



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

Published by Authority.

THURSDAY, 13TH MARCH 1862.

 *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 Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 26th February 1862, and was referred to a Select Committee who will make a report thereon after the 1st of June next :—

A Bill to authorise the punishment of whipping in certain cases.

WHEREAS it is expedient that in certain cases offenders should be liable, under the provisions of the Indian Penal Code, to the punishment of whipping; it is enacted as follows :—

I. In addition to the punishments described in Section 53 of the Indian Penal Code, offenders are also liable to whipping under the provisions of the said Code.

Whipping added to the punishments described in Section 53 of the Penal Code.

Offences punishable with whipping.

II. Whoever commits any of the following offences may be punished with whipping, that is to say :—

1. Giving false evidence, as defined in Section 193 of the Indian Penal Code.
2. Giving or fabricating false evidence with intent to procure conviction of a capital offence, as defined in Section 194 of the said Code.
3. Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment, as defined in Section 195 of the said Code.
4. Falsely charging any person with having committed an unnatural offence, as defined in Sections 211 and 377 of the said Code.
5. Assaulting or using criminal force to any woman with intent to outrage her modesty, as defined in Section 354 of the said Code.
6. Rape, as defined in Section 375 of the said Code.

7. Unnatural offences, as defined in Section 377 of the said Code.

8. Theft, as defined in Section 378 of the said Code.

9. Theft in a building, tent, or vessel, as defined in Section 380 of the said Code.

10. Theft by a clerk or servant, as defined in Section 381 of the said Code.

11. Theft after preparation for causing death or hurt, as defined in Section 382 of the said Code.

12. Extortion by threat, as defined in Section 388 of the said Code.

13. Putting a person in fear of accusation in order to commit extortion, as defined in Section 389 of the said Code.

14. Robbery or Dacoity, as defined in Sections 390 and 391 of the said Code.

15. Attempting to commit Robbery, as defined in Section 393 of the said Code.

16. Voluntarily causing hurt in committing robbery, as defined in Section 394 of the said Code.

17. Dishonestly receiving stolen property, as defined in Section 411 of the said Code.

18. Dishonestly receiving property stolen in the commission of a Dacoity, as defined in Section 412 of the said Code.

19. Habitually dealing in stolen property, as defined in Section 413 of the said Code.

20. Lurking house-trespass, or house-breaking, as defined in Sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping.

21. Lurking house-trespass, or house-breaking by night, as defined in Sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping.

22. Forgery, as defined in Section 463 of the said Code.

23. Forgery of a document, as defined in Section 466 of the said Code.

24. Forgery of a document, as defined in Section 467 of the said Code.

25. Forgery for the purpose of cheating, as defined in Section 468 of the said Code.

26. Forgery for the purpose of harming the reputation of any person, as defined in Section 469 of the said Code.

III. In the case of an adult, that is, of a person who appears to be more than sixteen years of age, the punishment of whipping shall not exceed fifty stripes. In the case of a youth, that is, of a person who appears to be not more than sixteen years of age, the punishment of whipping shall not exceed ten stripes. No female shall be punished with whipping.

IV. The punishment of whipping may be in addition to, or in substitution of any other punishment to which offenders are liable under the provisions of the Indian Penal Code for any of the offences herein before mentioned. Provided that no person who may be sentenced to death, or to transportation, or to Penal Servitude, or to imprisonment for more than five years, shall be also punished with whipping.

V. The first five Sections of this Act shall be read and construed as part of the Indian Penal Code.

VI. A sentence of whipping, passed by any Court superior to the Magistrate of a District, may be either in addition to or in substitution of any punishment to which the offender is liable under the provisions of the Penal Code. A sentence of whipping passed by any other Court or Officer shall be in substitution of the punishment to which the offender is liable under the provisions of the said Code. No sentence of whipping shall be passed by any Officer inferior to a Subordinate Magistrate of the first class, unless he shall have been expressly empowered by the Government to pass such sentences.

VII. When the punishment of whipping is awarded in addition to imprisonment by a Court whose sentence is open to revision by a superior Court, the whipping shall not be inflicted until fifteen days from the date of such sentence, or if an appeal be made within that time, until the sentence is confirmed by the superior Court.

VIII. In the case of an adult, the punishment of whipping shall be inflicted on the bare back with a cat-of-nine-tails, and in the case of a youth it shall be inflicted in the way of school discipline with a light rattan. The punishment shall be inflicted in the presence of a Justice of the Peace, or of an Officer authorised to exercise any of the powers of a Magistrate, and also, unless the Court which passed the sentence shall otherwise order, in the presence of a Medical Officer.

IX. No sentence of whipping shall be carried into execution unless a Medical Officer, if present, certifies, or unless it appears to the Justice of the Peace or other Officer present, that the offender is in a fit state of health to undergo the punishment; and if, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Officer present, that the offender is not in a fit state of health to undergo the remainder of the punishment, execution shall be stayed. No sentence of whipping shall be executed by instalments.

X. In any case in which, under the preceding Section of this Act, no part of a sentence of whipping is carried into execution, the offender shall be kept in custody till the Court which passed the sentence can revise it, and the said Court may, at its discretion, either order the discharge of the offender, or sentence him in lieu of whipping to imprisonment for any period in addition to any other punishment to which he may have been sentenced for the same offence; provided that the whole period of imprisonment shall not exceed that to which the offender is liable under the provisions of the Indian Penal Code; or that which the said Court is competent to award.

XI. Sections VI to XI of this Act, both inclusive, shall be read and construed as part of the Code of Criminal Procedure.

STATEMENT OF OBJECTS AND REASONS.

In the Penal Code, as it was originally prepared by the Indian Law Commissioners, flogging was not placed in the list of punishments. Corporal punishment had then recently been abolished in Bengal, except as a means of enforcing jail discipline; and, although it continued to be a legal punishment in Madras and Bombay, and might also be inflicted on European British subjects in any part of India, under the Statute 9th, Geo. IV. c. 74, the Commissioners, while admitting that in some cases it was a proper punishment, were unwilling to advise the Government to retrace its steps, and to re-establish throughout India a practice which had already been discontinued in one of its Provinces.

In 1844, corporal punishment was revived in Bengal in cases of petty larceny, and in all cases in which the offenders were of tender years; and in 1858, in consequence of the destruction of jails during the mutiny, this punishment was extended for two years to other crimes.

In every Non-Regulation Province which has been added to the British Empire, corporal punishment has been introduced.

Therefore, up to the date on which the Penal Code came into operation, flogging was legal punishment in certain cases in all parts of India, and for all classes of offenders.

The Select Committee, to whom the Penal Code was referred by the Legislative Council, included flogging among the punishments to be provided by the Code, but it was struck out as the Bill passed through the Committee of the whole Council, because it was thought that local Officers and the public should have an opportunity of expressing their opinions as to the expediency of adopting this mode of punishment, and that the passing of the Code should not be delayed on that account. At the same time a Select Committee was appointed to report on the punishment of flogging, and to prepare such Bill as they might consider necessary.

In due time the Committee submitted a Bill, providing that the punishment of flogging should be inflicted under certain restrictions in the case of degrading offences, and this Bill, considerably modified in its details, was eventually passed by the Council, but did not receive the Governor General's assent.

