SUPPLEMENT

TO THE

BOMBAY GOVERNMENT GAZETTE

CONTAINING

BILLS OF THE GOVERNMENT OF INDIA.

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HOME DEPARTMENT (Legislative).

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th February 1862, and was referred to a Select Committee, with instructions to make a report thereon before the 1st March next:—

A Bill to Provide for the Payment at the Banks of Bengal, Madras, and Bombay, respectively, of Moneys payable at the General Treasuries of Calcutta, Madras, and Bombay.

Preamble.

Whereas under the provisions of Act XXIV. of 1861, the Bank of Bengal has entered into an agreement with the Secretary of State for India in Council, through the Governor General of India in Council, that so much of the business hitherto generally transacted at the General Treasury of the Government at the Presidency of Fort William as consists in receiving and paying money on behalf of the Supreme Government and the Government of Bengal, shall be carried on and transacted by the said Bank, subject to the provisions of the said agreement and to such orders and directions with regard to receipts and payments, as may, from time to time, be given to the said Bank by the Governor-General in Council, or any of the Officers of the Government of India authorised in that behalf.

And whereas the Governor General in Council has given notice in the *Calcutta Gazette* that the Treasury of the Secretary of State for India in Council and of Her Majesty's Indian Government at Calcutta shall, from and after the 1st day of March 1862, be established at the Bank of Bengal.

And whereas the Bank of Madras and the Bank of Bombay are in treaty with the Governor in Council of Madras and the Governor in Council of Bombay respectively, for the purpose of entering into similar agreements, and it is probable that such agreements will be shortly executed, and that similar notice to that hereinbefore mentioned will be given by the Governors in Council of Madras and Bombay in regard to the Banks of Madras and Bombay.

And whereas divers promissory notes and negotiable securities and other obligations for the payment of money made by or on behalf of the Secretary of State for India in Council, or by the Governor General of India in Council, the Governor of Madras in Council, and the Governor of Bombay in Council, respectively, on behalf of the East India Company and of the Secretary of State for India in Council, are made payable at the General Treasury of Fort William in Bengal, the General Treasury at Madras, and the General Treasury at Bombay, respectively.

And whereas divers other securities and obligations are made payable to the Secretary of State for India in Council, or to the said Governor General in Council, or to the Governors in Council of Madras or of Bombay, at the said General Treasuries of Fort William in Bengal, Fort St. George, and Bombay, respectively;

It is therefore enacted as follows:—

On and after 1st March 1862 all sums payable by or to Government to be payable at the Bank of Bengal instead of at the General Treasury at Calcutta.

I. On and after the 1st day of March 1862, all sums payable by or to the Secretary of State for India in Council, or by or to the Governor General of India in Council, or the Government of Bengal on behalf of the Secretary of State for India in Council, at the General Treasury of Fort William in Bengal, shall be payable by or to the Secretary of State in Council, or by or to the Governor General of India in Council, or the Government of Bengal, respectively, on behalf of the Secretary of State in Council, at the Bank of Bengal instead of at the General Treasury at Calcutta.

Presentment of promissory notes, &c. at the Bank of Bengal.

II. Whenever presentment of any promissory note, security, or obligation for payment or for any other purpose at the General Treasury of Fort William in Bengal, before the said 1st day of March 1862, would have been necessary or sufficient, presentment for such purpose at the Bank of Bengal shall be necessary or sufficient, as the case may be, on and after the said 1st day of March 1862.

III. If the Governors in Council of Madras and of Bombay respectively shall give notice in the *Government Gazettes* of their Presidencies respectively, that the Banks of Madras and Bombay respectively have entered into agreements or arrangements with the Secretary of State for India in Council through the said Governor in Council, for the purposes mentioned in the Preamble of this Act, under the provisions of the said Act XXIV. of 1861, and that from and after a date to be specified in such notice, the Treasury of the Secretary of State for India in Council, and of Her Majesty's Indian Government at Madras and Bombay respectively, shall be established at the Banks of Madras and Bombay respectively, all sums payable by or to the Secretary of State for India in Council, or by or to the Governor of Madras in Council, or the Governor of Bombay in Council, on behalf of the Secretary of State for India in Council at the General Treasury at Madras, or at the General Treasury at Bombay, respectively, shall be payable by or to the Secretary of State in Council, or by or to the Governor of Madras in Council, or the Governor of Bombay in Council, on behalf of the Secretary of State in Council, at the Bank of Madras or the Bank of Bombay respectively, instead of at the General Treasury at Madras or the General Treasury at Bombay.

Payment at the Banks of Madras and Bombay of sums payable by or to Government at the General Treasuries at Madras and Bombay.

IV. In such case, whenever presentment of any promissory note, security, or obligation for payment or for any other purpose, at the General Treasuries at Madras or Bombay respectively, would have been necessary or sufficient, if such notice had not been given, and this Act had not been passed, presentment for such purpose, at the Banks of Madras and Bombay respectively, shall be necessary or sufficient, as the case may be, on and after the date specified in such notice by the Governor in Council of Madras and Bombay respectively.

Presentment of promissory notes, &c., at the Banks of Madras and Bombay.

V. Nothing in this Act shall render necessary the presentment at the Banks of Bengal, Madras, and Bombay, respectively, of any security or other obligation which it would not have been necessary to present at the General Treasuries of Bengal, Madras, and Bombay, respectively, if this Act had not been passed.

Proviso as to presentment at the several Banks.

STATEMENT OF OBJECTS AND REASONS.

The sole object of this Bill is to place beyond all doubt the sufficiency of presentment at the Banks of Bengal, Madras, and Bombay, respectively, of all notes and securities payable by the terms thereof at the General Treasuries of Calcutta, Madras, and Bombay, and of the payments at the Banks of all sums payable by or to Government at those Treasuries, after those Banks have been appointed by the Government Agent for the purpose of making the payments heretofore made at the General Treasuries under the provisions contained in Act XXIV. of 1861.

When, by the terms of any security or contract, a sum is payable generally at the Treasury of the Government at or of the Presidency, no doubt can exist as to the validity of presentment and payment at any place which the Government may, from time to time, appoint to be its Treasury, and the aid of the Legislature is not necessary for such a purpose. But a question may arise, whether some of the existing obligations of Government may not be so framed as to render necessary a presentment and payment at the particular Establishment known as the General Treasury at the Presidency Towns and distinct from any agency the Government may appoint elsewhere for payment: and it is to meet this doubt that the Bill has been framed.

Care has been taken to preserve the rights and liabilities both of the Government and of parties holding its securities precisely in the same condition as before the Bill, the only change effected being in the place of payment.

The agreements with the Banks of Madras and Bombay have not been, as yet, reported as concluded, and provision is therefore made that the Act shall come into operation, as to them, when the Governor in Council of the Presidencies shall have issued a notice similar to that issued by the Governor General in Council in regard to the Bank of Bengal, and from the date specified in such notice.

(Signed) W. RITCHIE.

The 2nd January 1862.

M. WYLIE,
Depy. Secy. to the Govt. of India,
Home Department.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations, on the 5th February 1862, and was referred to a Select Committee, with instructions to make a report thereon within one month :—

A Bill to amend Act XLVI. of 1860 (to authorise and regulate the Emigration of Native Labourers to the French Colonies).

Whereas, since the passing of Act XLVI. of 1860 *(to authorise and regulate the Emigration of Native Labourers to the French Colonies)*, the Convention therein recited between Her Majesty the Queen of Great Britain and Ireland and His Majesty the Emperor of the French has been varied in the following particulars; that is to say, by substituting for Article XXVI. in the said Convention as so recited in the said Act, the following Article :—

Preamble.

"ARTICLE XXVI.

The present Convention shall begin to take effect on the 1st of July 1862; its duration is fixed at three years and a-half. It shall remain in full force if notice for its termination be not given in the course of the month of July of the third year, and then notice can be given only in the course of the month of July of each succeeding year.

In case of such notice being given, it shall cease eighteen months afterwards.

Nevertheless, the Governor General of British India in Council shall, in conformity with the Act of the 19th of September 1856, relative to emigration to British Colonies, have the power to suspend at any time emigration to any one or more of the French Colonies, in the event of his having reason to believe that in any such Colony proper measures have not been taken for the protection of the Emigrants immediately upon their arrival or during their residence therein or for their safe return to India, or to provide a return passage to India for any such Emigrants at or about the time at which they are entitled to such return passage.

