



SUPPLEMENT
TO THE
BOMBAY GOVERNMENT GAZETTE
CONTAINING
BILLS OF THE GOVERNMENT OF INDIA.

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THURSDAY, 12TH FEBRUARY 1863.

Separate Paging is given to these Supplements, in continuation from one to the other, that the Bills may be collected into a separate Compilation.

HOME DEPARTMENT (Legislative).

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 7th January 1863:—

HOME DEPARTMENT.—Legislative.

We, the undersigned, the Members of the Select

1. Resolution, Foreign Department, dated 4th November 1862.

2. From Officiating Under Secretary, Government of India, Foreign Department, to Commissioner of Pegu, dated 4th November 1862.

3. Statement of Appeal and Original Suits.

4. From Secretary to Chief Commissioner, British Burmah, to Secretary, Government of India, Foreign Department, dated 29th March 1862.

5. From Secretary, Government of India, Home Department, to Chief Commissioner, British Burmah, dated 27th April 1862.

6. From ditto to Advocate General, dated ditto, and enclosure.

7. Opinion of Advocate General, dated 5th July 1862.

8. From Chief Commissioner, British Burmah, to

Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations, to whom the Bill to define the jurisdiction, and to regulate the Procedure of the Courts of Civil Judicature in British Burmah, and to provide for the extension of certain Acts to the said Territory was referred, have the honour to report that we have considered the Bill and the papers mentioned in the margin.

We think that some modifications may be made in Section VII., with the view of limit-

Secretary, Government of India, Foreign Department, dated 31st July 1862.

9. From Secretary, Government of India, Home Department, to Chief Commissioner, British Burmah, dated 29th August 1862.

10. From Secretary, Chief Commissioner, British Burmah, to Secretary, Government of India, Home Department, dated 18th September 1862, and enclosures.

ing a second appeal to the Divisional Commissioner to cases in which the decision of the Court below may appear erroneous, or deserving of further consideration, on a point material to the merits of the case. We also recommend that provision be made for copies of the judgment appealed against being filed, and for a rejection of an appeal by a Commissioner having the effect of a confirmation of a decree of the Court below.

This Section, therefore, we recommend should be passed in the following form:—

“The Court of the Commissioner shall have power to hear and determine appeals from the original decisions, and where an appeal is allowed by the Code of Civil Procedure, or by this Act, from the orders passed by the Courts of the Deputy Commissioners in the Division of such Commissioner. The Commissioner may also receive a second appeal from the decisions of the Courts of the Deputy Commissioners in his Division, passed in regular appeal, reversing or modifying the decision of the Court of original jurisdiction on a point material to the merits of the case, if on a perusal of the grounds of appeal and of the judgments of the Courts below copies of which judgments shall be filed with the petition of appeal, a further consideration of

"the case shall appear to him to be requisite for the ends of justice. The decision of the Commissioner on such second appeal, whether for confirming, modifying, or reversing the decision of the lower appellate Court, shall be final, and no special appeal shall be allowed in such case to the Chief Commissioner from the decision either of the Deputy Commissioner, passed in regular appeal, or of the Commissioner of the Division passed on such second appeal. The rejection of an appeal by the Commissioner on a second appeal shall have the same effect as a confirmation of the decree of the lower Court."

In Section VIII. we recommend that the words "and in Section XVIII. of this Act" be inserted after the word "Section" in line 4.

Major Sparks in his Memorandum, dated the 12th September 1862, adverts to a point on which he considers some modification of the Code of Procedure, as regards the hearing of appeals in British Burmah, desirable. He says "in my former remarks I abstained from noticing one point in which, in my opinion, the Bill might be materially improved. I did so because I felt a diffidence in proposing a return to an old practice which the Legislature, doubtless for some good reason unknown to me, abrogated in passing Act VIII. of 1859. I mean the power of an Appellate Court to confirm a decree without summoning the respondent. Every day, however, strengthens my conviction of the hardship the present law inflicts upon many suitors in this province; and as the Government is about passing an exceptional Act specially adapted to the peculiar circumstances of British Burmah, I consider that I ought to take the opportunity of bringing this subject to notice. I have several times already had appeals from the Districts of Prome and Toung-hoo, not to mention the others, where there were no grounds for appeal whatever, nevertheless I have been obliged to delay the decision of the case until a notice could be served on the respondent and a return to it received; this alone, in cases from Toung-hoo, occupies from a month to six weeks. In many cases the respondents, not knowing how to appoint a pleader of my Court to appear for them and fearing that if they fail to appear they may lose their cause, have come down themselves all the way to Rangoon, at a fearful expense and loss of time, merely to be told that the appellant's appeal is groundless, and they may go back again. In other cases they have retained pleaders of my Court to appear for them, but as the pleaders always in small cases demand more than the fee allowed to be charged as costs of suit, the respondent does not recover from the appellant nearly the amount the appeal has cost him. Most of the appeals before me are in suits for land, the value of which at a year's tax is generally under 50 Rupees, the pleader's fee allowed as cost of suit upon this sum is 2 Rupees, whereas a respondent retaining a pleader of my Court would certainly not have to pay the most moderate of them less than 25 Rupees, and the greater number of them much more. The difference in this case between 2 Rupees and the sum paid to the pleader would be a dead loss to the respondent."