The Criminal Law Consolidation Statutes passed in the last Session of Parliament provide for the punishment, by whipping, of persons under sixteen years of age for larceny, felony, and other crimes.

The present Bill is framed on the principle of that passed by the Legislative Council, but differs somewhat in details.

The word whipping has been substituted for flogging, as being more in accordance with the language of the Acts of Parliament and more suitable to the kind of punishment it is proposed to inflict, and the mode in which it is to be inflicted.

The crimes for which it is proposed that the punishment of whipping may be awarded are the same as those to which it was made applicable by the former Bill, with the addition of Dacoity.

The award of whipping as a punishment is in no case obligatory on the Court before which an offender is convicted of any of these crimes. It is left to the discretion of the Court to pass a sentence of whipping or not according to circumstances. The punishment may be awarded by any Court, or by any Magistrate not being inferior to a Subordinate Magistrate of the first-class. It is thought that any Officer who has been deemed fit to award a sentence of imprisonment up to six months, and fine up to two hundred Rupees, may safely be entrusted with the discretion to award a sentence of whipping.

Except in cases in which juvenile offenders are concerned, the cat-of-nine-tails is substituted for the rattan, and the punishment is limited to fifty stripes on the bare back. It is believed that a whipping inflicted in this manner on an adult would be equally efficacious for its immediate purpose, is less likely to be injurious in its effects than flogging with a rattan. Juvenile offenders, it is proposed, may be punished, as under the Law of 1844, with not more than ten stripes of a light rattan in the way of school discipline.

A Clause is added to provide that where, in consequence of the unfitness of the offender to undergo the punishment, no part of a sentence of whipping is carried into execution, it may be commuted to imprisonment: but when such a sentence is partially carried into execution, it is not intended that the remainder of the punishment shall, at any future time, be inflicted, or that any other punishment shall be inflicted in lieu thereof. The attendance of a Magistrate at all times, and of a Medical Officer whenever practicable, is provided for.

The Bill does not affect the existing Laws relating to corporal punishment for offences against Jail discipline, or for offences not provided for in the Indian Penal Code.

(Signed) CECIL BEADON.

The 5th February 1862.

M. WYLIE,

Deputy 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 26th February 1862, and was referred to a Select Committee who will make a report thereon after the 1st of June next:—

A Bill to enable the Government to divest itself of the management of Religious Endowments.

WHEREAS it is expedient to relieve the Boards of Revenue and the Local Agents in the Presidency of Fort William in Bengal and the Presidency of Fort Saint George, from the duties imposed on them by Regulation XIX. 1810 of the Bengal Code (for the due appropriation of the Rents and produce of Lands granted for the support of Mosques, Hindoo Temples, Colleges, and other purposes, for the maintenance and repair of Bridges, Serays, Kultras, and other public buildings; and for the custody and disposal of Nuzool Property or Escheats), and Regulation VII. 1817 of the Madras Code (for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindoo Temples, and Colleges, or other public purposes; for the maintenance and repair of Bridges, Choultries, or Chuttruns, and other public buildings; and for the custody and disposal of Escheats), so far as those duties embrace the superintendence of lands granted for the support of Mosques or Hindoo Temples and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments, the repair and preservation of buildings connected therewith, and the appointment of trustees

or managers thereof, or involve any connexion with the management of such religious establishments; and whereas it is expedient for that purpose to repeal so much of Regulation XIX. 1810 of the Bengal Code and Regulation VII. 1817 of the Madras Code as relate to endowments for the support of Mosques, Hindoo Temples, or other religious purposes; it is enacted as follows:—

I. So much of Regulation XIX. 1810 of the Bengal Code, and so much of Regulation VII. 1817 of the Madras Code as relate to endowments for the support of Mosques, Hindoo Temples, or other religious purposes, are repealed.

II. As soon as possible after the passing of this Act the Government shall determine, in respect to each and every such Mosque, Temple, or religious establishment mentioned in the Preamble of this Act and now under the superintendence of the Board of Revenue, whether the said Mosque, Temple, or establishment shall be left to the management of the present Trustees, Managers, or Superintendents, or whether special provision shall be made for the management thereof.

III. Whenever the Government shall determine, that any such religious establishment shall be left to the management of the present Trustees, Managers, or Superintendents, it shall declare the same by Notification in the *Official Gazette*, and thereupon the Board of Revenue or the Local Agents, acting under the authority of the said Board, shall transfer to the said Trustees, Managers, or Superintendents all landed or other property now under the superintendence or in the possession of the said Board or Local Agents, and belonging to such religious establishment, except as provided in Sections XIII. and XV. of this Act; and the powers and responsibilities of the Board and the Local Agents in respect to such religious establishments, and to all lands and other property so transferred, except as above, and except as regards acts done and liabilities incurred by the said Board or Agents previous to such transfer, shall cease and determine.

IV. The rights, powers, and responsibilities of Trustees, Managers, or Superintendents to whom the superintendence of the lands and other property of any such religious establishment is transferred in the manner prescribed in the preceding Section of this Act, as well as the conditions of their appointment, election, and removal, shall be the same as if this Act had not been passed, except in respect of the liability to be sued under Section X. of this Act, and except in respect of the authority of the said Board and Local Agents given by the said Regulations over such establishment, and over such Trustees, Managers, or Superintendents, which authority is hereby determined and repealed.

V. Whenever the Government shall determine that special provision shall be made for the superintendence of any such religious establishment, it shall once for all appoint for that purpose a Committee of management consisting of three or more persons who, in respect to such religious establishment and to all the lands and other property belonging thereto and to all persons employed in connexion therewith, shall, except as provided in Sections XIII. and XV. of this Act, exercise all the powers vested by the said Regulations in the Board of Revenue and the Local Agents, and shall perform all the duties now imposed by Law on the said Board and Agents.

VI. The Members of the said Committee shall be

Provision as to the qualifications of Members of such Committee.

appointed from among persons professing the religion for the purposes of which the establishment was founded or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested in the maintenance of such establishment. The appointment of the Committee shall be notified in the *Official Gazette*.

VII. Every Member of a Committee appointed as above shall hold his office for life unless removed for misconduct or unfitness, and no such Member shall be removed except by an order of the Civil Court as hereinafter provided.

VIII. Any vacancy which may occur among the Members of a Committee of management appointed as above shall be filled up by the remaining Members, and if any vacancy shall not be filled up within three months after it has occurred, the Civil Court, on the application of any person whatever, may order that the vacancy be forthwith filled up by the remaining Members, and, if this order be not complied with, may appoint a Member to fill the said vacancy.

IX. Immediately on the appointment of a Committee of Management as above provided, for the superintendence of any such religious establishment and for the management of its affairs, the Board of Revenue or the Local Agents acting under the authority of the said Board shall transfer to the said Committee all landed or other property now under the superintendence or in the possession of the said Board or Local Agents and belonging to the said religious establishment except as provided in Sections XIII. and XV. of this Act, and thereupon the powers and responsibilities of the Board and the Local Agents in respect to such religious establishment, and to all lands and other property so transferred except as above, and except as regards acts done and liabilities incurred by the said Board or Agents previous to such transfer shall cease and determine.

