made to carry the meat.

STATEMENT OF OBJECTS AND REASONS.

India is mainly an agricultural country. Nearly two-thirds of the population depend directly or indirectly upon agriculture, the bulk of the people are also vegetarians. Cattle are essential to the agriculturist and milk to the great bulk of the population. Since the introduction of dry meat trade in India an enormous number of cattle has been slaughtered every year for the purpose of trade. This has naturally seriously raised the prices of cattle and milk. The agriculturist finds it increasingly difficult to purchase a sufficient number of cattle for his plough. The dearness of milk is not a less serious hardship upon people in general, but its evil results have been most felt in the case of the infants. The number of deaths of infants who die for want of proper nourishment is appalling. The great rise in infant mortality during recent years has been distressing. The object of this Bill is to combat these growing evils to some extent by penalising export trade in cattle meat.

BURDWAN ; AMAR NATH DUTT,

The 15th June, 1927. *M.L.A.*

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Provide for the prevention of export of dried meat; and Annexure.

(*Mr. Amar Nath Dutt, M. L. A.*).

M213LD—650—12-8-27—GIPS

[To be introduced in the Legislative Assembly.]

A

BILL

TO

Reserve the Coastal Traffic of India to Indian Vessels.

WHEREAS it is expedient to provide for the rapid development of an Indian Merchant Marine;

And whereas for this purpose it is expedient to reserve the Coastal Traffic of India to Indian vessels; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Reservation of the Coastal Traffic of India Act, 192 .

(*2*) It extends to the whole of the coastal traffic of British India and of the Continent of India.

(*3*) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

Definitions.

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

(1) "A common carrier by water" means a common carrier by water engaged in the cargo and passenger traffic between any two ports in British India, or between any port in British India and any port or place on the Continent of India.

(2) "A subject" means a person and includes a joint stock company, corporation, partnership or association existing under or authorised by the laws of British India.

(3) "Controlling interest" means—

(*a*) that the title to not less than 75 per cent. of the stock is vested in British Indian subjects free from any trust or fiduciary obligation in favour of any person other than a British Indian subject,

(*b*) and that in the case of a joint stock company, corporation or association, the Chairman of the Board of Directors and not less than 75 per cent. of the number of members of the Managing firm of and of the Directors of the Board are British Indian subjects,

(*c*) and that not less than 75 per cent. of the voting power is vested in British Indian subjects,

(*d*) and that through any contract or understanding it is not arranged that more than 25 per cent. of voting power may be exercised, directly or indirectly, on behalf of any person who is not a British Indian subject,

(*e*) and that by any other means whatsoever control of any interest in excess of 25 per cent. is not conferred upon or permitted to be exercised by any person who is not a British Indian subject.

(4) "The coasting trade of India" means the carriage by water of goods or passengers between any ports in British India, or between any port in British India and any port or place on the Continent of India.

Licence for coasting trade.

3. No common carrier by water shall engage in the coasting trade of India unless licensed to do so.

Issue of licence.

4. The licence for engaging in the coasting trade of India shall, on application, be issued by the Governor General in Council, subject to such rules and conditions as may be prescribed in that behalf by the Governor General in Council.

Security for licence.

5. Before granting a licence, the Governor General in Council may require security to be given to his satisfaction by the master, owner, charterer or agent of the vessel for compliance with the conditions of the licence.

Amount of security

6. The amount of security required under section 5 shall not exceed Rs. 50,000.

Duration of licence.

7. Every such licence shall be for the duration of three years only.

Renewal of licence.

8. Every such licence shall on its expiry be renewable on application to the Governor General in Council.

Proportion of tonnage.

9. A proportion of not less than 20 per cent. of the tonnage licensed for the first year, not less than 40 per cent. of the tonnage licensed for the second year, not less than 60 per cent. of the tonnage licensed for the third year, not less than 80 per cent. of the tonnage licensed for the fourth year, and all the tonnage licensed for the fifth and subsequent years shall have the controlling interest therein vested in British Indian subjects.

Penalty.

10. The penalty for the contravention of this Act shall be a fine not exceeding Rs. 10,000, or simple imprisonment for a period not exceeding six months, or both.

Cancellation of licence.