In case, however, the power thus reserved to the Governor General of British India should at any time be exercised, the French Government shall have the right immediately to terminate the whole Convention if they should think proper to do so.

But, in the event of the determination of the present Convention, from whatever cause, the stipulations relative to Indian subjects of Her Britannic Majesty introduced into the French Colonies shall be maintained in force in favour of the said Indian subjects, until they shall either have been sent back to their own country, or have renounced their right to a return passage to India."

And also by the addition of the two following Articles, which were not comprised in the Convention or recited in the said Act; that is to say—

"ARTICLE XXVII.

The present Convention shall be ratified, and the ratifications shall be exchanged at Paris in four weeks, or sooner if possible.

Additional Article.

His Majesty the Emperor of the French having stated that, in consequence of the order which he gave long ago that no more African Emigrants should be introduced into the Island of Re-union, that Colony has, since last year, had to obtain labourers from India and China; and Her Britannic Majesty having, by Convention signed on the 25th of July 1860, between Her Majesty and His Majesty the Emperor of the French, authorised the Colony of Re-union to recruit six thousand labourers in Her Indian possessions, it is agreed that the Convention of this date shall take effect forthwith with regard to the said Colony of Re-union.

The present Additional Article shall have the same force and validity as if it were inserted word for word in the Convention signed this day. It shall be ratified, and the ratifications shall be exchanged at the same time as those of the Convention."

And whereas the said Convention, with such alterations and additions as aforesaid, together with such additional Article, has been duly signed, ratified, and confirmed.

It is declared and enacted as follows:—

Act XLVI. of 1860 to be applicable to the Convention as signed and ratified.

All the provisions of Act XLVI. of 1860 (*to authorise and regulate the Emigration of Native Labourers to the French Colonies*) shall be and remain in full force, notwithstanding that the Convention therein recited had been so altered and added to before the same was signed or ratified as aforesaid; and all such provisions, in so far as the same relate to the Convention recited in the said Act, shall be deemed to apply, and shall apply, to the said Convention as signed and ratified as aforesaid, together with the additional Article thereof.

Statement of Objects and Reasons.

The object of this Bill is to adapt the provisions of Act No. XLVI. of 1860 (*to authorise and regulate the Emigration of Native Labourers to the French Colonies*) to the Convention actually signed on the 1st July 1861, and ratified by Her Majesty and the Emperor of the French, for authorising and regulating the emigration of Native Labourers to the French Colonies, with an additional Article signed on the same date and similarly ratified.

The Convention thus signed varied in one important particular contained in the 26th Article from that originally negotiated and agreed upon, to which the Act XLVI. of 1860, which was passed on the 6th October 1860, referred. The 26th Article as signed and ratified prescribes that the convention shall be given to take effect on the 1st July 1862 (instead of September 1861); and it adds as a new provision that the Governor General of India in Council shall, in conformity with Act XIX. of 1856 (*to enable the Governor General of India in Council to suspend the operation of certain Acts relating to the Emigration of Native Labourers*) relative to emigration to British Colonies, have the power to suspend at any time emigration to any of the French Colonies, in the event of his having reason to believe that in any such Colony proper means have not been taken for the protection of the emigrants immediately upon their arrival, or during their residence therein, or for their safe return to India, or to provide a return passage to India for any such emigrants at or about the time at which they are entitled to such passage. But that, in case the powers thus reserved should at any time be exercised, the French Government should have the right immediately to terminate the whole Convention if they should think right so to do.

By the additional Article it was agreed that the Convention should take effect forthwith with regard to the Colony of Re-union.

These alterations in the Convention being material, it has become necessary to provide by legislation for the carrying it into effect in its altered shape. The present Bill therefore provides that all the provisions of Act XLVI. of 1860 shall remain in full force, notwithstanding the change in the Convention, and shall be taken to apply to the Convention as altered, together with the additional Article thereof.

(Signed) W. Ritchie.

The 22nd January 1862.

M. Wylie,
Depy. Secy. to the Govt. of India,
Home Department.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations, on the 5th February 1862, and was referred to a Select Committee, with instructions to make their report thereon within a fortnight:—

A Bill to amend the Law relating to the use of a Government Seal.

Preamble.

Whereas it is expedient to adapt the Law relating to the use of a Government Seal to the present form of the Government in India; it is enacted as follows:—

What Seal to be used instead of the Seal of the East India Company.

Whenever it is required, by any Regulation of a local Government, or by any Act of the Governor General of India in Council, that the seal of the East India Company shall be affixed on behalf of the Government to any instrument or document, it shall be lawful, if the seal is to be affixed on behalf of a local Government, to affix in lieu of the seal of the East India Company a seal bearing the designation of such local Government, or, if the seal is to be affixed on behalf of the Government of India, a seal bearing the inscription "Government of India;" and such instrument or document so sealed shall, to all intents and purposes, be as valid and effectual as if the seal so used had been that of the East India Company.

Statement of Objects and Reasons.

Legislation on this subject was originally suggested in order to meet a difficulty respecting the seal to be used under Act XIX. of 1838 (*for the registration of Coasting Vessels in the Bombay Presidency*). Section VIII. of that Act requires that Certificates of Registry "shall be sealed with the seal of the East India Company," and the Government of Bombay were advised by their Law Officers that no other seal could properly be used for such Certificates until some Act should be passed "prescribing the seal to be used in lieu of the seal of the East India Company."

Before the present Bill was drafted, a further reference was made on the general question by the Government of India to the Advocate General of Bengal. That Officer (Mr. Ritchie) expressed his concurrence in the opinion given in Bombay. He did not doubt that Certificates of Registry, for instance, would be valid, though sealed with the East India Company's seal subsequently to the transfer of the Government to the Crown. But it would, he observed, at all events, be more seemly to substitute some other seal for the future. This could not, he added, be properly done without the authority of the Legislature; and he suggested that any enactment which might be drafted for the purpose should be so drawn as to have a general application, and should not be limited to the Government of Bombay alone.

The present Bill has therefore been made applicable to all cases in which the use of the seal of the East India Company is prescribed by any Indian Regulation or Act. But it does not affect the use of that seal, or of the seal of the Secretary of State or of the Members of his Council under any English statue.

(Signed) C. J. Erskine.

The 22nd January 1862.

M. Wylie,
Depy. Secy. to the Govt. of India,
Home Department.

The following Report of a Select Committee was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 79th February 1862 :—

We, the undersigned, the Members of the Select Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations, to whom the Bill to amend the Law relating to the use of a Government Seal was referred, have the honour to report that we have considered the Bill, and that we have only to suggest the insertion of the words "or by the authority" after the word "behalf" in lines 7 and 13 of the Section, so as to provide for the use of the new Seal, whether it be required to be affixed on behalf of the Government (as provided in the Bill) or by its authority.

(Signed) C. J. Erskine.
,, W. Ritchie.
,, H. B. Harington.

M. Wylie,
Depy. Secy. to the Govt. of India,
Home Department.

The following Report of a Select Committee was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th February 1862 :—

We, the undersigned the Members of the Select Committee of the Council of the Governor General of India, for the purpose of making Laws and Regulations, to whom the Bill " to revive and continue in force for a further period Act XXXIII. of 1857 (to make further provision relating to Foreigners)" was referred, have the honour to report that we have considered the Bill, and that we have no amendment to propose.

(Signed) Cecil Beadon.
,, W. Ritchie.
,, Deo Narain Sing.

M. Wylie.
Depy. Secy. to the Govt. of India,
Home Department.

The following Bill was introduced into the Council of the Governor General of India, for the purpose of making Laws and Regulations on the 12th February 1862, and was referred to a Select Committee, with instructions to make their report thereon within a fortnight :—

A Bill for Regulating the Bank of Bengal.

Preamble.

Whereas the Governor General of India in Council has, pursuant to the provisions of Act VI. of 1839, given twelve months' due notice to the Bank of Bengal that the provision of the said Act, as regards the power of the Bank to issue Promissory Notes under Section XXXI. of that Act, would be modified as hereinafter appears ; and it is expedient that the provisions of the said Act and of Act XXI. of 1854 (*to amend the Law relating to the several Banks of Bengal, Madras, and Bombay*), as regards the said Bank of Bengal, should be re-enacted with certain amendments and modifications hereafter contained ; It is hereby enacted as follows :—

Repeal of Act VI. of 1839, and Act XXI. of 1854, so far as it relates to the Bank of Bengal.