X. Any person or persons interested in any such Mosque, Temple, or religious establishment, or in the performance of the worship or of the services thereof, or of the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the Trustees, Managers, or Superintendents of such Mosque, Temple, or establishment, or the Members of any Committee appointed under this Act, or any of them, for any breach of trust, neglect of duty, or misfeasance committed by such Trustee, Manager, Superintendent, or by such Member of a Committee, in respect of the trusts vested in or confided to them respectively, and the Civil Court may direct the specific performance of any act by such Trustees, Managers, or Superintendents or by such Member of a Committee, and may decree damages and costs against them, and may also direct the removal of all or any of such Trustees, Managers, or Superintendents or of any such Member of a Committee.

XI. The interest required in order to entitle a person to sue under the last preceding Section need not be a pecuniary, or a direct or immediate, interest or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts. Any person having a right of attendance, or having been in the habit of attending at the performance of the worship or services of any Mosque, Temple, or religious endowment, or of partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last preceding Section.

XII. No suit or proceeding before any Civil Court under this Section shall in any way affect or interfere with any proceeding in a Criminal Court for Criminal breach of trust under the Indian Penal Code.

No Civil suit to affect Criminal proceedings.

XIII. In any case in which lands have been granted for the support of establishments partly of a religious and partly of a secular character, or in which the endowments made for the support of an establishment are appropriated partly to religious and partly to secular uses, the Board of Revenue, before transferring to any Trustees, Managers, or Superintendents, or to any Committee of Management appointed as aforesaid, shall determine what portion, if any, of the said lands or other property shall remain under the superintendence of the said Board for application to secular uses, and what portion shall be transferred to the superintendence of the said Trustees, Managers, or Superintendents, or of the said Committee, and also what annual amount, if any, shall be charged on the lands or other property which may be so transferred to the superintendence of the said Trustees, Managers, or Superintendents, or of the said Committee, and made payable to the said Board or to the Local Agents for secular uses as aforesaid. In every such case the provisions of this Act shall take effect only in respect to such lands and other property as may be so transferred.

XIV. After the passing of this Act it shall not be lawful for the Government, or for any Officer of the Government, to undertake or resume the superintendence of any lands or other property granted for the support of or otherwise belonging to any Mosque, Hindoo Temple, or other religious establishment, or to take any part in the management or appropriation of endowments made for the maintenance of any such establishment, or to nominate or appoint any Trustees, Managers, or Superintendents thereof, or to be in any way concerned therewith.

XV. Nothing in this Act shall be held to affect the provisions of the said Regulations except in so far as they relate to Mosques, Hindoo Temples, and other religious establishments, or to prevent the Government from taking such steps as it may deem necessary under the provisions of the said Regulations, to prevent injury to and preserve buildings remarkable for their antiquity or for their historical or architectural value or required for the convenience of the public.

Nothing in this Act to prevent Government preserving remarkable or ancient buildings, &c.

Nothing in this Act to prevent Government preserving remarkable or ancient buildings, &c.

STATEMENT OF OBJECTS AND REASONS.

It has long been the avowed policy of the Government of India to divest itself of all direct concern with the management of religious endowments, but the obligations imposed on its Officers by law in the Presidencies of Bengal and Madras present difficulties which have hitherto, as far as regards those Presidencies, prevented the full accomplishment of this purpose.

The subject has given rise to much correspondence to which it is not necessary more particularly to advert. It may suffice to state that the Secretary of State in his Despatch, dated the 16th July 1860, reviewing the more recent proceedings of the Government of India relative to "the repeal of those provisions of the Bengal and Madras Codes by which the general superintendence of the endowments for the support of Mosques and Temples is vested in the Revenue Officers of Government," expressed an opinion "that all that is requisite is an Act on the principle of Act No. X. of 1840 in regard to the Temple of Juggernath, repealing the existing enactments on the subject, and transferring the entire superintendence of the institutions to their re-

spective Trustees, provision being made for an appeal by suit in the ordinary way to the established Courts of Justice in all disputes relating to the appointment and succession to the management of Hindoo and Mahomedan religious institutions, and to the control and application of their funds."

Previous to this expression of opinion by the Secretary of State, a Bill had been brought into the Legislative Council early in 1860, simply repealing Regulation XIX. 1810 of the Bengal Code, and Regulation VII. 1817 of the Madras Code, and reserving the jurisdiction now exercised, or which but for those Regulations might have been exercised, by Courts of Justice, in enforcing the due execution or administration of any trust or endowment, and in securing the due appointment or succession to the management thereof.

To this proposed measure two objections have been made. *First*, that by the repeal of the Regulations above cited, the Government is relieved of all concern in the management, not only of all religious endowments, but also of other trusts not of a religious character, which those Regulations impose on it, and which it is not desirable that it should be relieved of. *Second*, that a sudden and abrupt relinquishment by Government of the guardianship of the property of religious and charitable endowments which it has so long managed on behalf of the public, without making due provision for their future management, would be unjust.

Concurring in these objections, I have endeavoured to frame this Bill so as to carry out the object proposed by the Secretary of State, without interfering with the provisions of the existing law so far as they define the duty of Government and its Officers in respect to public property not connected with religious endowments, and at the same time to provide for the due supervision of religious endowments which are now managed by the Government and its Officers, but from which they will henceforth be disconnected.

(Signed) CECIL BEADON.

The 15th February 1862

M. WYLIE,
Deputy 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 26th February 1860, and was referred to a Select Committee with instructions to make their report thereon within two months:—

A Bill to amend the Law relating to Affidavits, Affirmations, and solemn Declarations.

WHEREAS it is expedient to enable persons making affidavit or solemn affirmation intended to be used in the Courts of Judicature constituted by Royal Charter, and in other Courts in British India, to swear or solemnly affirm to the truth of the same before any Judge, Magistrate, or Covenanted Officer in Civil employ or before any of the Officers hereinafter enumerated; and to give greater facilities for the taking and receiving of affidavits and affirmations within the said territories, and to authorise the taking of solemn declarations in certain cases; it is enacted as follows:—

I. From and after the passing of this Act it shall be lawful for any Judge, Magistrate, or Covenanted Officer in Civil employ in British India, whether within the local limits of his jurisdiction or not, whenever he shall be thereto required, or whenever he shall think it necessary, to administer any oath, or to take any affidavit or affirmation from any person whomsoever, for the purpose of or in relation

to any action, cause, matter, or proceeding, civil or criminal, pending or about to be brought in or before any Court of Judicature in British India, whether established by Royal Charter or not; provided that in every such affidavit or affirmation there shall be expressed the name of the party making the same and the place of his abode.

II. The affidavit, when the party making the same shall swear to the truth thereof, may be in the form first set forth in the Schedule hereto annexed; and the affirmation, when the party making the same shall not swear but shall affirm to the truth thereof, may be in the form secondly set forth in the said Schedule; and such forms, when used, shall, in all cases and in all Courts in British India, be deemed sufficient. Provided that it shall not be deemed necessary to make use of either of the said form and that no affidavit or affirmation which would be otherwise sufficient shall be deemed insufficient by reason only of the same not having been made in either of the said forms.