11. In addition to or in lieu of any penalty otherwise provided, the Governor General in Council may cancel any licence for engaging in the coasting trade of India if he is satisfied that a breach of any of the conditions of the licence, as may from time to time be prescribed by the Governor General in Council, has been committed

Opportunity to show cause.

12. No licence for engaging in the coasting trade of India shall be cancelled, unless an opportunity has been given to the master, owner, charterer or agent of the vessel to show cause against such cancellation.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to provide for the employment of Indian tonnage in the coastal traffic of British India and of the Continent of India. This Bill is intended to serve as a powerful aid to the rapid development of an Indian Merchant Marine. Several attemps made in this direction in the past have all practically failed, owing, it is believed, to the existence of powerful non-Indian interests in the coasting trade of India. There can be no doubt that the growth of an Indian Merchant Marine would prove a powerful factor in the employment of Indian talent and the further extension of Indian trade in various directions in a manner calculated to advance the national interests of India.

SARABHAI N. HAJI.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

TO

Reserve the Coastal Traffic of India to Indian vessels; and Annexure.

(*Mr. Sarabhai N. Haji, M.L.A.*)

M219LD—650—15-8-27—GIPS

[To be introduced in the Legislative Assembly.]

A

BILL

Further to amend the Indian Merchant Shipping Act, 1923, for certain purposes.

WHEREAS it is expedient further to amend the Indian Merchant Shipping Act, 1923, for the purposes hereinafter appearing; It is hereby enacted as follows:— XXI of 1923.

1. (*1*) This Act may be called the Indian Merchant Shipping (Amendment) Act, 192 .

Short title and commencement.

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

2. For section 24 of the Indian Merchant Shipping Act, 1923 (hereinafter referred to as the said Act), the following shall be substituted, namely:— XXI of 1923.

Substitution of new section for section 24, Act XXI of 1923.

"24. (*1*) Employment Bureau shall be established and maintained, at the ports of Calcutta and Bombay and such other ports as the Governor General in Council may deem necessary, to engage or supply seamen for merchant ships in British India.

(*2*) For every such Bureau, there shall be a Bureau Officer with such Deputy Bureau Officers, clerks, and servants (if any) as the Governor General in Council may consider necessary".

3. In section 25 of the said Act,—

Amendment of section 25, Act XXI of 1923.

(*i*) in sub-section (*1*), for the words "either holds a licence under this Act for the purpose," the words "is the Bureau Officer or Deputy Bureau Officer" shall be substituted; and the words "or is *bonâ fide* the servant and in the constant employ of the owner" shall be omitted;

(*ii*) in sub-section (*2*), for the words "either holds a licence under this Act for the purpose" the words "is the Bureau Officer or Deputy Bureau Officer" shall be substituted; and the words "or is *bonâ fide* the servant and in the constant employment of the owner" shall be omitted;

(*iii*) in sub-section (*4*), for the word "hundred" the word "thousand" shall be substituted; and the words "and, if a licensed person, shall forfeit his licence" shall be omitted.

4. In sub-section (*2*) of section 26 of the said Act, for the words "a fine of fifty rupees" the words "a sentence of rigorous imprisonment which may extend to two years", shall be substituted; and the words "and, if a licensed person, shall forfeit his licence" shall be omitted.

Amendment of section 26, Act XXI of 1923.

STATEMENT OF OBJECTS AND REASONS.

The present system of recruitment of seamen through the licensed brokers and ghat serangs and ghat butlers, which pre-eminently lends itself to extensive practice of bribery and corruption, has been unreservedly condemned by the Seamen's Recruitment Committee, appointed by the Government of India in 1922. The Committee recommended the abolition of the present system and its substitution by the Employment Bureau, organised and maintained, either by the representative associations of shipowners and seamen in co-operation or by the State, as suggested in the draft Convention for establishing facilities for finding employment for seamen, framed and adopted by the General Conference of the International Labour Organisation of the League of Nations, in its Session at Geneva in June 1920. This Bill is intended to give effect to the unanimous recommendation of the Committee for the establishment of the Employment Bureau by the State and the abolition of the system of recruitment through the licensed brokers, ghat serangs and ghat butlers. The penal provisions with regard to the receipt of unauthorised remunerations for securing employment for seamen has been further stiffened in accordance with the recommendations of the Committee.