I. Act VI. of 1839, except in so far as it repeals any prior Charter, Regulation, or Act, and except as to any act or offence done or committed, or any liability incurred before this Act shall come into operation, and Act XXI. of 1854, so far as it relates to the Bank of Bengal, are repealed from and after the coming into operation of this Act.

Present Corporation continued.

II. From and after the coming into operation of this Act, and notwithstanding the repeal of the said Act VI. of 1839, the present and future Proprietors of the capital stock of the Bank of Bengal shall continue to be a body corporate by the name of the Bank of Bengal with perpetual succession, and shall continue to possess and enjoy all the rights, privileges, and immunities incident by law to a corporation aggregate.

Property of the Bank.

III. All property and securities for property, claims, and demands whatsoever, now vested in or held by the said Bank of Bengal under and by virtue of the said Act VI. of 1839, shall, from and after the coming into operation of this Act, be vested and continued in the said Bank of Bengal, as and being a body corporate, under and by virtue of this Act as aforesaid ; and the said Bank of Bengal as such body corporate shall be subject to all debts, demands, claims, and liabilities outstanding against the said Bank at the time of this Act so coming into operation, and no suit or proceeding at Law or in Equity then pending shall cease or abate in consequence of the repeal of the said Act VI. of 1839, or of the continuance of the said Bank by virtue of this Act.

Bank may sue and be sued by corporate name, and hold and transfer property.

IV. The said Bank so continued as aforesaid shall and may sue and be sued by its corporate name aforesaid, and shall and may have and use such common seal as the Directors of the said Bank shall from time to time appoint, and shall be competent as such body corporate to acquire and hold, either absolutely or conditionally, for a term or in perpetuity, any description of property whatever, and to transfer and convey the same.

Capital of the Bank.

V. The existing capital of the said Bank, now consisting of 2,675 shares of Company's Rupees 4,000 each, divisible into half and quarter shares, shall continue to be the capital of the said Bank ; but shall, from and after the coming into operation of this Act, consist of 10,700 shares of Rupees 1,000 each, divisible into half and quarter shares, and such capital shall be subject to such increase as next hereinafter mentioned.

Increase of Capital.

VI. It shall be lawful for the Directors of the said Bank for the time being, from time to time, as and when they shall deem it expedient so to do, and on such previous notification as they may deem sufficient in that behalf, to increase the said capital, and for that purpose to make such orders and directions for the opening of subscriptions towards such increase of capital by the Proprietors of the Bank for the time being as to them may seem fit, and also to allow to the said Proprietors such period to fill up the subscription as to them, the said Directors, shall seem meet, and also to prescribe in what manner and form the said Proprietors shall subscribe and pay into the said Bank the proportions of new capital which such Proprietors may respectively desire to subscribe, and also to make such orders and directions as to them, the said Directors, may seem fit for the disposal and allotment of the amount of new capital that may not be subscribed for and paid up by Proprietors for the time being in the manner and form so prescribed. Provided always, that the capital of the said Bank shall never in the whole exceed 21,400 shares of 1,000 Rupees each.

Consolidated Stock.

VII. It shall be lawful for any Proprietor of any 1,000 Rupees share or shares, or of any half or quarter share or shares in the existing capital or in the new capital so to be created as aforesaid, at any time, and from time to time to surrender such share or shares, or half or quarter share or shares or any of them to the Directors of the Bank for the time being, and to demand and receive from the Bank, in lieu thereof, consolidated stock to the like amount as represented by the share or shares or half or quarter share or shares so surrendered; and in like manner any Proprietor or other person subscribing for any portion of the new or increased capital under the provisions hereinbefore contained, may at his option subscribe for shares or for consolidated stock, or partly for shares and partly for stock.

Consolidated Stock how transferable.

VIII. The consolidated stock aforesaid shall be transferable (subject to the provisions hereinafter contained with respect to transfers) in any amount or sum not less than 250 Rupees, and the holder of any share or shares or half or quarter share or shares of any consolidated stock, shall be a Proprietor of and interested in the capital of the Bank to the extent of the amount of the shares or half or quarter shares or stock so held by him.

Certificates of shares and receipts for Stock.

IX. A certificate signed by three Directors of the said Bank shall be delivered to the Proprietor of any share or half or quarter shares of the capital of the said Bank, upon demand made by such Proprietor, and any Proprietor of more than one such share or half or quarter share, may at his option demand a certificate for each or one certificate for all his shares, and a receipt shall in like manner on demand be delivered to the Proprietor of any stock, and any Proprietor of stock may at his option demand one receipt for the whole of the stock or separate receipts for any portions of the stock so held by him.

Shares and stock to be deemed personal estate.

X. The proportion of the capital of the said Bank held by any Proprietor, whether held as shares or as consolidated stock, shall be of the nature of personal estate of such Proprietor.

Transfer of shares and stock.

XI. Shares in the capital shall be transferable by endorsement to be made on the certificates thereof respectively, under the hand of the Proprietor or his Attorney duly authorised, which endorsement shall specify the name of the person or persons to whom the said transfer shall be made, and consolidated stock shall be transferable by a deed of transfer executed by the Proprietor or his duly authorised Attorney, and in the form set forth in Schedule A hereto annexed. Provided always, that no endorsement of a share, certificate, or deed of transfer of stock shall be effectual to transfer any interest in the share or stock until such endorsement or deed of transfer shall have been registered at the Bank of Bengal, and such registration shall have been noted on such endorsement or deed of transfer under the hand of an Officer appointed for that purpose by the Directors of the said Bank. Provided also, that every transfer of shares of stock by endorsement or deed of transfer as aforesaid shall be liable to Stamp Duty as a transfer of shares under Clause 19 of the Schedule A to Act XXXVI. of 1860, or any future Act imposing a Stamp Duty on transfer of shares.

Corporation to consist of registered Proprietors only.

XII. The registered Proprietors for the time being of the shares and stock into which the capital of the said Bank shall be divided, and no other persons, shall be members of the body corporate hereby continued, and the Bank shall not be bound or affected by notice of any trust to which any share or stock may be subject in the hands of the registered Proprietor thereof; and when any share or stock is vested in more than one registered Proprietor, such Proprietors shall, as between themselves and the Bank, be considered as joint tenants with benefit of survivorship.

Directors.

XIII. The business of the said Bank shall be managed by nine Directors, of whom three shall be appointed and removable by the Governor General of India in Council, and the remaining six shall be elected and be removable by vote of a general meeting of the Proprietors.

Present Directors to be continued.

XIV. The persons who at the time of this Act coming into operation shall be Directors of the said Bank, shall continue to be Directors of the said Bank, subject to removal as aforesaid and to the provisions hereinafter contained.

Two of the elective Directors to go out by rotation annually.

XV. Two of the six Directors elected and to be elected by the said Proprietors shall in rotation go out of office on the Second Monday in the month of December in every year, on which day a general meeting of Proprietors shall be held for the election of two Directors in their stead. Provided always, that any Directors going out by rotation as aforesaid shall not be re-eligible at the election which takes place thereupon. Provided also, that the rotation existing at the time of this Act coming into operation shall continue to be observed.

Disqualifications to serve as an elective Director.

XVI. No person shall be eligible or qualified to serve as a Director by election of the Proprietors who shall not be Proprietor in his own right and unencumbered of shares or stock to the amount of Twelve thousand Rupees at the least of the capital of the said Bank, or who shall be a Director of or Agent or Manager of or for any other Bank or Branch Bank within the Town or Suburbs of Calcutta.

Vacancies among the elective Directors how to be filled up.

XVII. In case of the death, resignation, or absence from Calcutta for more than three calendar months, or disqualification under the preceding Section, or removal as aforesaid of any Director elected or to be elected by the said Proprietors, the other Directors shall, within fifteen days after such death, removal, or resignation, call a special general meeting of the Proprietors for the purpose of choosing a successor to the Director so dead, resigned, absent, disqualified, or removed, and such successor shall come into the same place in the rotation abovementioned, in which the deceased, removed, absent, or disqualified Director was.