III. Every affidavit and affirmation taken under this Act shall and may be received, read, and made use of in and before any Court in British India and before any of the Judges and Officers thereof, in or in relation to any action, suit, cause, matter, or proceeding, civil or criminal, in like manner, and shall be of the same force and effect as an affidavit or affirmation taken in or before such Court or by any person duly commissioned or authorised by such Court to take such affidavit or affirmation, and shall be filed and dealt with accordingly.

IV. In all suits or matters now pending or hereafter to be brought in any Court of Justice in British India (whether established by Royal Charter or not), it shall be lawful for the Court to receive, in the manner and for the purpose hereinafter mentioned, any affidavit or affirmation or answer or allegation or pleading required to be made on oath or affirmation, purporting to have been sworn or made before any Court, Magistrate, Justice of the Peace, or Notary Public, or before any Ambassador, Consul, or Resident, or before any Officer who now is, or hereafter may be, by law authorised to administer an oath or take an affirmation at any place in Great Britain or Ireland, or in any part of Her Majesty's Dominions, or in any Foreign Kingdom, State, or Country; and such affidavit or affirmation, answer, allegation, or pleading shall and may be received, read, and made use of in and before any of the said Courts, or before any Judge or Officer thereof, in like manner, and shall be of the same force and effect as an affidavit or affirmation taken in or before such Court.

V. And whereas it may be necessary and proper, in many cases not herein specified, to require confirmation of statements or allegations or of written instruments, proof of debts, or of the execution of wills, deeds, or other matters, it is therefore enacted that it shall be lawful for any Court, Judge, Magistrate, or Covenanted Officer in Civil employ, or Officer who now is, or who hereafter may be, by law authorised to administer an oath, or to receive a solemn affirmation in British India, to take and receive the solemn declaration, affidavit, or affirmation, of any person voluntarily making the same before him, in the first, second, or third form in the Schedule hereto annexed; or in some other form expressing that the said solemn declaration, affidavit, or affirmation is made in pursuance of or by virtue of this Act.

VI. Any document purporting to be an affidavit,

A document purporting to be an affidavit, &c. duly sworn, admissible without further proof.

affirmation, or solemn declaration, and to have been sworn, affirmed, or made before any Court, Judge, Magistrate, Officer, or other person hereby authorised to take or receive the same, may be admitted and used without proof of any seal or signature thereto, or of the official character of any person.

VII. Any such document shall be deemed to be a

Forged Documents.

document purporting to be made by a public servant in his official capacity within the meaning and for the purposes of the 466th Section of the Indian Penal Code.

VIII. Any affidavit or affirmation made or taken

False Affidavits, &c.

under the 1st or 4th Section of this Act shall be deemed to be evidence within the meaning and for the purposes of the 193rd, 194th, 195th, and 196th Sections of the Indian Penal Code.

IX. Any voluntary declaration, affidavit, or affirmation

False Declarations, &c.

made under the 5th Section of this Act shall be deemed to be evidence within the meaning and for the purposes of the 199th and 200th Sections of the Indian Penal Code.

X. And whereas it is necessary to make separate

Special provision regarding the Straits Settlement.

provision for the trial of offences committed in regard to affidavits, affirmations, or declarations made under this Act, in the Settlement of Prince of Wales' Island, Singapore, and Malacca, to which the provisions of the Penal Code do not extend; it is enacted as follows:—Whoever shall within the Settlement of Prince of Wales' Island, Singapore, and Malacca forge any document purporting to be an affidavit, affirmation, or declaration, and to have been sworn, affirmed, or made before any Court, Judge, Magistrate, Officer, or other person authorised to take or receive the same, or a seal or signature to any such document, or shall tender in evidence or fraudulently or dishonestly use as genuine any such forged document or any such document with a false or counterfeit seal or signature thereto, or to the jurat thereof, or to any statement made therein or thereon for the purpose of authenticating such document, knowing such document to be forged, or such seal or signature to be false or counterfeit, shall, on conviction, be liable to transportation for a term of seven years, or to penal servitude for a term of four years, or to imprisonment with or without hard labour for any term not exceeding three years.

XI. Whoever shall, within the Settlement of Prince

Willful false statement in affidavit in any material particular, to be deemed perjury.

of Wales' Island, Singapore, and Malacca wilfully make before any Judge or other Officer or person hereby authorised to take the same, any oath, affidavit, affirmation, or solemn declaration, knowing such oath, affidavit, affirmation, or solemn declaration to be false in any material particular, shall be deemed guilty of perjury, and any person, who, within the said Settlement shall wilfully use, or tender in evidence, or in confirmation of any allegation or statement, any such affidavit, affirmation, or solemn declaration, whether sworn or made within the territories aforesaid, or without the said territories, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanor, and shall be liable to the same punishment as if he had committed perjury.

XII. Every accessory before the fact to any offence

Trial of accessories.

under the 10th or 11th Section of this Act, may be indicted, tried, and dealt with by any Court having jurisdiction over him for the commission of his offence in the place in which it was committed, or may be indicted, tried, and dealt with in the same manner as if his offence had been committed in the place in which he

may be apprehended and be in custody, or in the place in which the principal offender may be tried, and shall, if convicted, be liable to the same punishment as the principal offender.

XIII. The following words in this Act shall have

Interpretation.

the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say):—

I. The words "British India" denote the territories

"British India."

which are or may become vested in Her Majesty by the Statute 21 and 22 Vic. c. 106, entitled An Act for the better Government of India.

2. The word "Judge" shall include all Officers

"Judge."

exercising judicial functions, authorised to administer an oath or affirmation, whether Covenanted or Un-Covenanted.

3. The word "Magistrate" shall include Joint

"Magistrate."

Magistrates, Deputy Magistrates, and persons lawfully exercising the powers of a Magistrate, and Justices of the Peace.

4 The words "Covenanted servant in Civil employ"

"Covenanted Servant in Civil employ."

shall include all Covenanted public servants of Her Majesty whether Civil or Military, who shall at the time hold or exercise any Civil employ whatsoever in the service of Government.

5. The word "Ambassador" shall include Envoys,

"Ambassador."

Ministers, Chargés d'Affaires, Secretaries of Embassy or Legation, and Diplomatic Agents at Foreign Courts.

6. The word "Consul" shall include Vice Consuls,

"Consul."

Acting Consul, and Consular Agents.

7. The word "Resident" shall include all Officers

"Resident."

acting as Resident or as representing the Governor General, or the Governor General in Council, at the Court of any Native Prince and State, and the Secretaries and Under-Secretaries employed at such Residency.

8. Words importing the singular number shall include

Number.

the plural, and words importing the plural shall include the singular number

Gender.

9. Words importing the masculine gender shall include females.

SCHEDULE TO THE FOREGOING ACT.

1.

Form of Affidavit and of Jurat.

I, A. B., of make oath and say that

And I make this affidavit, believing the same to be true, and by virtue of the provisions of the Act No. of 186 , of the Governor General of India in Council.

(Signed) A. B.

Sworn before me at

this day of 186 .

(Signed) C. D.

(Description of the Judge, Magistrate, or other Officer administering the oath.)

2.

Form of Affirmation.