Concurring with Major Sparks, we recommend that the following Section be introduced as Section XV. :—

"In cases of appeal preferred to a Deputy Commissioner under Section VI., or to a Commissioner under Section VII. of this Act, it shall not be necessary to summon the respondent in the first instance, and if upon the perusal of the judgment of the Court below of the whole or any part of the record of the original suit, and of the petition of appeal in the presence of the appellant, or of his duly constituted agent the Deputy Commissioner or the Commissioner, as the case may be, shall see no reason to alter the decision appealed from, it shall be competent to him to confirm the same, recording his reasons for rejecting the appeal. In such case the Deputy Commissioner or the Commissioner shall cause the order for confirmation to be made known to the respondent through the Court from whose decision the appeal was made."

In Section XVI. of the Bill, we recommend the substitution, in line 5, of the words "Section XIV." for "the last preceding Section."

The Chief Commissioner and Major Sparks concur in recommending certain modifications of Act XIV. of 1859 (the Limitation Act) on its extension to Pegu under Section XXIV. of the Bill. The first point to which they advert is Clause 13 of Section I., relative to the limitation of time to enforce the right to share in family property. The custom of Pegu, as stated by Major Sparks, is to make family arrangements for the cultivation of ancestral property by the heirs in turn, or by the payment of separate portions by a cultivator to the heirs, and these arrangements continue for many years.

Major Sparks therefore fears that the limitation of twelve years provided by Clause 13 would cause a revolution in the law affecting immoveable property, and the Chief Commissioner concurs with him in recommending "the retention of the law on this head laid down in Section 60 of the Civil Code of Pegu," which provides that "land which has remained in the possession of the descendants of the original proprietor without being divided may be made the subject of a suit among the co-heirs for division without limitation of time."

We observe that the period of twelve years, to which objection is made, would run only from the commencement of a cause of action. So long as property remained "in the possession of the descendants," according to the terms just quoted, there would be no cause of action; but if any right of one of the descendants were invaded or infringed in violation of the family arrangement, or otherwise, a cause of action would arise; and we do not think that the period of twelve years limited by Clause 13 of Section I. of Act XIV., for the commencement of a suit, would in such a case be too short.

The second point is the limitation by Clause 15 of Section I. of Act XIV. of 1859, of thirty years in the case of moveable, and sixty years in the case of immoveable property deposited, pawned, or mortgaged. Major Sparks states that, under the Pegu Revenue Code, Rule 5, Section XV., "land which has been mortgaged, with possession to the mortgagee, without specification of time, and not redeemed for twelve years, becomes at the expiration of twelve years the absolute property of the mortgagee." In order to obviate injustice in respect of rights that may have been

acquired under this Rule, we recommend the addition to Section 24 of the following words:—
 “Provided also that Clause 15 of Section I. of the said Act XIV. of 1859 shall not apply to any claim to foreclosure arising under any deed or instrument of mortgage of immoveable property in Pegu executed before the date aforesaid, but every such claim arising under any such deed shall, so far as the law of limitation is concerned, be governed by the laws or rules of limitation now in force in that Province.”

We recommend that the 1st May 1863 be inserted in the last Section of the Bill as the period for it to come into operation, and with these amendments we recommend that Bill be passed.

The Chief Commissioner and Major Sparks recommend that the Chapter on Insolvency in Major Sparks' Code be retained in use. But we are not prepared to recommend that this important subject should be dealt with in the present Bill. The Code of Civil Procedure contains provisions under which the Courts can give relief in certain circumstances to indigent judgment-debtors, and we think that the expansion of these provisions into an Insolvent Law will require very mature consideration, and that any Insolvent Law which may be passed should not be confined in its operation to British Burmah.

(Signed) H. B. HARRINGTON,
 " HENRY S. MAINE,
 " C. J. ERSKINE,
 " R. S. ELLIS.

The 2nd January 1863.

M. WYLLIE,
 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 7th January 1863:—

HOME DEPARTMENT.—Legislative.

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 regulate the admission of Appeals to Her Majesty in Council from certain judgments and orders in Provinces not subject to the general Regulations was referred, have the honour to report that no communication has been received on the subject of the Bill.

The only amendments we have to suggest are in Section VI. We recommend that the words “decree or order” in line 9, be substituted for the words “decree, order or sentence,” and that the words “judgment, decree or order” be substituted for the words “judgment or determination” in line 13.

We recommend that the Bill be passed with these amendments.