The 1st July, 1927.

ABDUL MATIN CHAUDHURY.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

A

BILL

Further to amend the Indian Merchant Shipping Act, 1923, for certain purposes; and Annexure.

(*Maulvi Abdul Matin Chaudhury, M.L.A.*)

M222LD—15-8-27—650—GIPS

[To be introduced in the Legislative Assembly.]

A

BILL

Further to amend the Indian Divorce Act.

WHEREAS it is expedient further to amend the law relating to the divorce of persons subject to the Indian Divorce Act; It is hereby enacted as follows:— IV of 1869.

Short title and commencement.

1. (*1*) This Act may be called the Indian Divorce (Amendment) Act, 192 .

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

Amendment of section 2, Act IV of 1869.

2. In the second paragraph of section 2 of the Indian Divorce Act (hereinafter referred to as the said Act), IV of 1869.

(*a*) before the words "Nothing hereinafter contained" the words "Except as otherwise provided by any law for the time being in force," shall be inserted, and

(*b*) after the words "under this Act except where the petitioner" the words "or the respondent" shall be inserted.

Substitution of new section for section 3, Act IV of 1869.

3. For section 10 of the said Act the following section shall be substituted, namely:—

When a person may petition for dissolution.

"10. Any married person may petition for divorce on any one or more of the following grounds, namely that the respondent—

(*a*) has since the marriage committed adultery, or in the case of the husband has been guilty of rape, sodomy, or bestiality; or

(*b*) has deserted the petitioner for a period of at least three years; or

(*c*) has, since the marriage, treated the petitioner with cruelty; or

(*d*) is incurably insane and has been continuously a certified lunatic for a period of at least five years immediately preceding the presentation of the petition; or

(*e*) is an incurable habitual drunkard, and has for a period of at least three years been separated from the petitioner under a temporary separation order made under this Act on the ground of habitual drunkenness; or

(*f*) is undergoing sentence of imprisonment under commuted death sentence or is confined during His Majesty's pleasure in a criminal lunatic asylum.

Contents of petition.

Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded."

Amendment of section 11, Act IV of 1869.

4. In section 11 of the said Act, after the words "presented by a husband" the following words

shall be inserted, namely : " on the ground of the wife's adultery."

5. In section 14 of the said Act,—

Amendment of section 14, Act IV of 1869.

(*a*) after the words " or that the petition is presented or prosecuted in collusion with either of the respondents," the following shall be inserted, namely :—" or where the petition is presented on the ground of cruelty, that the petitioner has condoned the cruelty in question ; or where the petition is presented on the ground of insanity or habitual drunkenness, that the petitioner has been guilty of such wilful neglect or misconduct as has conduced to the insanity or habitual drunkenness ; or where the petition is presented on the ground of insanity, that the respondent is, in the case of a man, over 60, and in the case of a woman, over 50 years of age," and

(*b*) the following shall be added at the end, namely :—" No *bona fide* agreement made as to the course to be taken in any proceedings shall be treated as proof of collusion if there existed previously to such agreement sufficient ground for divorce."

6. In section 19 of the said Act,

Amendment of section 19, Act IV of 1869.

(*i*) to clause (3) the following shall be added, namely :—" or, was at the time of the marriage subject to recurrent fits of insanity or epilepsy ";

(*ii*) clauses (1), (2) and (4) shall be renumbered as clauses (4), (1) and (2), respectively ;

(*iii*) after clause (4) the following clauses shall be inserted, namely :—

" (5) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage ; or

(6) that the respondent was at the time of the marriage suffering from venereal diseases in a communicable form ; or

(7) that the respondent was at the time of the marriage pregnant by some person other than the petitioner :

Provided that, in the cases mentioned in clauses (3), (6) and (7), the Court shall not grant a decree unless it is satisfied—

(*a*) that the petitioner was at the time of the marriage ignorant of the facts alleged ;

(*b*) that the petition was instituted within a year from the date of the marriage ; and

(*c*) that marital intercourse has not taken place since the discovery by the petitioner of the existence of the grounds for a decree ";

(*iv*) the following shall be added at the end, namely :—" Nothing in this section shall be construed as validating any marriage which is by law void but with respect to which a decree of nullity has not been granted."