I, A. B., of do solemnly and sincerely affirm that, &c.

And I make this solemn affirmation, believing the same to be true, and by virtue of the provisions of the Act No. &c.

Solemnly affirmed before me at

this day of 186 .

(Signed) C. D.,

(Description of Officer.)

I, A. B., of
and sincerely declare that

And I make this declaration conscientiously believing
the same to be true, and by virtue of the provisions of
Act No. of 1856.

Solemnly declared before me this
day of 1856

(Signed) C. D.,
(Description of Officer.)

STATEMENT OF OBJECTS AND REASONS.

THE main Objects and Reasons of this Bill sufficiently appear from the statement of Objects and Reasons made by the Honorable Mr. Peacock (the present Chief Justice), on first bringing in the Bill, and in the letter from the Advocate-General annexed thereto.

The reasons for the Bill are at least as strong now as they were when it was first proposed. Much inconvenience and loss of time are sometimes caused by reason of the necessity that at present exists, when a person is desirous of deposing by affidavit to material points which require to be verified in proceedings in the Presidency Towns, of obtaining a Commission from the Court in which the affidavit is to be used, to swear such person to the affidavit. In such case an affidavit sworn before a Magistrate or other Officer at the place at which the deponent resides would be quite as effectual for the purposes of Justice, and would save all the expense and delay which a resort to the present cumbrous system, existing at the Presidency Towns, of obtaining a Commission under the seal of the Court directed to a Commissioner at the place of the deponent's residence (very often being the local Magistrate or Officer to whom the deponent would have resorted in the first instance, if the law admitted of his doing so), and sending such Commission back to the Presidency executed with the affidavit.

The provisions of the Penal Code relating to false evidence and the fabrication of documents render the penal Sections of the Bill (Sections 7 and 8), as originally drawn, so far as they apply to British India generally, unnecessary. For the sake of greater caution however I propose, in substitution for those Sections, to declare that affidavits and affirmations taken under the 1st and 4th Sections of this Act, in the course of or with a view to proceedings in any Court, shall be deemed evidence within the meaning of Sections 193 and 194 of the Penal Code, that any voluntary declaration made under the 5th Section (not being in the course of or with a view to judicial proceedings) shall be deemed a declaration within the meaning of Sections 199 and 200, and that every affidavit, affirmation, or declaration, professing to have been made before, or to have been authenticated by any Judge or Officer under this Bill, shall be deemed a document purporting to be made by a public servant within the meaning of Section 466.

As however the provisions of the Penal Code do not extend to the Straits Settlement, while the provisions of this Act as to affidavits and declarations do extend to that Settlement, it is necessary to provide for the punishment of such offences when committed within that Settlement. The 10th, 11th, 12th, and 13th Sections of the Act as now framed make such provision.

(Signed) W. RITCHIE.

The 22nd January 1862.

STATEMENT OF OBJECTS AND REASONS.

THE Government of India lately applied to the Supreme Court in Calcutta to know whether the costs of taking out probate to estates of small value might not be diminished. The Judges of the Supreme Court in answering the question remarked that, in the particular case adverted to, the expenses were materially increased by the costs of a Commission which it was necessary to take out in order to swear the Executrix, who was resident in the Mofussil, to her affidavit; and that any general measure, which would enable Judges and other

Officers of Government to swear parties in the Mofussil to affidavits to be used in the Supreme Court, would much diminish such costs.

The Advocate-General was accordingly requested to prepare a Bill for that purpose, which, subject to some alterations, is the Bill now proposed. It should be remarked that, in addition to taking affidavits and affirmations to be used in the Supreme Courts, the Bill authorises certain Officers to take voluntary affidavits and declarations for the purpose of confirming statements, of authenticating documents, and of proving debts and other matters.

A copy of the letter from the Advocate-General to the Secretary to the Government of India in the Home Department is annexed.

B. PEACOCK.

The 7th June 1856.

From the Officiating Advocate-General, to the Secretary to the Government of India, Home Department, (date the 15th May 1856).

SIR,—I have now the honour to submit the draft of a Bill which I have prepared in compliance with the instructions of the Right Honorable the Governor General in Council, conveyed in your letter, dated the 25th ultimo, for the purpose of enabling Judges and Magistrates to swear parties in the Mofussil to affidavits to be used in the Supreme Court, with a view to obviate the costs now incurred in taking out a Commission.

2. I have thought it advisable to extend the Bill beyond the immediate purpose above specified, which is alone referred to in the correspondence with the Honorable the Judges of the Supreme Court accompanying your instructions, and to make the proposed measure applicable to all cases of affidavits taken within the British Territories in India and to all Courts of the Company as well as of the Crown within those Territories; and also to provide for the reception in all such Courts of affidavits taken in Great Britain, the Colonies, or in foreign parts.

3. My object has been to assimilate the law relating to affidavits in this country substantially to that in force in Great Britain, in which the law now stands on a much more liberal and satisfactory footing under the provisions of 5 and 6 Wm. 4, c. 62, and 18 and 19 Vic. c. 42 than it does in India—and there seems no reason why any distinction should exist between the Courts of Her Majesty and those of the East India Company in respect to the law and practice relating to affidavits.

4. The following analysis of the several Sections of the draft Act may perhaps be found useful:—

Section I. empowers any Judge, Magistrate, or Commissioned Officer in civil employ in the Company's service to take affidavits on oath or affirmation for the purpose of or in relation to any suit or proceeding in any Court whatever in British India.

The only restriction on this power is that the name and place of abode of the deponent shall appear in the affidavit or affirmation.

Section II. gives a form of affidavit, jurat, and affirmation; but provides that such form shall not be imperative, and that no affidavit, &c. otherwise good, shall be vitiated only for not following the form.

Section III. provides for the reception in evidence in all Courts of British India of affidavits and affirmations taken under the Act.

Taken partly from 5 and 6 Wm. 4, c. 62, s. 15, and partly from 18 and Vic., c. 42, s. 1.

Section IV. provides for the reception in evidence in any Court of British India of affidavits, &c., taken before any Court, Magistrate, Notary, Diplomatic or Consular functionaries or other specified Officers in Great Britain or of the Colonies or in any Foreign State.

Taken from 18 and 19 Vic. c. 42, s. 1.

Of course the Legislative Council has no power to regulate the mode in which the Judges or other Officers out of the limits of British India shall administer oaths

or affirmations or take affidavits; but it has full power to authorise the reception in evidence of such affidavits in any Courts in British India, and the provision will supply a want often felt where the deponents are beyond the limits of such Courts.

Section V. provides for what are usually called voluntary affidavits, that is, affidavits not made in any particular suit or legal proceeding then pending, but required for the purpose of verifying facts or documents which may afterwards come into dispute.

Such affidavits are constantly sworn and received in different parts of India, especially in Calcutta, and they are often taken for legitimate purposes and are of considerable utility; though sometimes, I believe, taken for more questionable purposes. Great doubts exist as to whether the practice, though so common, is not altogether illegal in this country; and no punishment at present exists for barely making a false oath or affirmation upon such an affidavit. It seems very desirable to legalise the practice with certain restrictions, the most important of which is that of rendering a false oath or affirmation punishable as perjury. The English Act abolishes all oaths on such occasions, and substitutes solemn declarations. I scarcely see the necessity of this, if oaths are retained in ordinary affidavits; and I think it of importance to place voluntary and judicial affidavits as much as possible on the same footing, and to afford facilities for the former when required in judicial proceedings that may subsequently arise. I have not therefore in that respect followed the English precedent; though, if thought desirable, that may easily be adapted to the present Section.