(Signed) H. B. HARRINGTON,
 " HENRY S. MAINE,
 " C. J. ERSKINE,
 " A. A. ROBERTS.

The 7th January 1863.

M. WYLLIE,
 Deputy 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 7th January 1863:—

HOME DEPARTMENT.—Legislative.

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 for regulating the Police of the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca was referred, have the honour to report that no communication has been received on the subject of the Bill.

We recommend that the Bill be passed with the following amendments:—

Section II., the introduction of the words “the Commissioner of Police of such station acting under the orders of” after the words “fixed by” in line 9, and the substitution of the word “such” for the word “the” in lines 18 and 20.

Section IV., the substitution of “twenty-five Dollars,” for “Fifty Rupees,” in line 19.

Section VII., the addition of the following words “and shall come into operation on the 1st of March 1863.”

(Signed) H. B. HARRINGTON,
 " HENRY S. MAINE,
 " W. S. FITZWILLIAM,
 " R. S. ELLIS,
 " C. J. ERSKINE,
 " D. COWIE.

The 7th January 1863.

M. WYLLIE,
 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 7th January 1863, and was referred to a Select Committee with instructions to make their report thereon in three weeks:—

No. 62 OF 1862.

A Bill to authorise the extension of the term of Office of the Municipal Commissioners in the Settlement of Prince of Wales' Island, Singapore, and Malacca.

Whereas it is expedient that power should be given for extending the term of Office of the Municipal Commissioners in the Straits Settlement; It is enacted as follows:—

I. Sections XI., XII., XIII., XVIII., and XIX. of Act XXVII. of 1856. Sections repealed. (for appointing Municipal Commissioners, and for levying rates and taxes in the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca), are repealed.

II. The Municipal Commissioners of Prince of Wales' Island, Singapore, and Malacca respectively, shall henceforth, from the time of the next election, hold their Office for one, two, or three years, as shall be determined from time to time in manner hereinafter mentioned.

III. The Governor of the Settlement shall, upon the appointment of the Commissioner, whom he is empowered by the said Act XXVII. of 1856, Section V. to appoint, declare for what number of years, not exceeding three, such Commissioner shall hold Office.

IV. At the time and place appointed for the election, the Sheriff or his Deputy shall attend with a closed box with an opening for the reception of voting tickets; every voter shall state in a voting ticket, which shall be signed by him, the name of the person or persons, not exceeding three, for whom he wishes to vote, and for what number of years, not exceeding three, he wishes that the elected Commissioners shall hold Office.

V. Every voter shall attend personally at the place of election and shall deliver his voting ticket to the Sheriff or his Deputy who, on being satisfied that the person tendering the ticket is on the list of persons qualified to vote, and that the ticket tendered conforms with the provisions of the preceding Section, shall deposit such voting ticket in the closed box.

VI. As soon as the elections shall be completed, the Sheriff or his Deputy shall publicly, at the place of election, ascertain the names of the persons for whom votes shall have been given, and the number of votes given to each person, and shall also ascertain for what term of Office each voter shall have voted; and he shall thereupon publicly declare the names of the several persons for whom votes shall have been given, and the number of votes given for the said terms of one, two, or three years respectively; and he shall declare that the persons not exceeding three, for whom the greatest number of votes, exceeding ten, shall have been given, are duly elected Municipal Commissioners of the Station; and that the term of their holding Office is the term of years in favour of which the greatest number of votes shall have been given, if such number of votes shall exceed ten. If such greatest number shall not exceed that number, he shall make no declaration as to the term of holding Office.

VII. In case there shall be an equal number of votes for any two or more terms of service, or in case the highest number of votes given for the term which has most votes shall not exceed ten, the Governor, or in his absence from the Station at which such election is being held, the Resident Councillor, shall declare for which of the said terms of service the elected Commissioners shall hold Office.

VIII. Every Commissioner appointed under the provisions of Sections XV., XVI., and XVII. of the said Act XXVII. of 1856, shall serve for the term or the residue of the term, as the case may be, which shall have been declared as aforesaid by the voters, or by the Governor on their failure to do so.

IX. The names of the elected persons and the term of service ascertained and declared by the Sheriff or his Deputy as aforesaid shall forthwith, after the election, be certified by him to the Resident Councillor of the Station.

X. The names of the appointed and elected Commissioners and of the term or terms (as the case may be) of Office shall be published in such manner as the Governor may direct.

XI. This Act shall be read and taken as part of the said Act XXVII. of 1856.

STATEMENT OF OBJECTS AND REASONS.

On the representation of the Municipal Commissioners of Singapore, supported by the Governor of the Straits Settlement, the Government of India consented to the preparation of a Bill for amending the Municipal Act XXVII. of 1856 (*for appointing Municipal Commissioners, and for levying rates and taxes in the several Stations of the Settlement of Prince of Wales Island, Singapore and Malacca*) in respect of the period for which the Municipal Commissioners in the Straits Settlement hold Office. A Bill was accordingly prepared at the request of the Governor by the Honorable the Recorder of Singapore, and was transmitted to the Government of India, and is now submitted to the Council.