Amendment of section 22, Act IV of 1869.

7. In section 22 of the said Act, for the words beginning with the words "on the ground of adultery" and ending with the words "hereinafter mentioned", the following shall be substituted, namely :—"on the grounds upon which he or she may have applied for a decree of divorce, and such decree shall have the effect of a divorce *a mensa et toro* under the existing law and such other legal effect as hereinafter mentioned"

Insertion of new section 23A, Act IV of 1869

8. After section 23 of the said Act the following new section shall be inserted, namely :—

Application of the Act to proceedings for judicial separation.

"23A. The provisions of this Act with respect to defences to proceedings for divorce shall apply also to proceedings for judicial separation, and the Court may, if so desired by the respondent, instead of passing a decree of judicial separation, pass a decree *nisi* of divorce :

Provided that, before granting such a decree, the Court shall give the petitioner a chance to withdraw his or her petition for judicial separation if he or she should so desire."

Amendment of section 37, Act IV of 1869.

9. In the second paragraph of section 37 of the said Act, after the words "as the Court may think reasonable," the following shall be inserted, namely :—

"and it may from time to time vary such order in such manner as having regard to all the facts of the case the Court may deem fit."

STATEMENT OF OBJECTS AND REASONS.

1. A somewhat lengthy statement is required to explain the object of this Bill. The Indian Divorce Act (IV of 1869) was enacted on the lines of the English Divorce Act, 1857, to give effect to some of the recommendations of the Royal Commission of 1850 appointed to inquire into the state of the Law and procedure connected with matrimonial causes in England. That Act was professedly declared to be passed mainly to amend the procedure and not to alter the Law. And it was clear from the debates in both Houses of Parliament that a considerable body of opinion was expressed by eminent lawyers and politicians, including the late Mr. Gladstone, that the Law of Divorce which was sought to be enacted was inadequate and unequal and unfair to the wife. Nevertheless, being the first Act of Parliament on the subject, it proceeded upon very cautious lines leaving intact the pre-existing Law upon which the parties could have sought the intervention of the Ecclesiastical Courts for obtaining their dissolution of marriage.

2. Soon after the enactment of the English Divorce Act, the Government of India took steps to enact a similar Law for this country, and Sir Henry Mayne and Sir Barnes Peacock, the then Chief Justice of Bengal and others, strongly pressed upon the Government the desirability of ensuring the equality of sexes by giving the wife equally with the husband the right of divorce on the sole ground of adultery, without her being required to prove the additional fact of cruelty. Sir Henry Mayne acknowledged that this view was morally sound, but that as the Indian Legislature were legislating a replica of the English Act in order to ensure the decrees of Indian Courts being given effect to in England, it was necessary that the Laws of the two countries should be identical. (*See* Supplement to the Gazette of India, March 6th, 1869, pages 297-299.)

3. Since the enactment of the English Divorce Act, the British Dominions have passed similar Acts of their own, but they have, in every case, enlarged the grounds upon which the parties are entitled to obtain the dissolution of their marriages: for example, in the Union of South Africa, the grounds upon which divorce may be granted are malicious desertion, unnatural crimes, perpetual imprisonment, long absence and the refusal of marital privileges; while in the province of Natal, desertion for not less than 18 months is required for the suit. In New Zealand, Queensland, Australia, Tasmania and other colonies similar provisions exist, though they differ in minor details. And similar provisions have found a place in the Statute Laws of all European countries, except Italy and Spain where the ecclesiastical monopoly for granting divorce is still in force. In the United States of America, the Law of Divorce varies, but, in substance, it agrees with that obtaining in other parts of Christendom.

4. As the English Law of Divorce had not kept pace with the march of progress in the civilized countries of the world, a Royal Commission was issued on the 8th November 1909 to examine the Law relating to Divorce and make recommendations. This Commission comprised 14 commissioners, of whom some had to resign in the interim on account of various causes. They submitted their report, the majority comprising 9 commissioners recommending the change embodied in the present Bill, while the minority of 3, headed by the Archbishop of York, were opposed to all reforms though they admitted the hardship consequent upon the stagnation of English Law which had not kept pace with the current of public opinion elsewhere. They, however, agreed with the majority on the point which had been the subject of acute controversy at the time of the enactment of the first Divorce Act, both in England and in India to the effect that the wife should be entitled to obtain her divorce on the same ground available to the husband. (*See* Report page 191.)