At general meetings all matters to be decided by a majority of votes.

XVIII. At general meetings of the Proprietors, whether ordinary or special, every election and other matter submitted to the meeting shall be decided by a majority of votes, and no person shall be allowed to vote at any such meeting in respect of any share or stock acquired by transfer, unless such transfer shall have been completed and registered six months at the least before the time of such meeting.

Scale of votes.

XIX. At all such general meetings, the Proprietors shall vote according to the following scale :—

4 Shares of Rupees 1,000 each or consolidated stock amounting to 4,000, shall entitle to 1 Vote.

20 Shares	or	consolidated stock				
		ditto	ditto	Rs. 20,000	2	Votes.
40	,,	ditto	ditto	,, 40,000	3	,,
60	,,	ditto	ditto	,, 60,000	4	,,
80	,,	ditto	ditto	,, 80,000	5	,,
120	,,	ditto	ditto	,, 120,000	6	,,
160	,,	ditto	ditto	,, 160,000	7	,,

and no Proprietor shall be entitled to more than seven votes. Provided that also when any share or stock shall be held by Joint Registered Proprietors, the Proprietor whose name shall appear first in the Register as one of the holders of such share or stock shall alone be entitled to vote in respect thereof, and to receive notices as if he were sole Proprietor thereof.

Government proxy.

XX. It shall be lawful for the Governor General of India in Council to give a proxy in writing signed by one of the Secretaries to Government, to any person whom the Governor General in Council may appoint to attend any general meeting of the Proprietors, and the holder of such proxy shall be entitled to give seven votes upon all matters or questions that may be submitted to such meeting, excepting upon the election or removal of such Directors as are elected by the said Proprietors.

XXI. Any Proprietor entitled to vote at any general meeting may give a proxy in writing, either general or special, under his hand, or the hand of his Attorney duly authorised, to any other Proprietor, and such proxy shall be produced at the time of voting, and shall entitle the person to whom it is given, to vote on such matters as shall be authorised by the tenor of such proxy. Proxies existing and in force at the time of this Act coming into operation, shall continue in force, anything herein contained notwithstanding.

Proxies of Proprietors.

XXII. At the first meeting of the Directors in every year, they shall choose a President from among themselves, and whenever the office of President shall become vacant, they shall, at their next meeting, choose a successor for the remainder of the current year; and during any vacancy, or in the absence of the President, the Senior Director in rotation shall be Vice-President for the time, and such President or Vice-President shall have the casting vote in all cases of an equal division of votes at meetings either of Directors or of Proprietors.

Directors to choose a President, who is to have a casting vote.

XXIII. The persons for the time being holding the office of Secretary and Treasurer, or of Secretary alone, or of Deputy Secretary of the said Bank, are hereby severally empowered for and on behalf of the Bank to endorse and transfer Government securities, Railway shares, certificates, and Bonded Warehouse warrants, and other documents of title in goods standing in the name of the Bank, and to draw, accept, and endorse Bills of Exchange, Bank Post Bills, and letters of credit, in the current and authorised business of the Bank, and to sign all other accounts, receipts, and documents connected with such business.

Amounts, receipts, and documents of the Bank by whom to be signed.

XXIV. The seal of the said Bank shall not be affixed to any instrument, except in the presence of three Directors, who shall sign their names to the instrument in token of their presence, and such signing shall be independent of the signing of any person who may sign the instrument as a witness; and unless so signed by three Directors, such instrument shall be of no validity.

Seal to be used only in presence of three Directors, who shall sign in token of their presence.

XXV. The Directors for the time being shall have power to appoint such officers, clerks, and servants as may be necessary to conduct the business of the said Bank, and to remove any officer, clerk, or servant of the said Bank, and to fix the salaries of such officers, clerks, and servants.

Appointment, removal, and remuneration of Officers, &c.

XXVI. No person who shall hold the office of Secretary and Treasurer, Deputy Secretary, Head Accountant, or Khazanchee of the said Bank, shall, directly or indirectly, engage in any other commercial business, either on his own account individually or jointly with others, or as agent for any other persons, or act as a broker; and every person appointed to any one or more of the said offices shall give such security to the Directors for the faithful discharge of his duty as they shall think sufficient. Provided that the security to be given by any Secretary or Treasurer shall be for not less than Fifty thousand Rupees.

Prohibits certain Officers from engaging in other commercial business as principal, agent, or broker, and requires them to give security.

XXVII. The business of the said Bank of Bengal shall consist in lending on Government Securities and shares in Railways, the interest whereon shall have been guaranteed by Government, and on goods, wares, and merchandize not of a perishable kind, in discounting, buying, and selling Bills of Exchange, and other negotiable securities payable in Her Majesty's Indian Territories and not elsewhere; in granting Post Bills payable in Her Majesty's Indian Territories to order or otherwise than to Bearer or demand; in buying and selling gold and silver bullion; in making investments in securities of the Government of India or in loans or Bonds secured by the Imperial Parliament on the revenues of India, or in debentures of Railways guaranteed by the Government of India; in receiving deposits; in opening cash accounts and credits; in transacting pecuniary agency business on commission; and in selling property or securities deposited in the Bank as security for loans and not redeemed, or property or securities recovered by the Bank in satisfaction of debts and claims.

Business of the Bank specified.

XXVIII. In addition to buying and selling Bills of Exchange and granting Post Bills payable in India, it shall be lawful for the Bank to buy Bills of Exchange for the purpose of remitting funds to meet Bills or Letters of Credit drawn by the Bank in favour of their constituents in the Agency Department, and to grant letters of credit payable out of India for the use of their constituents in the Agency Department.

Bank may buy Bills for remitting funds to meet Bills drawn in favour of their constituents in the Agency Department.

XXIX. It shall also be lawful for the said Bank, through their Directors, under any arrangement or agreement with the Governor General of India in Council on behalf of the Secretary of State for India in Council to take over and transact any part of the business of or hitherto carried on at the General Treasury (or in the Department of the Accountant General at Fort William), and to superintend, manage and become agents for the issue, payment, and exchange of Government Currency Notes under Act XIX. of 1861, or any Act which may hereafter be passed in relation to the Paper Currency of the Government of India, and to pay the amount of such Government Currency Notes in silver to the holders thereof on presentation and demand; and the Directors of the said Bank shall have power, from time to time, to arrange and settle with the Governor General in Council as to the terms of remuneration on which such business in relation to the General Treasury, Accountant General's Department, and Government Paper Currency shall be undertaken by the Bank, and also as to the examination and audit, from time to time, of the accounts and affairs of the Bank on behalf of the Governor General of India in Council.

Bank may transact the business carried on at the General Treasury and undertake the management of the Government Paper Currency.

XXX. The Directors of the said Bank shall not make any loan or advance on shares or consolidated stock of the said Bank, nor on mortgage, or in any other manner on the security of any lands, houses, or immovable property, or the title deeds relating thereto.

Directors not to make loans on shares, &c.

XXXI. The Directors of the said Bank shall cause the books of the said Bank to be balanced on the 30th day of June and the 31st of December in every year, or at such other periods as shall, from time to time, be determined by the Directors; and a settlement of the balance at every such period, signed by a majority of the Directors, shall be forthwith transmitted to one of the Secretaries to the Government of India, and the Governor General

Books to be balanced half-yearly.

of India in Council shall at all times be entitled to require of the said Directors any information touching the affairs of the Bank, and the production of any documents of the said Bank, and the said Directors shall comply with every such requisition.

Dividends to be determined half yearly.

XXXII. An account of the profits of the said Bank shall be taken half-yearly, on the 1st day of January and the 1st day of July in every year, or at such other periods as may, from time to time, be determined on by the Directors, and a dividend thereof shall be made as soon thereafter as conveniently may be, and the amount of such dividend shall be determined by the Directors of the said Bank on the basis of the actual profits made by the said Bank during the six calendar months preceding the day up to which such half-yearly account shall be taken; provided that the said Directors shall, in their discretion, have power to set apart such portion of the said profits as they may deem expedient to be added to the reserve fund against contingencies.

General meeting of Proprietors.

XXXIII. On the 1st Monday of the month of August in every year, a general meeting of the Proprietors of the capital of the said Bank shall be held, at which the Directors of the said Bank shall submit to the said Proprietors a statement of affairs of the said Bank made up to the preceding 30th of June, or to such other day as may be determined on by the Directors.