(Signed) H. S. MAINE.

The 17th December 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 7th January 1863, and was referred to a Select Committee with instructions to make their report thereon in three weeks:—

No. 64 OF 1862.

A Bill relating to the Emigration of Native Laborers to the Danish Colony of Saint Croix.

Whereas it is expedient to render lawful the emigration of laborers, being Native Inhabitants of British India, to the Danish Colony of Saint Croix, and to extend the provisions of Act XXXI. of 1855 (*relating to the emigration of Native Laborers to the British Colonies of Saint Lucia and Grenada*) to the emigration of Native Inhabitants of British India who may emigrate to Saint Croix: It is enacted as follows:—

1. 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 Danish Colony of Saint Croix, 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 Colony, is repealed.

II. All the provisions of Act XXXI. of 1855, and of the Schedule thereto, 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 Danish Colony of Saint Croix, and that Act shall be read as if the words "or the Danish Colony of Saint Croix" had been inserted therein after the words "Saint Lucia and Grenada," or "Saint Lucia or Grenada," wherever those words occur in the said Act.

III. This Act shall take effect as to the said Colony of Saint Croix from the day when the Commencement of Act. 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 Colony of Saint Croix and in respect of their return to India.

IV. All the provisions of 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 Laborers) shall apply to Emigration to the said Colony of Saint Croix.

STATEMENT OF OBJECTS AND REASONS.

This Bill has for its object to authorise emigration to the Danish Colony of Saint Croix and is drawn on the model of Acts XII. and XLI. of 1860, relating to emigration to Saint Vincent and Saint Kitts.

The Bill is based on negotiations between the British and Danish Governments which have resulted in the consent of the British Government to the extension of the system of emigration from British India to Saint Croix.

(Signed) HENRY S. MAINE.

The 24th December 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 21st January 1863, and was referred to a Select Committee:—

No. 63 OF 1862.

A Bill for conferring upon the High Courts of Judicature in India the jurisdiction and powers vested in the Court for Divorce and Matrimonial Causes in England.

Whereas it is expedient to confer upon the High Courts of Judicature in India the jurisdiction and powers vested in the Court for Divorce and Matrimonial Causes in England by the Act 20 and 21 Victoria, Chapter 85, as amended by the Acts 22 and 23 Victoria, Chapter 61, and 23 and 24 Victoria, Chapter 144; It is enacted as follows:—

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I. From the time that this Act shall come into operation, the jurisdiction now exercised by the said High Courts in respect of Divorce *a mensâ et thoro*, and in all other causes, suits, and matters, matrimonial, shall be exercised subject to the provisions in this Act contained, and not otherwise: except so far as relates to the granting of marriage licenses which may be granted as if this Act had not been passed.

II. Any decree or order of the late Supreme Courts of Judicature at Calcutta, Madras, or Bombay, sitting on the Ecclesiastical side, or of any of the said High Courts sitting in the exercise of their matrimonial jurisdiction respectively in any cause or matter matrimonial, may be enforced and dealt with by the said High Courts respectively as hereinafter mentioned, in like manner as if such decree or order had been originally made under this Act by the Court so enforcing or dealing with the same.

III. All suits and proceedings in causes and matters matrimonial which at the time of this Act coming into operation shall be pending in any of the said High Courts shall be dealt with and decided by such Court, so far as may be, as if the same had been originally instituted in such Court under this Act.

IV. Subject to the provisions contained in this Act, the said High Courts shall, in all suits and proceedings under this Act, proceed, and act, and give relief, on principles and rules which in the opinion of the said Courts shall be as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England may for the time being act and give relief. And, subject as above, all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure.

V. No decree shall hereafter be made for a divorce *a mensâ et thoro*, but in all cases in which a decree for divorce *a mensâ et thoro* might now be pronounced, the High Court may pronounce a decree for a judicial separation, which shall have the same force and the same consequences as a divorce *a mensâ et thoro* now has.

VI. A sentence of judicial separation (which shall have the effect of a divorce *a mensâ et thoro* under the existing law, and such other legal effect as herein mentioned) may be obtained either by the husband or the wife, on the ground of adultery, or cruelty, or desertion without cause for two years or upwards.

VII. In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation shall continue, be considered as a *Feme sole* with respect to

Jurisdiction of High Courts regarding Divorce to be exercised subject to this Act.

Exception.

Enforcement of decrees or orders made heretofore by any Supreme or High Court.

Pending suits, &c., to be dealt with as if instituted under this Act.

Court to act on principles of the Court for Divorce and Matrimonial Causes in England.

No decree for divorce *a mensâ et thoro* to be made but a judicial separation.