5. To give effect to the recommendations of the majority of the Royal Commissioners, Lord Buckmaster introduced a consolidating measure in the House of Lords which was passed by that body by a large majority. It is reported that owing to the congestion of business and other causes the progress of that Bill through the House of Commons has been delayed, with the result that Lord Buckmaster's reforming measure has not yet found a place in the Statute-book, but that the measure was long overdue has been explained in a series of articles written by the Earl of Birkenhead in the English Press, from which the following extracts are taken:—Supporting the 5 additional grounds besides that of adultery, namely (1) wilful desertion for three years, (2) cruelty, (3) incurable lunacy of 5 years' standing, (4) habitual drunkenness, (5) imprisonment under commuted death sentence, His Lordship wrote as follows:—"I believe that all these additional grounds for divorce may be supported on the ground of *natural justice, public expediency,* and *State policy.*" He then proceeded to justify the additional grounds as follows:—

1. DESERTION FOR 3 YEARS.

"6. Deliberate desertion for three years is a grave violation of the marriage tie. The consequences, especially to a deserted wife, if she is poor, are a complete negation of the obligations solemnly undertaken when the marriage was contracted. Such desertion implies adultery on the part of the deserter, but the poor can seldom prove this. Desertion for three years is a cause for divorce which can be proved as a definite fact.

2. CRUELTY.

"The second cause, that of cruelty, must also obviously destroy the substratum of married life for it means that one party must go in fear and horror of the other. But the opposition answer that such a ground of divorce is liable to the gravest kind of abuse, and that cruelty is indefinite and hard to define. The answer is that cruelty

has been a subsidiary cause of divorce ever since 1857 and that the Judges have never found any difficulty in defining it. A dependable definition is 'such conduct by one married person to the other party to the marriage as makes it unsafe, having regard to life, limb or health, bodily or mental, for the latter to continue to live with the former'. 'Such new causes as the Royal Commission proposed to add are of a character easily proved and defined. They are wilful or negligent infection with venereal disease, or forcing a wife to submit to prostitution.

(3) LUNACY.

"The third reason for divorce would be incurable lunacy of five years' standing. This proposal was not accepted by the majority of the Royal Commission so unhesitatingly as the two former, and the whole question requires a more lengthy discussion than I can find space in this article. None the less, I believe the provision to be right in essence. A lunatic cannot marry—why should a lunatic be allowed to continue to be married merely because the lunacy supervenes?

(4) HABITUAL DRUNKENNESS.

"The fourth cause was Habitual Drunkenness. On this point I will simply quote the Royal Commission as showing how far the vice is a cause for the dissolution of a marriage where the substratum has been destroyed. 'In the case of a drunken husband, the physical pain of brute force is often added to the mental and moral injury he inflicts on the wife; moreover, he has power to reduce himself and those dependent upon him to penury. In the case of a drunken wife, neglect of home duties and of the care of the children produce a most deplorable state of affairs. In both cases, the ruin of the children can be traced to the evil parental example. But Lord Phillimore is greatly exercised to maintain such legal unions, in the interests of the children.

(5) THE COMMUTED DEATH SENTENCE.

"On the fifth cause, the commuted death sentence, I find it difficult to write in terms of moderation. How the Law of God or the Law of Man can be invoked to chain a wife or a husband to one who has been segregated for ever under these circumstances passes my comprehension. One would require a heart of stone, under a breast-plate of steel, to resist such an appeal for freedom. If one party to the marriage is hanged, because a Home Secretary declines to relent, the other party is (even from the most extreme ecclesiastical standpoint) free in an instant to live his or her own life and remarry. Otherwise the innocent partner is chained to disgrace and condemned to lifelong celibacy. But the Bishops and the pious laymen in the House of Lords cheerfully forced through an amendment to Lord Buckmaster's Bill, depriving these wretched people of relief 'because there were so few of them'. The heads of the Christian Church of England seem to think you have to be a majority before you can suffer an injustice.