Election of Auditors.

XXXIV. At the first general meeting of the Proprietors of the Bank held after the coming of this Act into operation, one or more Auditor for the current year may be elected by a majority of votes at such meeting, and in like manner an Auditor may be elected to the first general meeting of the Proprietors in each current year.

Convening of special general meeting.

XXXV. Any three of the Directors, or any ten Proprietors of the said Bank, may at any time convene a special general meeting of the Proprietors upon giving fifteen days' previous notice of such meeting, and of the purpose of which the same shall be convened as well to the Directors of the said Bank for the time being, as also by public advertisement in the *Calcutta Gazette.*

Establishment of branch Banks.

XXXVI. It shall be lawful for the Directors of the said Bank, with the sanction of the Governor General of India in Council, from time to time, to form business agencies and to establish branch Banks at such places as they may deem advantageous to the interests of the Bank, with full power to the said Directors to appoint during pleasure such agents, clerks, and servants, and either with or without local Boards of Directors or management, and under such regulations, restrictions, and conditions as to them may seem fit, and from time to time to vary such regulations, restrictions, and conditions; and the said Agents and other Officers shall give such security for their good behaviour as the Directors may require; and it shall also be lawful for the Directors, from time to time, under any arrangements or agreements with the Governor General in Council on behalf of the Secretary of State in Council, to provide for the conduct and transaction by any such Branch Bank or Banks of any part of the business of or hitherto conducted at the Local Government Treasuries, and for the superintendence, management, and agency of the local issue, payment, and exchange of any Government Currency Notes, provided that such arrangements and all regulations and directions given by the said Directors to the Agents or Managers of such Branch Banks, touching the management thereof or the description of business to be undertaken thereby, shall not contain anything inconsistent with or contrary to the provisions of this Act, or of any Bye-laws, Regulations, or Orders which may be in force for the time being under the 39th Section of this Act.

If any Proprietor becomes indebted to the Bank.

XXXVII. If any of the said Proprietors shall become indebted to the said Bank, it shall be lawful for the said Bank to withhold payment of the dividends on the share or shares or consolidated stock of such Proprietor registered as his own property, and not as held in trust or as executor or administrator, until payment of such debt, and to apply such dividends towards payment thereof, and after demand and default of payment, and notice in that behalf given either to such Proprietor, or his constituted agent, or by public advertisement in the *Calcutta Gazette*, it shall be lawful for the said Bank to refuse registration of the transfer of any such share or shares or stock of such Proprietor, until payment of such debt, and if the same shall remain unpaid for the space of six calendar months after such notice, to advertise for public sale and to sell such share or shares or stock or so many or so much as may be necessary, and to apply the proceeds thereof towards payment of such debt, with interest at the rate of six per cent. per annum, paying over the surplus, if any, to such Proprietor or to his lawful representative.

Recognition of legal representatives of deceased Proprietors.

XXXVIII. Where, by the death of any Proprietor, his share or shares of stock shall devolve on his legal representative, the Bank shall not be bound to recognise any legal representatives of such deceased Proprietor other than a person who has taken out Probate to the Will, or Letters of Administration to the estate of such deceased Proprietor from the Supreme Court of Judicature at Fort William, or who has obtained a certificate in respect of the estate of such deceased Proprietor under Act XXVII. of 1860, describing such shares or stock, from a Court of competent jurisdiction within the Presidency of Fort William.

Power of Directors to make, alter, and rescind Bye-laws, &c.

XXXIX. It shall be lawful for the Directors for the time being of the said Bank to make and pass Bye-laws, Regulations, and orders for the good government, and in reference to the mode of conducting the business of the Bank, and such Regulations and orders, from time to time to modify, rescind, and vary; and it shall further be lawful for the Proprietors of the said Bank at any general meeting, whether ordinary or special, to pass resolutions and frame, and from time to time, rescind and vary Bye-laws and Rules for the direction of the affairs of the Bank, and the same shall be binding on the Directors and Officers and on the Proprietors of the Bank, until rescinded or varied at any subsequent general meeting; provided always, that no Bye-law, Regulation, or order, or alteration or rescission of any Bye-law, Regulation, or order, whether passed by the Directors or by the Proprietors at a general meeting, shall be of any validity, except in so far as the same shall be consistent with the provisions of this Act, and shall be approved by the Governor General of India in Council, such approval to be signified in writing under the hand of one of the Secretaries to the Government of India.

Construction.

XL. In the construction of this Act, words in the singular number shall include the plural, words in the plural shall include the singular; and words in the masculine gender shall include the feminine, except where the contrary appears by the context.

Commencement of Act.

XLI. This Act shall come into operation on the day of 186

Statement of Objects and Reasons.

The object of this Bill is to provide a new Charter of Incorporation for the Bank of Bengal in lieu of that contained in Act VI. of 1839.

In pursuance of the provisions of that Act, the Governor General in Council, in contemplation of the measure for providing for a Paper Currency which is now embodied in Act XIX. of 1861, gave twelve months' notice to the Bank of Bengal that the provisions of Act VI. of 1839, as regards the power of the Bank to issue Promissory Notes under Section XXXI. of that Act, would be modified. The Currency Act has since been passed, which prohibits the issue of Promissory Notes payable to bearer on demand by any Banking Corporation or private firm whatever, except the Banks of Bengal, Madras, and Bombay, up to the 1st March 1862. That Act also provided for the Governor General in Council making such arrangements with any Bank at Calcutta or elsewhere as may be required to regulate and facilitate the issue and payment, under the provisions of that Act, of the Government Currency Notes. The subsequent Act, No. XXIV. of 1861, empowered the Banks to enter into agreements or arrangements with the Government for superintending, managing, and being agents for the issue, payment, and exchange of the Government Notes payable under the Currency Act, for the carrying on the business of an Agency of Issue in any Circuits of Issue which the Banks shall have established in British India, and for transacting any part of the business of or hitherto generally transacted by or at the General Treasury of the Government of the Presidency of Fort William.

The Government has accordingly entered into an agreement with the Bank of Bengal for the several purposes mentioned in the last-cited Act, which agreement was published in the *Calcutta Gazette* of the 4th instant.

It is now proposed to grant to the Bank a new Charter of Incorporation, similar in most respects to the old one, but adapted to the change in the business and to the altered circumstances of the Bank consequent upon the withdrawal of the privilege to issue Bank Notes payable to bearer on demand, and upon the transfer of the business of the Government Treasury at Calcutta to the Bank, and to the establishment of the agency of Issue for the Calcutta Circuit at the Bank.

The principal changes proposed in the present Bill in regard to the constitution and business of the Bank are as follows :—

The Capital, which now consists of 2,675 shares of Rupees 4,000 each, is to consist of 10,700 shares of Rupees 1,000 each, divisible as at present into half and quarter shares. (Section V.)

Power is given to increase the Capital to an extent not exceeding double the present Capital, that is, not exceeding 21,400 shares of Rupees 1,000 each. (Section VI.)

Any Proprietor may at his option convert his shares into consolidated stock. Such stock shall be transferable in sums of Rupees 250 and upwards, so that a Proprietor may sell any fractional amount he may desire above that sum. (Section VII.)

The transfer of any stock is to be by deed of transfer, while the shares continue to be transferred by endorsement of the certificate as at present. (Section XI.)

Alterations are provided in regard to the business of the Bank in the following particulars :—

1st.—By extending the power of making loans on security from the security of Government securities and guaranteed Railway shares, to that of goods, wares, and merchandise not of a perishable kind. (Section XXVII.)

2nd.—By adding the power of transacting agency business on commission.

3rd.—By empowering the Bank to issue Post Bills payable in India otherwise than to bearer on demand.

4th.—By empowering the Bank to buy Bills for the purpose of remittance to meet Bills or letters of Credit in favour of their constituents, or to grant letters of Credit payable out of India for the use of constituents. (Section XXVIII.)

Power is further given to the Directors to take over and transact any part of the business of or hitherto carried on at the General Treasury or in the Department of the Accountant General at Fort William ; to undertake the agency for the Currency business ; and to settle with the Government as to the terms of remuneration of the Bank, and as to the examination and audit from time to time of the affairs and accounts of the Bank on behalf of Government. (Section XXIX.)