Sentence of judicial separation may be obtained by husband or wife.

In case of judicial separation the wife to be considered a *Feme sole* with respect to property she may acquire. &c

property of every description which she may acquire, or which come to or devolve upon her; and such property may be disposed of by her in all respects as a *Feme sole*, and on her decease the same shall, in case she shall die intestate, go as the same would have gone if her husband had been then dead; provided that, if any such wife should again cohabit with her husband, all such property as she may be entitled to when such cohabitation shall take place, shall be held to her separate use, subject, however, to any agreement in writing made between herself and husband whilst separate.

VIII. In every case of a judicial separation

And to be a *Feme sole* for purposes of contract and suing.

under this Act, the wife shall, whilst so separated, be considered as a *Feme sole* for the purposes of contract and wrongs and injuries, and suing and being sued in any Civil proceedings; and her husband shall not be liable in respect of any engagement or contract she may have entered into, or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant; provided that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same shall not be duly paid by the husband, he shall be liable for necessities supplied for her use; provided also that nothing shall prevent the wife from joining at any time during such separation, in the exercise of any joint power given to herself and her husband.

IX. Application for restitution of conjugal

Application for restitution of conjugal rights or judicial separation may be made by husband or wife by petition to Court, &c.

rights or for judicial separation on any one of the grounds aforesaid may be made by either husband or wife, by petition to the High Court, and the said High Court on being satisfied of the truth of the allegations contained in such application, and that there is no legal ground why the same should not be granted, may decree such restitution of conjugal rights or judicial separation accordingly, and where the application is by the wife, may make any order for alimony which shall be deemed just.

X. A wife deserted by her husband may, at

Wife deserted by her husband may apply to the High Court for protection.

any time after such desertion, apply to the High Court for an order to protect any money or property she may acquire by her lawful industry, and property which she may become possessed of after such desertion, against her husband or his creditors or any person claiming under him; and the said Court, if satisfied of the fact of such desertion, and that the same was without reasonable cause, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and property acquired since the commencement of such desertion from her husband and all creditors and persons claiming under him, and such earnings and property shall belong to the wife as if she were *Feme sole*. Provided that it shall be lawful for the husband, and any creditor or other person claiming under him, to apply to the Court by which such order was made, for the discharge hereof. Provided also, that, if the husband or any creditor of, or person claiming under the hus-

band shall seize or continue to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to restore the specific property, and also for a sum equal to double the value of the property so seized or held after such notice as aforesaid. If any such order of protection be made, the wife shall, during the continuance thereof, be, and be deemed to have been during such desertion of her, in the like position in all respects, with regard to property and contracts, and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation.

XI. Any husband or wife, upon the applica-

Decree of separation obtained during the absence of husband or wife may be reversed.

tion of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced may, at any time thereafter, present a petition to the Court by which the decree was pronounced praying for a reversal of such decree on the ground that it was obtained in his or her absence, and that there was reasonable ground for the alleged desertion, where desertion was the ground of such decree; and the Court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly, but the reversal thereof shall not prejudice or affect the rights or remedies which any other person would have had in case such reversal had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the sentence of separation and of the reversal thereof.

XII. It shall be lawful for any husband to

On adultery of wife or incest, &c., of husband, petition for dissolution of marriage may be presented.

present a petition to the High Court, praying that his marriage may be dissolved, on the ground that his wife has since the celebration thereof been guilty of adultery; and it shall be lawful for any wife to present a petition to the said Court, praying that her marriage may be dissolved on the ground that since the celebration thereof her husband has been guilty of incestuous adultery, or of marriage with another woman, with adultery, or of rape, or of sodomy or bestiality, or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensâ et thoro*, or of adultery coupled with desertion, without reasonable excuse, for two years or upwards; and 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. Provided

As to "incestuous adultery," that for the purposes of this Act, incestuous adultery shall be taken to

mean adultery committed by a husband with a woman with whom, if his wife were dead, he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity or affinity; and marriage with another woman shall be taken to mean marriage of any person being married to any other person during the life of the former wife, whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere.

XIII. Upon any such petition presented by a husband the petitioner Adulterer to be a co- shall make the alleged respondent adulterer a co-respondent to the said petition, unless on special grounds, to be allowed by the Court, he shall be excused from so doing; and on every petition presented by a wife for dissolution of marriage, the Court, if it see fit, may direct that the person with whom the husband is alleged to have committed adultery be made a respondent.

XIV. Upon any such petition for the dissolution of a marriage, it shall be the duty of the Court to satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or no the petitioner has been in any manner accessory to or conniving at the adultery, or has condoned the same, and shall also inquire into any counter-charge which may be made against the petitioner.

XV. In case the Court, on the evidence in relation to any such petition, shall not be satisfied that the alleged adultery has been committed, or shall find that the petitioner has, during the marriage, been accessory to or conniving at the adultery of the other party to the marriage, or has condoned the adultery complained of, or that the petition is presented or prosecuted in collusion with either of the respondents, then and in any of the said cases the Court shall dismiss the said petition.