"All the five additional causes for divorce advocated by the Royal Commission and contained in Lord Buckmaster's Bill, are readily ascertainable by the Law of Evidence. That the new Law would be administered strictly by British Judges, according to the evidence, is a fact which does not admit of dispute. It follows that those, who declare that the passing of such a measure implies promiscuous divorce on grounds of incompatibility of temperament or any other vague cause, have no ground whatever for their assertion."

7. The additional grounds for Divorce embodied in the Bill have, thus, received the highest judicial and legal support. They have been supported by the usages of nations and by the Royal Commission of 1909-1912 and by the verdict of the House of Lords. The equality of the sexes has already been assured by the enactment of the Matrimonial Clauses Act, 1923 (13 and 14 Geo. 5, ch. 19; Statutes P. 280), and it is possible that the House of Commons may assent to the other provisions of the Bill, in which case the provisions of the present Bill will have received the support of the English Statute. But there is no reason why the amendment of the Indian Statute should be delayed merely because the progress of the English Bill through the House of Commons has been delayed through other causes when the Indian Divorce Act itself contains and is, in fact, an exhaustive code of the Law of Divorce, which must be brought up to date.

8. When the Act of 1869 was passed, it was confined to Christians and its provisions have since been made applicable to those who have contracted marriages under the Special Marriage Act (III of 1872) and under the recent amendment of that Act (XXX of 1923). (*See* section 17 of Act III of 1872.) Section 2 of the Act has, therefore, been amended. Further explanation of the amendments will be found in the Notes on Clauses appended to the Bill.

NOTES ON CLAUSES.

Clause 2.—Two amendments are proposed by this clause to make its provisions expressly conformable to the provisions of the other Acts of the Indian Legislature, namely:—Section 4 of the Indian Christian Marriage Act (XV of 1872); and section 17 of the Special Marriage Act (III of 1872). Section 2 of the Act as it stands requires that the petitioner must profess the Christian religion at the time of applying for Divorce under the Act. But under section 4 of the Indian Christian Marriage Act (XV of 1872), marriage is possible "between persons one or both of whom is or are a Christian or Christians"; in other words, under that Act, it is legal for a Christian to contract marriage with a non-Christian, and therefore, it follows that it is equally just that a non-Christian petitioner should have the same right of Divorce as a Christian petitioner. The Indian Divorce Act, when enacted, in 1869, was intended to be applicable only to Christians, but its provisions have been extended to those married under the provisions of the Special Marriage Act (III of 1872) and (XXX of 1923). This has been made clear by the opening words of the section as amended by this clause.

Clause 3.—This clause replaces section 10 originally enacted which is admittedly one-sided as regards the right of Divorce in that it permits the husband to divorce his wife on the sole ground of adultery, while the wife cannot divorce the husband except on the ground of adultery of a special character therein mentioned, or of adultery coupled with cruelty or desertion for 2 years or upwards. The other clauses occurring in the present section were explained by Sir Henry Mayne in his speech in the late Imperial Council is due to his close adhesion to the English Law (Supp. to the Gazette, 6th).

The present clause has been bodily copied from clause 4 of Lord Buckmaster's Bill as passed by the House of Lords, embodying the recommendations of the majority of the Royal Commission. The Commissioners were unanimous on the amendment of the Law so as to ensure mutuality as regards the right of divorce between husband and wife. The clause relating to Rape, Sodomy, and Bestiality is taken from the section which the present clause is intended to repeal, though its omission would not materially alter the sense as these acts would presumably constitute cruelty within the meaning of the English Law.

Clause 4 is merely consequential.

Clause 5 is taken from the corresponding clause 5 of Lord Buckmaster's Bill.

Clause 6 is taken from clause 7 of Lord Buckmaster's Bill.

Clause 7 is consequential on the amendment of section 10.

Clause 8 is taken from clause 6 (*b*) of Lord Buckmaster's Bill.

Clause 9 is taken from clause 12 (*d*) of Lord Buckmaster's Bill.

H. S. GOUR.

The 26th May, 1927.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

BILL

Further to amend the Indian Divorce Act; and Annexure.

The Governor General has been pleased to accord the sanction required by clause (*b*) of section 67 (2) of the Government of India Act.

W. T. M. WRIGHT,
Secretary of the Legislative Assembly.

(*Sir Hari Singh Gour, M.L.A.*)

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