Power is also given to the Bank to establish branch Banks and Agencies at such places as the Directors think fit, and to provide for the conduct at such branches of any part of the business hitherto conducted at the local Government Treasury, and for the superintendence of the local issue, payment, and exchange of any Government Currency Notes. (Section XXXVI.)

In other respects the provisions of the new Charter follow those of the old. The first Clause as to the privileges of the Bank ceasing in case of its suspending cash payment is omitted, inasmuch as the main object of that provision, which was to stop the issue of Bank Notes payable on demand in case of the Insolvency of the Bank, no longer exists, since the power to issue such notes has been taken away.

(Signed) W. Ritchie.

The 22nd January 1862.

M. Wylie,

Deputy Secretary to the Government of India,
Home Department.

The following PROPOSED AMENDMENTS in the FOREGOING Bill were also ordered to be published :—

(1.) The insertion of the following words before the words "are repealed" in Section I. :—" Act XXVII. of 1855 so far as it relates to the Bank of Bengal."

(2.) That the following Section be adopted instead of Section VI. as printed :—

"It shall be lawful for the Directors of the said Bank, for the time being from time to time as and when they shall deem it expedient so to do, and on such previous notification as they may deem sufficient in that behalf, to increase the said capital ; and for that purpose to make such orders and directions for the opening of subscriptions towards such increase of capital by the proprietors of the Bank for the time being as to them may seem fit ; and also to allow to the said Proprietors such period to fill up the subscription as to them, the said Directors, shall seem meet ; and also to prescribe in what manner and form the said Proprietors shall subscribe and pay into the said Banks the proportions of new capital which such Proprietors may respectively desire to subscribe, and also to make such orders and directions as to them, the said Directors, may seem fit for the disposal and allotment of the amount of new capital that may not be subscribed for and paid up by Proprietors for the time being in the manner and form so prescribed. Provided always, that the capital of the said Bank, including any increase therein, that may be made under Section XXXVII. of this Act, shall not in the whole exceed 30,000 shares of 1,000 Rupees each."

(3.) That the following words be added to Section XVI. :—

"No two or more persons who shall be partners of the same Mercantile Firm, or one of whom shall be the general Agent of, or shall hold a power of procuration from a Mercantile Firm of which the other is a partner, shall be eligible or qualified to serve as Directors at the same time?"

(4.) That the following Section be introduced after Section XXXVI. :—

"It shall be lawful for the Directors of the said Bank, from time to time, to enter into negotiations for and to purchase and take over the capital, assets, and business of any other Bank within Her Majesty's Indian Territories of which the capital is divided into shares, and to grant and allot to the Shareholders or Proprietors in such Bank, in full of their respective right, title, and interest in such capital, assets and business a sufficient number of shares in the capital stock of the said Bank of Bengal (which number shall be determined by the Directors) and for that purpose to increase the Capital stock of the said Bank by the issue of such number of shares as may be so determined on. . The Shareholders or Proprietors of the purchased Bank, to whom such new shares shall be allotted, shall be Proprietors of the Bank of Bengal, and be in all respects in the same position as if they had respectively subscribed and paid for the share sso allotted to them. Provided always, that the business so purchased shall after the purchase be carried on by the said Bank of Bengal with, and subject to, the several restrictions contained in this Act."

M. WYLIE,
Depy. Secy. to the Govt. of India,
Home Department.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 12th February 1862, and was referred to a Select Committee, who will make a report thereon after the 15th of May next :—

A Bill relating to Breaches of Contract committed in bad faith.

Preamble.

Whereas it is just and expedient that Defendants in Civil suits who have broken their Contracts in bad faith, without reasonable excuse, after receiving consideration for the same, shall be liable to stricter provisions in regard to the judgment and execution to be awarded against them than Defendants whose failure to perform their Contracts has not been in bad faith or without reasonable excuse ; It is enacted as follows :—

Definitions.

I. In this Act, a person is said to break, or to refuse or neglect to perform his Contract in bad faith, if he breaks, or refuses or neglects to perform his Contract intentionally and from some motive of interest or ill-will, and not otherwise.

The words "reasonable excuse" denote an excuse which the Court may think reasonable, having regard to the circumstances of the case, and the ability of the Defendant to perform his Contract, although such excuse does not amount to a legal justification of the non-performance of the Contract.

The expression "substantial part of the consideration" denotes any such part of the consideration as the Court shall deem to be substantial according to the nature of the Contract and the circumstances of the case. Mere payment of earnest or of a small sum to bind the bargain shall not be deemed a substantial part of the consideration within the meaning of this Act. Nor shall any payment or delivery as part of the consideration be deemed substantial, if it is less in amount or value than the Defendant was entitled, according to the terms of the Contract, to have received from the Plaintiff at the time of the neglect or refusal of the Defendant to perform his Contract.

The words "damages necessary to indemnify the Plaintiff against all loss" are not confined to such damages as were contemplated, or may reasonably be supposed to have been contemplated, by the parties at the time they entered into the Contract. They include the full extent of loss which the Plaintiff has sustained or is reasonably likely to sustain as a direct consequence of the breach of Contract, including the loss of any profit which he has been thereby directly prevented from making, whether the Defendant at the time of entering into the Contract or of the breach thereof knew that such loss would be the direct consequence of a breach of the Contract or not.

Words importing the singular number include the plural : and words importing the plural number include the singular.

Words importing the masculine gender include females.

Civil Court to determine as to breach in bad faith and without excuse of Contract for which consideration has been received.

II. (1).—When any person who shall have entered into a Contract for the performance of any act on his part, shall have received the consideration, or any substantial part of the consideration for the performance of the Contract on his part, and shall refuse or neglect to perform his Contract according to the terms thereof, it shall be lawful for the Civil Court before which any suit for the breach of such Contract may be brought, whether such Court be one established by Royal Charter or not, to determine whether the Defendant has in bad faith and without reasonable excuse refused or neglected to perform his Contract.

And may in such cases award full damages.

(2).—If it shall find that the Defendant has wilfully or in bad faith and without reasonable excuse refused or neglected to perform his Contract, the Court shall record its judgment to that effect, and shall award to the Plaintiff the full amount of damages necessary to indemnify the Plaintiff against all loss which he may have sustained, or which the Court may consider he is reasonably likely to sustain by reason of the non-performance of the Contract.

On order of specific performance Court may award damages for non-performance

III. If a Civil Court shall order the specific performance of any Contract of which the consideration, or a substantial part of the consideration, shall have been received by the Defendant, and shall fix an amount, to be paid as damages in the event of the non-performance thereof, and shall find that the Defendant has wilfully or in bad faith and without reasonable excuse broken his Contract, the Court may award and assess the damages to be paid, in the event of non-performance, in the manner provided by Section II. of this Act ; and such damages, if they shall become payable, shall be deemed to be damages within the meaning of this Act, and shall be subject to all its provisions in regard to damages.

When damages under Section II. not paid, Defendant may be detained.

IV. (1).—Whenever damages shall be awarded by a Civil Court under Section II. of this Act, if the Defendant shall fail to pay the same at the time at which they are payable by the judgment or decree, it shall be lawful for the Court to order him to be arrested and detained in execution for such period as it may deem fit, not exceeding the period allowed by the Code of Civil Procedure (Act VIII. of 1859), that is to say if the decree be for the payment of money not exceeding 50 Rupees, a period not exceeding three months ; if the decree be for the payment of money not exceeding 500 Rupees, a period not exceeding six months ; or if the decree be for the payment of money exceeding 500 Rupees, a period not exceeding two years.

In such case Plaintiff not bound to pay for subsistence.

(2).—It shall not be necessary in such case for the Plaintiff to provide subsistence money as required by that Act or by Act VII. of 1855 (*to amend the Law of Arrest on mesne process in Civil actions in Her Majesty's Courts of Judicature, and to provide for the Subsistence of Prisoners confined under Civil process in any of the said Courts*) or diet money as required by Act IX. of 1850 (*for the more easy recovery of Small Debts and Demands in Calcutta, Madras, and Bombay*).

V. In every such case the Defendant shall provide for his own subsistence in Jail, and in case he shall fail so to do, he shall be maintained at the expense of the Government and allowed the same diet as Prisoners in the Criminal Jail, and shall be subject to hard labour in the Civil Jail for the period during which he shall be detained in execution.