In others respect the Section in substance resembles Section 18 of 5 and 6 Wm. 4, c. 62.

Section VI. provides for the reception in evidence of affidavits and affirmations purporting to be authenticated by the proper Officer without proof of his seal or signature.

This is taken from Section 3 of 18 and 19 Vic. c. 42, and is in conformity with the spirit of the Acts of 1852 and 1855 for the improvement of the law of evidence.

Section VII. provides for the punishment of the forgery of such seal or signature which is made a felony.

Taken from Section 5 of 17 and 18 Vic. c. 42.

Section VIII. provides for the punishment of a false oath or affirmation which is treated as perjury, and for the punishment of the person using or tendering in evidence as true any affidavit or affirmation, knowing it to be false.

The former punishment is provided for by the 5 and 6 Wm. 4, c. 62, s. 22, and 17 and 18 Vic. c. 42, s. 5. The latter I do not find specially provided for in any of the English Acts, but I think of very great importance, especially with reference to affidavits taken out of British India, the actual maker of which cannot be punished under this or any Indian Act.

Section IX. provides for the place of trial of offences under this Act in conformity with the 5th Section of 18 and 19 Vic.

I think the option of the place of trial should be given in the first instance to the Government; as if left to the prosecutor, it might often be exercised with hardship towards the accused; but when Government does not see fit to interfere, the option may be safely given under this Section to the prosecutor.

Section X. provides for the trial and punishment of accessories before the fact in the same manner as the principals.

See 5th Section of 18 and 19 Vic., c. 42.

Section XI. Interpretation of terms.

I have, &c.,

(Signed) W. RITCHIE,
Acting Advocate-General.

M. WYLIE,
Dy. 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 26th February 1862, and was referred to a Select Committee with instructions to make their report thereon within two months:—

A Bill to remove the District of Humeerpore in the North-Western Provinces from the operation of the general Regulations.

WHEREAS the District of Humeerpore forms part of the Division of Jhansi in the North-Western Provinces;

Preamble.

and whereas none of the other Districts or parts of the said Division has ever been brought under the operation of the general Regulations; and whereas it is expedient that the said District of Humeerpore should, for the sake of uniformity and public convenience, be administered on the same system as prevails in the rest of the Division; it is enacted as follows:—

I. Regulation VIII. 1805 of the Bengal Code (for

extending to the conquered
Humeerpore removed from the operation of the general Regulations.
Provinces situated within the Doab, and on the right bank of the river Jumna, and to the territory ceded to the Honorable the English East India Company in Bundelkud by the Peishwa, such of the Laws and Regulations established for the internal Government of the Provinces ceded by the Nowab Vizier to the Honorable the English East India Company, as have not been already extended to those Territories, and for revising and amending certain parts of the said Laws and Regulations), in so far as it relates to the District of Humeerpore in the Division of Jhansi, is hereby repealed, and the said District shall be subject to the same Laws as are now or may hereafter be in force in the other Districts of the said Division.

II. Any suit or proceeding which, at the time of

the passing of this Act, shall be pending in any Court or before any Officer in the said District of Humeerpore, and any suit which, before the passing of this Act, had been determined, and which has been or shall be remanded by any Appellate Court, shall be tried before the Court which for the time being would be competent to try such a suit if instituted after the passing of this Act.

III. But such suit or proceeding shall be tried in

Proviso.

the same manner, and shall be subject to the same right of appeal or revision, as if the same were tried by the Court or Officer before whom (in the former case) the suit or proceeding was pending at the time of the passing of this Act, or to whom (in the latter case) the said suit or proceeding would have been remanded but for the passing of this Act.

IV. Any appeal or proceeding now pending in the

Appeals or proceedings pending before the Sudder Court or Sudder Board.
Court of Sudder Dewanny Adawlut or in the Court of Nizamut Adawlut or before the Sudder Board of Revenue for the North-Western Provinces, shall be determined by such Court or Board in the same manner as if this Act had not been passed;

and any application for the execution of a decree or order which, but for the passing of this Act, would have been made to any Court or Officer existing at the time of the passing of this Act, shall be made to the Court or Officer that would have jurisdiction under this Act, in respect of the matter in dispute, if the suit or proceeding had been instituted after the passing of this Act.

V. Any appeal from a decree or order passed before the passing of this Act shall be received, heard, and determined by the Court or Officer who would have jurisdiction under this Act over such appeal, if the decree or order to which it relates had been passed after the passing of this Act; but shall be heard and determined in the same manner as if the same had been heard by the Court or Officer to whom the appeal would have lain but for the passing of this Act.

STATEMENT OF OBJECTS AND REASONS.

The District of Humeerpore in the North-Western Provinces, to which this Bill relates, forms part of the Division of Jhansi, and is at present subject to the Regulations of the Bengal Code. None of the other Districts of the Division (three in number) are subject to the Regulations, and inconvenience has been felt in the administration of Civil and Criminal justice from the circumstance that in one Division three Districts are subject to one system of Law, and a fourth to a different system. In order that the entire Division may be placed on the same footing in this respect, it is proposed to remove the District of Humeerpore from the operation of the Regulations so as to make the whole Division a Non-Regulation Division. This is what was done when the Delhi Territory was taken away from the Government of the North-Western Provinces in 1858, and placed under the Government of the Punjab, and when in 1860 the Pergunnahs of Koonch and Calpee which previously were included within the limits of the District of Humeerpore, and had subsequently been transferred to the District of Jaloun, were removed from the operation of the general Regulations, so as to make the whole of Jaloun a Non-Regulation District. On these occasions Act XXXVIII. of 1858 and Act XXX. of 1860, were passed, and the present Bill is framed on the same principles as those Acts.

Below is an Extract from the letter of the Secretary to the Government of the North-Western Provinces, in which are stated the reasons of His Honor the Lieutenant-Governor for desiring that the change should be made.

(Signed.) W. RITCHIE.

The 29th January 1862.

Extract from a letter from the Secretary to the Government of the North-Western Provinces,—(No. 781A, dated the 11th July 1860.)

PARA. 13.—* * * The Commissioner of Jhansi is Civil and Sessions Judge in three of the Districts under him, namely, Jhansi, Jaloun and Chunderree. In Humeerpore he is Sessions Judge only, the Civil business being taken by the Judge of Banda. In the town of Jhansi there is a Principal Sudder Ameen, and in Humeerpore a Moonsiff.

14. The very bias of His Honor's proposals is the abolition of this anomalous state of things. For the reasons which have led the Legislature to de-regulationize the Pergunnahs of Koonch and Calpee in the Jaloun District, Humeerpore should be de-regulationized and placed under the jurisdiction of the Jhansi Commissioner in all Departments of Administration.