XVI. In case the Court shall be satisfied on the evidence that the case of the petitioner has been proved, and shall not find that the petitioner has been in any manner accessory to or conniving at the adultery of the other party to the marriage, or has condoned the adultery complained of, or that the petition is presented or prosecuted in collusion with either of the respondents, then the Court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitations in the next following Section of this Act made and declared. Provided always, that the Court shall not be bound to pronounce such decree if it shall find that the petitioner has during the marriage been guilty of adultery, or if the petitioner shall, in the opinion of the Court have been guilty of unreasonable delay in presenting or prosecuting such petition, or of cruelty towards the other party to the marriage, or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse, or of such wilful neglect or misconduct as has conduced to the adultery.

XVII. Every decree for a Divorce shall, in the first instance, be a Decree *Nisi*, to be made absolute till after the expiration of such time, not less than three months from the pronouncing thereof, as the Court shall by general or special order from time to time direct; and during that period any person shall be at liberty, in such manner as the Court shall by general or special order in that behalf from time to time direct, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not brought before the Court, and, on cause be-

ing so shown, the Court shall deal with the case by making the decree absolute, or by reversing the Decree *Nisi* or by requiring further inquiry, or otherwise as justice may require; and at any time during the progress of the cause or before the decree is made absolute, any person may give information to the Solicitor to Government at the place where the said Court is established of any matter material to the due decision of the case, who may there-upon take such steps as the Advocate General at the said place may deem necessary or expedient; and if from any such information or

Collusion. otherwise the said Solicitor shall suspect that any parties to the suit are or have been acting in collusion for the purpose of obtaining a Divorce contrary to the justice of the case, he may, under the direction of the Advocate General, and by leave of the Court, intervene in the suit, alleging such case of collusion, and retain Counsel, and subpoena witnesses to prove it; and it shall be lawful for the Court to order the costs of such Counsel and witnesses and otherwise arising from such intervention, to be paid by the parties or such one or more of them as it shall see fit, including a wife if she have separate property; and in case the said Solicitor shall not thereby be fully satisfied his reasonable costs, he shall be entitled to charge and to be re-imbursed the difference as part of the expenses of his Office.

XVIII. The Court may, if it shall think fit, on any decree absolute

Alimony. declaring a marriage to be dissolved, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it shall deem reasonable, and for that purpose may cause a proper deed or instrument to be executed by all necessary parties; and the said Court may in such case, if it shall see fit, suspend the pronouncing of its decree until such deed shall have been duly executed: and upon any petition for dissolution of marriage, the court shall have the same power to make interim orders for payment of money, by way of alimony or otherwise, to the wife, as it would have in a suit instituted for judicial separation.

XIX. Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition limited to

Husband may claim damages from adulterers. such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner, and such petition shall be served on the alleged adulterer and the wife, unless the Court shall dispense with such service or direct some other service to be substituted, and the claim made by every such petition shall be heard and tried on the same principles, in the same manner, and subject to the same or the like rules and regulations as actions for criminal conversation may now be tried and decided in the High Court sitting as a Court of ordinary original Civil jurisdiction, and the damages to be recovered on any such petition shall be ascertained by the said Court, although the respondents or either of them may not appear; and after the decision has been given, the Court shall have power to direct in what manner such damages shall be paid or applied, and

to direct that the whole or any part thereof shall be settled for the benefit of the children (if any) of the marriage, or as a provision for the maintenance of the wife.

XX. Whenever in any petition presented by a husband the alleged adulterer shall have been made a co-respondent, and the adultery shall have been established, it shall be lawful for the Court to order the adulterer to pay the whole or any part of the costs of the proceedings.

XXI. In any suit or other proceeding for obtaining a judicial separation or a decree of nullity of marriage, and on any petition for dissolving a marriage, the High Court may, from time to time, before making its final decree, make such interim orders, and may make such provision in the final decree as it may deem just and proper with respect to the custody, maintenance, and education of the children the marriage of whose parents is the subject of such suit or other proceeding, and may, if it shall think fit, direct proper proceedings to be taken for placing such children under the protection of the said High Court.

XXII. Every person seeking a decree of nullity of marriage, or a decree of judicial separation, or a dissolution of marriage, shall, together with the petition or other application for the same, file an affidavit verifying the same so far as he or she is able to do so, and stating that there is not any collusion or connivance between the deponent and the other party to the marriage.

XXIII. Every such petition shall be served on the party to be affected thereby, either within or without British India, in such manner as the Court shall by any general or special order from time to time direct. Provided always that the Court may dispense with such service altogether in case it shall seem necessary or expedient so to do.