Defendant to pay for subsistence or to be kept to hard labour.

VI. A Defendant in confinement for non-payment of such damages shall not be entitled to his discharge in respect thereof under the 280th and 281st Sections of the said Code of Civil Procedure, or under any order for his personal discharge by a Court for the relief of Insolvent Debtors (other than a final order of discharge in the nature of a certificate of his former and his after-acquired property) until he shall have been imprisoned for the period for which he shall have been committed as aforesaid, unless he shall have paid the full amount of such damages.

Defendant not entitled to discharge.

VII. A Defendant once discharged by the expiration of the period of imprisonment so awarded as aforesaid, shall not be again imprisoned or arrested under the same Decree: but until the Decree shall be fully satisfied, his property shall continue liable, when the Decree shall be that of a Court established by Royal Charter, to be taken in execution according to the provisions of Act VI. of 1855 (*to extend the operation of, and regulate the mode of executing writs of execution in Her Majesty's Supreme Courts of Judicature*) or to any Act or Rules in force for the time being regulating execution in such Courts, and when the Decree shall be that of a Court not so established, to attachment and sale according to the said Code of Civil Procedure.

If Defendant discharged, his property may still be liable.

VIII. Provided that if the Defendant shall obtain from any Court for the Relief of Insolvent Debtors an order of final discharge of his person and his after acquired property in the nature of a certificate in bankruptcy, nothing in this Act contained shall prevent the full operation of such order in respect of the person or the after-acquired property of the said Defendant.

Proviso.

IX. The arrest and confinement of a Defendant by virtue of the provisions of this Act under any judgment or decree of a Court established by Royal Charter shall not be deemed a satisfaction of such judgment or decree in respect of any property of the Defendant.

Arrest of Defendant not satisfaction.

X. This Act shall not extend to any Contract entered into before the passing of this Act.

Extent of the Act.

Statement of Objects and Reasons.

The object of this Bill is to provide proceedings of greater strictness, in regard to the amount of damages, and the nature of the execution to be awarded than the Law at present admits, against Defendants in Civil suits who have broken their Contracts in bad faith and without reasonable excuse, after having received consideration for the same.

2. A Bill was brought into the Legislative Council last year by the Hon'ble Mr. Beadon to provide for the punishment of breaches of Contract of one particular class, namely Contracts for the cultivation, production, gathering, provision, manufacture, carriage, and delivery of agricultural produce. The Bill was framed upon the same principle as Act XIII. of 1859, which provided for the punishment of breaches of Contract by artificers, workmen, and labourers in the Presidency Towns and in such other places as the Government might extend the Act to, and was itself based on the special legislation that has long obtained in England in regard to breaches of Contract between masters and workmen or labourers in numerous callings and trades. Mr. Beadon's Bill provided for the criminal trial before a Magistrate of all charges of wilful breach of such agricultural Contracts by Ryots, labourers, or others who had received an advance from their employers, and for their punishment by imprisonment with hard labour.

3. The Bill was read a second time, and was referred to a Select Committee. In the meantime a Despatch was received by the Government of India from the Right Hon'ble the Secretary of State in Council expressing disapproval of the principle of the Bill, on the ground that it treated a mere breach of Contract as a criminal offence, and indicating an intention to disallow the Bill if passed by the Council in India.

4. The President of the Select Committee upon the Bill, the Honourable and learned Chief Justice, (who had supported the penal provisions of the Bill, but thought that they ought not to be restricted to Contracts under which advances had been made), thereupon prepared a Draft Report, stating that the Committee thought, under the circumstances, that it would be injurious to the public interests to pass an Act with the knowledge that those who have been entrusted by Parliament with the power of ordering its immediate repeal would doubtless exercise such power ; but further stating, that although the Council could not do all that it might wish, the Committee thought that some relief might be afforded by exempting complainants in cases of the nature contemplated by Mr. Beadon's Bill, from the necessity of supplying subsistence money before the Defendants could be detained in execution by order of the Court, and by rendering the Defendants liable to be kept to hard labour in the Civil Jail for the period allowed by the Code of Civil Procedure for their detention in execution, unless they should provide for their own maintenance. The Honourable and learned Chief Justice prepared a Draft of an amended Bill in accordance with these suggestions.

5. The Report itself had not been presented, nor had any conclusion as to the Draft of the Report or of the amendments, been adopted, by the Select Committee at the time of the expiration of the functions of the Council as then constituted.

6. The Government of India has since carefully and earnestly considered the subject, and has come to the conclusion that, in regard to Contracts upon which consideration has been received, the principle of the measure recommended in the Draft Report ought to be adopted, but that that principle should be carried out to what appears to be its legitimate extent, and should be applied to all Contracts whatsoever, broken in bad faith and without reasonable excuse, by Defendants who have received consideration. While it is thought that a general measure of this kind will be less likely to meet with objection or disallowance in England than a measure restricted to agricultural Contracts, it is also felt that a broad and comprehensive Law applicable to all Contracts and to all Civil Courts throughout India, by which a clear distinction is marked out between the honest and the dishonest Contractor—between the man who breaks his Contract in bad faith and from some motive of interest or ill-will, and the man whose breach of Contract arises from misfortune or from circumstances which afford him morally a reasonable excuse though not a legal justification for the breach—is more consonant with just principles of legislation, and is less exposed to distrust and misinterpretation than a measure restricted to a special class of Contracts.

7. The Bill accordingly provides that when any person who shall have contracted for the performance of any act on his part shall have received the consideration, or a substantial part of the consideration for the same, and shall have broken his Contract, it shall be lawful for the Civil Court before which any suit for the breach of such Contract shall be brought, to determine whether the Defendant has broken the Contract in bad faith and without any reasonable excuse : and in that case the Court shall record its judgment to that effect, and shall award such amount of damages as it necessary fully to indemnify the Plaintiff against all loss,

present and prospective, arising from such breach. When the Court has so pronounced, the Defendant shall be liable to be committed to the Civil Jail in execution, for such period as the Court may award, not exceeding the time provided by the Code of Civil Procedure, (that is, when the damages are under 50 Rupees a term not exceeding three months, when above 50 Rupees but under 500 Rupees a term not exceeding six months, when above 500 Rupees a term not exceeding two years)—and in such case the Plaintiff shall not be bound to supply the subsistence money required by the Code or by Act VII. of 1855 regulating execution from the Supreme Courts: but the Defendant shall be bound to maintain himself in Jail, or, on failing so to do, shall be maintained at the expense of the Government, and shall be kept to hard labour while so maintained: And the Defendant shall not be entitled to be discharged from such confinement under the discharge Clauses of the Code of Civil Procedure (Sections 280 and 281), or under any order of discharge of an Insolvent Court (other than a final order of discharge in the nature of a certificate), until he shall either have paid the full amount of damages, or shall have undergone the term of imprisonment awarded by the Court. The Bill also provides that when a Defendant shall have been discharged from Jail by effluxion of time, his person shall not be again liable to be taken in execution for the same claim, but his property shall continue subject to execution and sale till the amount of damages is repaid, unless, in the case of a person subject to the jurisdiction of a Court for the relief of Insolvent Debtors, the party shall have obtained his final order of discharge in the nature of a certificate fom such a Court.

8. The Bill places an award for damages made by the Court in the alternative in case its Decree for specific performance is not carried out, on the same footing as ordinary damages under the Bill.

9. Care has been taken so to define the words "in bad faith," "reasonable excuse," and certain other expressions in the Bill (which might, if undefined, cause embarrassment to the Court applying its provisions) as to exclude from the operation of the Bill all cases in which intentional and dishonest breach of Contract is not an ingredient, and to give the Court within the limits prescribed a large discretion to deal with each case according to its special circumstances.

10. Such a measure will not be open to the objection that it is pointed against one particular class of Defendants, or that its benefits are confined to one particular class of Plaintiffs. Nor will the objection that a breach of Contract often involves Equities between the parties with which a Magistrate or other Criminal Authority unaccustomed to administer Civil Justice is not competent to deal satisfactorily, apply to such a measure: For the remedy it provides is to be administered solely by the ordinary Civil Courts, including in that term the Small Cause Courts, in cases within their jurisdiction: And that the difficulty of determining whether a Contract has been broken in bad faith or without reasonable excuse, will practically be no greater than that of resolving the ordinary questions with which Civil Courts have to deal. The measure, too, is free from the objection that the proceedings provided against a defaulting Contractor may be perverted into an instrument of extortion or oppression, as it is only after the Civil Court has fully heard the whole evidence on both sides, and after it has determined that a valid Contract exists, and that that Contract has been broken by the Defendant after receiving consideration, that it will be called on to pronounce whether the breach was committed in good or in bad faith, or with or without reasonable excuse.