15. The whole of the separate Judicial Agency should then be abolished in both the Divisions, the Commissioners put in all respects on the same footing as those in the Punjab, and the Punjab system introduced, as proposed by Mr. Ricketts, whereby the Civil administration in all Departments will devolve upon the Commissioners, the Deputy Commissioners, and their Subordinates; the Sudder Court and the Sudder Board taking the place respectively of the Judicial Commissioner and Financial Commissioner in the Punjab and Oudh.

M. WYLIE,

Deputy 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 26th February 1862, and was referred to a Select Committee, who will make a report thereon after the 1st of June next:—

A Bill to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore, and Malacca.

WHEREAS by the Letters Patent re-constituting the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca, Her Majesty, among other things, authorised and empowered the Governor or President and Council of the said Settlement for the time being to erect and establish such Court or Courts of Judicature as they should see fit for the recovery of small debts, and for the trial and determination of all suits and causes whatsoever against any of the inhabitants of the said Settlement, wherein the debt, duty, or matter in dispute should not exceed the value of thirty-two dollars; and whereas under the said authority Courts of Requests have been established at Penang, Province Wellesley, Singapore, and Malacca; and whereas it is expedient that the said Courts and also any other Courts which may hereafter be established under the said authority, should have jurisdiction in all suits wherein the matter in dispute shall not exceed the value of one hundred dollars; it is enacted as follows:—

I. From and after the passing of this Act, any Court or Courts established or which may be established in the Settlement of Prince of Wales' Island, Singapore, and Malacca, under the said authority, shall have jurisdiction to try and determine all suits brought for the recovery of debts, and all suits and causes whatever against any of the inhabitants of the said Settlement or the places now, or at any time hereafter to be, subordinate or annexed thereto, wherein the debt, duty, or matter in dispute shall not exceed the value of one hundred dollars.

II. It shall be lawful for the Commissioners of the Courts of Requests respectively in the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca, to appoint four or more persons to be Bailiffs and Appraisers for the purposes of this Act, and with the sanction of the Governor of the said Settlement to fix such remuneration for the services of the said Officers as shall appear to the said Commissioners expedient, and such persons shall be duly sworn before the said Commissioners, and shall also give security, to be approved by the said Commissioners faithfully to discharge the duties of their office, and the said Commissioners shall have power to suspend or remove such persons so appointed; provided that it shall be lawful for the said Commissioners respectively to appoint the Bailiffs who may be attached from time to time to the said Courts respectively to the office of Distraint Bailiffs and Appraisers for the purposes of this Act, and to award to the said Officers such remuneration, in addition to their respective salaries drawn from the said Court, as to the said Commissioners with the sanction of the Governor of the said Settlement shall appear expedient.

III. It shall be lawful for any Commissioner of a Court of Requests in any such Station, upon the affidavit in the form contained in the Schedule to this Act annexed (marked D) of any party claiming to be entitled to arrears of rent of any house or premises situate in such Station, not exceeding the amount of one hundred dollars, or in case of absence of such party from such Station, or in case of respectable females who do not appear in public, upon the affidavit of the

constituted Attorney of such party, stating the amount of such arrears, and for what time and at what rate the same became due, to issue a Warrant under his hand and seal, in the form contained in the Schedule to this Act annexed (marked A), addressed to any one of such Officers of such Court, directing him to levy the amount of such rent, together with the costs of the said distress, in the manner therein mentioned; provided that it shall be lawful for any of the said Commissioners upon personal examination of the party applying for such Warrant, to grant or withhold the same, at the discretion of the said Commissioner.

IV. By virtue of such Warrant it shall be lawful for such Officer to seize the whole or such part of the Goods and Chattels upon the said premises as shall be sufficient to cover the amount of the said rent, together with the costs of the said distress; and he shall thereupon make an Inventory of the Goods and Chattels so seized, and shall give a notice in writing in the form in the Schedule to this Act annexed (marked B) to the party from whom such rent is claimed to be due, or to any other person upon behalf of such party upon the said Premises, that the said Goods and Chattels will be appraised and sold in manner therein mentioned. And the said Officer shall file in the Court of Requests, from which the Warrant issued, true copies of the said Inventory and Notice; provided that it shall be lawful for the party from whom such rent is claimed to be due, at any time within five days from such seizure to apply to any Commissioner of such Court to discharge or suspend such Warrant, and it shall be lawful for such Commissioner to discharge or suspend such Warrant accordingly, with or without costs; provided that it shall be lawful for any of the said Commissioners in his discretion to give reasonable time to such party to pay the said rent.

V. In default of such application, it shall be lawful for any two such Officers of such Court, at the expiration of five days from such seizure, to appraise the Goods and Chattels so seized, and to give notice in writing in the form in the Schedule to this Act annexed (marked E) of the sale thereof, at such time and place as they shall direct, after an interval of not less than two days; and they shall file in such Court a true copy of the said notice, and that the same shall be sold accordingly, and the said Officers shall forthwith, after realization of the produce of the said sale, pay over the amount thereof to the Chief Clerk of the said Court, or other Head Officer of such Court and the amount of such produce shall be applied in satisfaction of the sum claimed to be due, together with the costs of the said distress, and the surplus, if any, shall be returned to the party from whom the said rent was claimed to be due; provided that it shall be lawful for such party to direct that such sale shall take place in any other manner, such party giving security for any extra costs attending such mode of sale.

VI. No costs shall be taken or demanded for such distress, except those contained in the Schedule to this Act annexed (marked C), and it shall be lawful for the said Commissioners of the Court out of which such distress is issued, with the sanction of the Governor of the said Settlement to apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said Bailiffs and Appraisers, as shall appear to the said Commissioners expedient, and the Chief Clerk or other Head Officer of the said Court shall keep a book, in which all sums received at costs upon distresses made under the provisions of this Act, and all sums paid as remuneration to the said Bailiffs and Appraisers and all contingent charges incurred in respect of such distresses shall be duly entered, and the Chief Clerk or other Officer as aforesaid, of the said Court, shall also enter in the said book all sums realized by sale of the goods and chattels

distrainted and paid over to the landlords, under the provisions of this Act.

VII. After the passing of the Act, no distress shall be levied for arrears of rent amounting to 100 Dollars, except under this Act. Penalty. No distress shall be levied for arrears of rent amounting to one hundred Dollars or less, except under the provisions of this Act; and any person, except such Officer as shall be appointed under this Act, levying or attempting to levy any such distress, shall be guilty of a misdemeanor, and shall be liable to be punished by fine and imprisonment for the same, in addition to any other liability he may have incurred by such trespass.

VIII. This Act shall not extend to any arrears of rent exceeding one hundred Dollars, nor in respect of any House or Premises situated out of the local jurisdiction of any such Court, nor to any rent due to Government, nor to any seizure, except on the Premises in respect of which such rent is claimed.

IX. A seal shall be made for every Court of Requests in the said Settlement under the direction of the Governor of the said Settlement, and all Summonses and other process issuing out of any such Court shall be sealed or stamped with the Seal of the Court; and every person who shall forge the Seal or any process of any such Court, or who shall serve or enforce any such forged process knowing the same to be forged, or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of such Court, knowing the same to be false, or who shall act, or profess to act under any false colour or pretence of the process of the said Court, shall be guilty of felony.