XXIV. In any case in which the Court shall pronounce a sentence of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property either in possession or reversion, it shall be lawful for the Court, if it shall think proper, to order such settlement as it shall think reasonable to be made of such property or any part thereof, for the benefit of the innocent party, and of the children of the marriage or either or any of them. And any instrument executed pursuant to any order of the Court at the time of or after the pronouncing of a final decree of divorce or judicial separation shall be deemed valid and effectual in law, notwithstanding the existence of the disability of coverture at the time of the execution thereof.

XXV. The witnesses in all proceedings, before the Court where their attendance can be had, shall be sworn and examined orally in open Court. Provided that parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit

shall, on the application of the opposite party or by direction of the Court be subject to be cross-examined by or on behalf of the opposite party orally in open Court, and after such cross-examination may be re-examined orally in open Court as aforesaid by or on behalf of the party by whom such affidavit was filed.

XXVI. On any petition presented by a wife, praying that her marriage may be dissolved by reason of her husband having been guilty of adultery, or coupled with cruelty, or of adultery coupled with desertion, the husband and wife respectively, shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

XXVII. All decrees and orders to be made by the Court in any suit, proceedings, or petition to be instituted under authority of this Act shall be enforced and put in execution in the same or the like manner as the judgments, orders, and decrees of the High Court passed in the exercise of its ordinary original Civil jurisdiction may be enforced and put in execution.

XXVIII. The Court after a final decree of nullity of marriage or dissolution of marriage may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or a portion of the property settled either for the benefit of the children of the marriage or of the respective parents as to the Court shall seem fit.

XXIX. In every case of a petition for a dissolution of marriage, it shall be lawful for the Court, if it shall see fit, to direct all necessary papers in the matter to be sent to the Solicitor to Government at the place where the said Court is established, who shall, under the directions of of the Advocate General at the said place, instruct Counsel to argue before the Court any question in relation to such matter, and which the Court may deem it necessary or expedient to have fully argued; and it shall be lawful for the Court to order the costs of such Counsel and otherwise arising from such intervention to be paid by the parties or such one or more of them as it shall see fit, including a wife, if she have separate property, and in case the said Solicitor shall not be thereby fully satisfied his reasonable costs, he shall be entitled to charge and to be re-imbursed the difference as part of the expenses of his Office.

XXX. In all cases in which any of the said High Courts shall make any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient, and may, from time to time, appoint a new trustee, if for any reason it shall appear to the Court expedient so to do.

XXXI. An appeal shall lie to the said High Court from any order or judgment in any suit or proceeding under this Act of one or more Judges of the said High Court or of any Division Court: **Provido.** Provided that no such appeal shall lie to the said High Court as aforesaid from any such order or judgment made or passed by a majority of the full number of Judges of the said High Court, but that the right of appeal in such case shall lie to Her Majesty's Privy Council, and provided also that there shall be no appeal on the subject of costs only.

XXXII. Any person may appeal to Her Majesty's Privy Council from any decision on a petition for the dissolution of a marriage under this Act of any of the said High Courts made on appeal, and from any final judgment, decree, or order, made under this Act by a majority of the full number of Judges of any of the said High Courts as hereinbefore mentioned, subject always to such rules and orders of Her Majesty's Privy Council as may, from time to time, be in force relating to appeals to the said Privy Council.

XXXIII. When the time limited for appealing against any decree dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal any marriage shall be declared to be dissolved, but not sooner, it shall be lawful for the respective parties thereto to marry again, as if the prior marriage had been dissolved by death. **Provided** always, that no Clergyman in Holy Orders of the Church of England shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved on ground of his or her adultery, or shall be liable to any suit, penalty, or censure for solemnizing or refusing to solemnize the marriage of any such person.

XXXIV. **Provided** always, that when any Minister of any Church or Chapel of the Church of England shall refuse to perform such marriage service between any persons who but for such refusal would be entitled to have the same service performed in such Church or Chapel such Minister shall permit any other Minister in Holy Orders of the said Church entitled to officiate within the diocese in which such Church or Chapel is situate, to perform such marriage service in such Church or Chapel.

XXXV. The Court after a final decree of judicial separation, nullity of marriage, or dissolution of marriage, may upon application (by petition) for this purpose make, from time to time, all such orders and provision with respect to the custody, maintenance, and education of children, the marriage of whose parents was the subject of the decree, or for placing such

children under the protection of the said High Court as might have been made by such final decree, or by interim orders in case the proceedings for obtaining such decree were still pending.

XXXVI. After this Act shall have come into operation no action shall be maintainable in any of the said High Courts for Criminal conversation.

XXXVII. Nothing in this Act contained shall be taken to enable any husband or wife to make any application or maintain any suit under this Act, who might not (so far as the jurisdiction of the Court is concerned) have before the passing of this Act obtained a decree of divorce *a mensâ et thoro* from the said High Court.

XXXVIII. Unless the contrary appears from the contest, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; and words importing the masculine gender shall include females.