11. The only restriction placed by the Bill upon the nature of the Contracts to which its provisions apply, is that the Contract shall be one upon which consideration has been received by the person breaking it. On the one hand, it is thought unadvisable to extend the measure to Contracts upon which the Plaintiff has not actually given any consideration by parting with his money, goods, or otherwise, but has merely promised to give some equivalent for the act to be done by the defendant: In such cases it is often impossible to say with absolute certainty whether the Plaintiff would have performed his part of the Contract if the Defendant had performed his. The position of the Plaintiff has not been changed for the worse, as it has been when he has actually performed his part of the Contract; The injury to him therefore in the great majority of cases is less than when he has given consideration: And the non-performance of the Contract, even though in some cases it may proceed from fraudulent motives, is not in itself of that palpably dishonest character, partaking morally of the nature of a breach of trust, which it is in the other case.

12. On the other hand, it has been thought advisable not to limit the measure to cases in which consideration has been paid in money, but to extend it to all cases in which consideration of whatever kind has been received by the Defendant. The Tradesman who has sold and delivered his goods, or the Landlord whose land has been held by a tenant, is as much entitled to protection in respect of the money receivable by him, as the Capitalist or Planter, who has advanced his money, is entitled to such protection in respect of the goods or produce he is to receive in return.

13. Such a measure will include every breach of Contract which Mr. Beadon's Bill provided for, and will in addition embrace a variety of other Contracts of which a wilful and dishonest breach may be fraught with as mischievous consequences to the other contracting party as in the class of Contracts referred to in that Bill.

(Signed) W. Ritchie.

The 29th January 1862.

DRAFT REPORT.

To the Honorable the Legislative Council.

We the undersigned, being the Select Committee to whom a Bill "to provide for the Punishment of Breach of Contract for the Cultivation, Production, Gathering, Provision, Manufacture, Carriage, and Delivery of Agricultural Produce," and a Bill "to provide for the registration and for the better enforcement of engagements for the cultivation and delivery of Agricultural Produce" were referred, have the honour to report as follows:—

The Right Honorable the Secretary of State for India having objected to a law for punishing by Criminal proceedings breaches of Contract relating to Agricultural produce, we cannot recommend the Council to pass the Bill introduced by Mr. Beadon in its present form. Such an Act, if passed by the Council, even if it should receive the assent of the Governor General, would no doubt be immediately repealed under orders from England. Whatever therefore may be the opinions of individual Members of this Committee (for they by no means agree as to the principle of the Bill), we think that it would be injurious to the public interests to pass an Act, with the knowledge that those who have been entrusted by Parliament with the power of ordering its immediate repeal would doubtless exercise that power. To pass a Law under such circumstances, and to give it effect for a few months only, could not by possibility be of any public benefit, But although the Council cannot do all that it might wish, we think that some relief may be afforded by exempting complainants, in cases of the nature contemplated by Mr. Beadon's Bill, from the necessity of supplying subsistence money before the Defendants can be detained in execution by order of the Civil Court. In many cases a single individual may be obliged to employ numerous labourers or cultivators to enable himself to carry on the business in which he may be engaged, and in which he may have embarked his capital. To compel him to resort to the Civil Court for every breach of Contract which may be committed by those whom he has employed will be a hardship, and will afford but little relief, unless Courts competent to deal summarily with the cases, such as the Small Cause Courts, be established in sufficient numbers and within convenient distances. But even if such Courts be established, the benefit to be derived from them will be greatly diminished if Complainants be compelled to deposit subsistence money not exceeding four annas a day for each defaulting Contractor, before he can be detained in execution by order of the Civil Court after a decree obtained against him. We therefore propose to relieve Complainants in such cases from the necessity of depositing subsistence money which now exists under the Civil Procedure Act, and to render the Defendants liable to be kept to hard labour in the Civil Jail so long as they are detained in execution, unless they provide for their own maintenance. The expense to Government will be no greater than if the defaulters were detained in the Criminal Jail under an order of a Magistrate. We propose also to render the defaulter's property liable to distress and sale for the amount expended by Government for his maintenance, leaving the defaulter himself liable to be imprisoned and kept to labour for an additional month unless the amount be paid. We have made such alterations in Mr. Beadon's Bill as we think necessary; and considering that the Contracts in question will be subject only to the Civil Courts, we see no necessity for any special provisions for registration. We have introduced in the Bill such of the Clauses of Mr. Sconce's Bill as appear to us to be necessary, and we recommend the two Bills to be consolidated.

M. Wylie,
Depy. Secy. to the Govt. of India,
Home Department.

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 12th February 1862, and was referred to a Select Committee, who will make a report thereon after the 15th of May next:—

A Bill relating to Emigration to the British Colonial Dependency of Seychelles.

Preamble.

Whereas it is expedient to extend the provisions of Act XV. of 1842 (*for regulating the Emigration of the Native Inhabitants of the Territories under the Government of the East India Company to the Island of Mauritius*) so that Native Inhabitants of British India may emigrate to the British Colonial Dependency of Seychelles: It is enacted as follows:—

Act XIV. of 1839 repealed.

I. Act XIV. of 1839, in so far as it renders liable to penalties every person who shall make with any Native of India any contract for labour to be performed in the British Colonial Dependency of Seychelles, or who shall knowingly aid or abet any Native of India in emigrating from the Ports of Calcutta, Madras, and Bombay respectively to the said Colonial Dependency, is repealed.

Act XV. of 1842 extended.

II. All the provisions of the said Act XV. of 1842, as modified by Act XLIX. of 1860 (*relating to Vessels carrying Emigrant Passengers to the British Colonies*), shall extend and apply to Native Inhabitants of the British Territories in India who shall emigrate to the British Colonial Dependency of Seychelles, and the said Act XV. of 1842 shall be read as if the words " or the British Colonial Dependency of Seychelles" had been inserted therein after the word " Mauritius" wherever the word " Mauritius" occurs in the said Act.

No Emigrant permitted to embark without certificate.

III. No Emigrant shall be permitted to embark for the said Dependency of Seychelles without a certificate from the Agent appointed by the Government of Mauritius and Seychelles, countersigned by the Protector of Emigrants of the Port of Calcutta, Madras, or Bombay, to the effect that such person has been engaged by him as an Emigrant to that Dependency on the part of the said Government.

In case of sickness, Emigrants may be taken to Quarantine Station of Mauritius.

IV. In case of sickness breaking out on board of any vessel conveying Emigrants to the said Dependency, such Emigrants may be taken to the Quarantine Station of the Island of Mauritius, and in such case such Emigrants may, at their option, contract for service at the said Island of Mauritius, or may proceed to the said Dependency; and if they shall elect to contract for service in the said Island of Mauritius, such Emigrants shall then be regarded and treated, in all respects, as if they had emigrated to the said Island under the said Act XV. of 1842.

Commencement of Act.

V. This Act shall take effect as to the said Colonial Dependency of Seychelles from the day when the Governor General of India in Council shall notify in the *Calcutta Gazette* that such regulations have been provided, and such measures taken, as the Governor General in Council deems necessary for the protection of such Emigrants during their residence in the said Colonial Dependency of Seychelles, and in respect of their return to India.

Statement of Objects and Reasons.

The Government of Mauritius has informed the Government of India, that the Secretary of State for the Colonies has approved of the extension of Indian Emigration to the Seychelles Dependencies, and has requested that the measure may receive the sanction of the Indian Legislature.

The present Bill has been drawn on the model of Act XXXIII. of 1860, relating to Emigration to Natal, and was introduced into the late Legislative Council at the request of the Government of India.

It proposes no new provision of Law, and only extends to the Seychelles the same facilities for obtaining labourers from India which have already been given to other British Colonies.

(Signed) H. Forbes.

The 22nd January 1862.

M. Wylie,
Depy. Secy. to the Govt. of India,
Home Department.

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