XXXIX. This Act shall come into operation on the 1st of 1863.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to place the Matrimonial Law administered by the High Courts, in the exercise of their original jurisdiction, on the same footing as the Matrimonial Law administered by the Court for Divorce and Matrimonial Causes in England.

The 9th Section of the Act of Parliament for establishing High Courts of Judicature in India (24 and 25 Vic., Ch. 104) provides that the High Courts shall exercise such Matrimonial Jurisdiction as Her Majesty by Letters Patent shall grant and direct. Under the authority thus conferred by Parliament, the 35th Section of the Letters Patent, constituting the High Courts of Judicature, provides as follows:—

"And we do further ordain that the said High Court of Judicature at Fort William in Bengal shall have Jurisdiction in matters Matrimonial between our subjects professing the Christian religion, and that such Jurisdiction shall extend to the local limits within which the Supreme Court now has Ecclesiastical Jurisdiction. Provided always that nothing herein contained shall be held to interfere with the exercise of any Jurisdiction in matters Matrimonial by any Court not established by Royal Charter within the said Presidency lawfully possessed thereof."

In the Despatch of the Secretary of State transmitting the Letters Patent, the 33rd and 34th paragraphs are to the following effect:—

33. "Her Majesty's Government are desirous of placing the Christian subjects of the Crown within the Presidency in the same position under the High Court, as to matters Matrimonial in general as they now are under the Supreme Court, and this they believe to be effected by

"Clause 35 of the Charter. But they consider it expedient that the High Court should possess in addition the power of decreeing divorce which the Supreme Court does not possess, in other words, that the High Court should have the same Jurisdiction as the Court for Divorce and Matrimonial Causes in England, established in virtue of the Act 20 and 21 Vic. Ch. 85, and in regard to which further provisions were made by 22 and 23 Vic. Ch. 61, and 23 and 24 Vic. Ch. 144. The Act of Parliament for establishing the High Courts, however, does not purport to give to the Crown the power of importing into the Charter all the provisions of the Divorce Court Act, and some of them, the Crown clearly could not so import such, for instance, as those which prescribe the period of re-marriage, and those which exempt from punishment clergymen refusing to re-marry adulterers. All these are, in truth, matters for Indian legislation, and I request that you will immediately take the subject into your consideration and introduce into your Council a Bill for conferring upon the High Court, the Jurisdiction and Powers of the Divorce Court in England, one of the provisions of which should be to give an appeal to the Privy Council in those cases in which the Divorce Court Act gives an appeal to the House of Lords."

34. "The object of the provision at the end of Clause 35 is to obviate any doubt that may possibly arise as to whether, by vesting the High Court with the powers of the Court for Divorce and Matrimonial Causes in England, it was intended to take away from the Courts within the division of the Presidency, not established by Royal Charter, any Jurisdiction which they might have in matters matrimonial, as for instance in a suit for alimony between Armenians or Native Christians. With any such Jurisdiction it is not intended to interfere."

In addition to the Act of Parliament mentioned by the Secretary of State as regulating the Jurisdiction of the English Divorce Court the Statute 25 and 26 Vic. Ch. 81 has been passed in the year just expired (1862). The object of this Statute is to render perpetual 23 and 24 Vic. Ch. 144, the duration of which had been originally limited to two years.

The Draft of a Bill has been prepared to give effect to the Secretary of State's instructions, but some variations from the English Statutes in respect of Procedure have been adopted.

With a view to uniformity in practice in the several branches of Jurisdiction, the Bill provides that the Procedure of the Code of Civil Procedure shall be followed, instead of the Rules of Her Majesty's Court for Divorce and Matrimonial Causes in England, and it omits the provision in 20 and 21 Vic. Ch. 85 respecting the occasional trial of questions of fact by Juries.

In respect of fees, it has been considered that the Act XX. of 1862 (lately continued by the Governor-General in Council for another year), render special legislation unnecessary.

The power of intervening in suits, given by 23 and 24 Vic. Ch. 144, to the Attorney General and the Queen's Proctor is, in this Bill, given to the Advocate General and the Solicitor to Government.

There are also other variations of a minor and verbal character.

The Draft Bill having been submitted to the Judges of the several High Courts, with a request that they would favour the Government with their opinions on it, communications have been received and will be laid before the Council, from the Judges at Calcutta and Bombay. In these letters there are several important suggestions, and the Honorable the Chief Justice of the High Court at Calcutta has intimated that he considers it doubtful whether decrees by the High Court under the proposed Act, dissolving the marriages of persons who have been married in England would have legal effect there. The question is one of considerable difficulty as well as of great importance, and has been stated to the Secretary of State, with the view of obtaining the opinion of Her Majesty's Law Officers, and if necessary, some legislative measure to remove all doubt.

(Signed) HENRY S. MAINE.

The 1st January 1863.

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