X. Every person who shall give evidence in any Court of Requests in the said Settlement shall be examined on oath, or when exempt by law from taking an oath on solemn affirmation; and every person who, in any examination upon oath or solemn affirmation under this Act, shall wilfully and corruptly give false evidence, shall be deemed guilty of perjury.

XI. Either of the parties to a suit or any other proceeding in any Court of Requests in the said Settlement may obtain, at the Office of the Clerk of such Court or other Officer as aforesaid, Summonses to witnesses, with or without a clause, requiring the production of books, deeds, papers, and writings in their possession or control, and in any such Summons any number of names may be inserted.

XII. Every person, on whom any such Summons shall have been served, either personally or in such other manner as shall be directed by the general rules or practice of the Court of Requests out of which such Summons shall issue, and who shall refuse or neglect, without sufficient cause, to appear or to produce any books, papers, or writings required by such Summons to be produced, and also every person present in any such Court, who shall be required to give evidence and who shall refuse to be sworn and give evidence, shall forfeit and pay such fine, not exceeding fifty Dollars, as the Commissioners of such Court shall set on him, and the whole or any part of such fine, in the discretion of the Commissioners after deducting the costs, may be applied towards indemnifying the party injured by such refusal or neglect.

XIII. The Commissioners of any Court of Requests in the said Settlement, in all suits where the debt or demand exceeds the sum of fifteen Dollars, upon proof before them that any defendant, against whom a summons has been taken out, conceals himself from, or otherwise evades process of, such Court, or is disposing

Issue of Warrant for arrest of defendant evading process or concealing property.

of his property and effects, with intent to defraud the plaintiff or his creditors generally, or is about to withhold his person or effects from the jurisdiction of such Court, may issue a Warrant for the apprehension of such person, and may commit him to gaol, until he shall find security for his appearance in such Court, from time to time, until judgment shall be pronounced in the suit commenced by such summons, and for payment of the amount and the costs which may be decreed against him therein.

XIV. Payment of any fine imposed by any Court of Requests under the authority of this Act may be enforced upon the order of the Commissioners of such Court in like manner as payment of any debt adjudged in the said Court, and shall be accounted for as herein provided.

XV. Whenever any Court of Requests in the said Settlement shall have made an order for the payment of money, the amount shall be recoverable in case of default or failure of payment thereof forthwith, or at the time or times and in the manner directed, by execution against the body or the Goods and Chattels of the person against whom such order is made, without further notice or order, and the Clerk of the said Court or other Officer as aforesaid, at the request of the person prosecuting such order, shall issue under the Seal of the Court a Writ of Execution to one of the Bailiffs of such Court, which shall be his Warrant to take the body of such person in execution, or to levy, or cause to be levied by distress and sale of the Goods and Chattels of such person, such sum of money as shall be so ordered, wheresoever they may be found within the district of the Court, and also the costs of the execution; and all Constables and other Peace Officers within their several jurisdictions shall aid in the execution of every such Writ.

XVI. If any such Court shall have made any order for payment of any sum of money by instalments, execution upon such order shall not issue until after default in payment of such instalment according to such order; and execution or successive executions may then issue without further notice or order for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as such Court shall order, either at the time of making the original order, or at any subsequent time, under the Seal of the Court.

XVII. Whenever any Warrant shall issue for taking in execution the body of any person under this Act the Bailiffs of the Court of Requests out of which such Warrant shall issue, shall be empowered, by virtue thereof, to take and convey him to any prison appointed by the Governor of the Settlement to be the prison of such Court there to remain for such term as shall be directed by the Warrant, not longer than six calendar months, or until he shall sooner perform the order of such Court.

XVIII. No person shall be imprisoned twice under the same judgment, nor shall execution against the body and the goods issue at the same time under the same judgment.

XIX. Every Bailiff executing any process of execution issuing out of any such Court against the Goods of any person, may, by virtue thereof, seize and take any of the Goods of such person (excepting the necessary wearing apparel and bedding of such person or his family, and the tools and implements of his trade), and may also seize,

and take any money or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to any such person against whom any execution shall have issued as aforesaid.

XX. If any person shall wilfully insult any Commissioner, Clerk, or Officer of any such Court, for the time being, during his sitting or attendance in Court, or shall wilfully interrupt the proceedings of any such Court, or otherwise misbehave in any such Court, it shall be lawful for any Bailiff or Officer of the Court, with or without the assistance of any other person, by the order of a Commissioner of such Court, to take such offender into custody, and detain him until the rising of such Court; and the Commissioners shall be empowered, if they shall think fit, by a Warrant under their hands, and sealed with the seal of the Court, to commit any such offender to any prison to which they have power to commit offenders under this Act, for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding twenty-five Dollars, for every such offence, and in default of payment thereof to commit the offender to any such prison as aforesaid, for any time not exceeding seven days, unless the said fine be sooner paid, or instead of inflicting summary punishment under this Act, may cause the offender to be indicted in the Court of Judicature if the offence be an indictable misdemeanor.

XXI. If any Officer or Bailiff of any such Court shall be assaulted, while in the execution of his duty, or if any rescue shall be made or attempted to be made of any person arrested or Goods layed under process of any such Court, the person so offending shall be liable to a fine not exceeding fifty Dollars, to be recovered by order of such Court, or before a Magistrate, and the Bailiff of the Court, or any Peace Officer in any such case, may take the offender into custody (with or without Warrant) and bring him before such Court or Magistrate accordingly.

XXII. If any Bailiff of any such Court, who shall be employed to execute any Warrant of any such Court, shall, by neglect, or connivance, or omission, lose an opportunity of executing such Warrant, then, upon complaint of the party aggrieved by reason of such neglect, connivance, or omission (and the fact alleged being proved to the satisfaction of the Court), the Commissioners of such Court shall order the Bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution is issued, and the Bailiff shall be liable thereto, and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said Court, without prejudice nevertheless to the execution of the original Warrant.

XXIII. If any Clerk, Bailiff, or other Officer of any such Court acting under colour or pretence of the process of the said Court shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this Act, the Commissioners of such Court may inquire into such matter in a summary way, and for that purpose may summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and may make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs, as they shall think just; and also, if they shall think fit,

may impose such fine upon the Clerk, Bailiff, or Officer, not exceeding fifty Dollars for each offence, as they shall deem adequate, and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said Court.

XXIV. Every Clerk, Bailiff, or other Officer employed in putting any of the powers of this Act in execution, who shall wilfully and corruptly exact, take, or accept any fee or reward whatsoever, other than his lawful salary, for any thing done or to be done by virtue of this Act, or on any account whatsoever, relative to putting this Act into execution, shall upon proof thereof before the Court in which such Clerk, Bailiff, or Officer is employed, and in the case of a Clerk, on confirmation of the finding of the Court by the Governor of the said Settlement, be for ever incapable of serving or being employed under this Act in any office of profit or emolument, and shall also be liable for damages as herein provided.

XXV. If any claim shall be made to or in respect of any Goods or Chattels taken in execution under the process of any Court of Requests under this Act, or in respect of the proceeds or value thereof, by any person not being the party against whom such process has issued, the Clerk of such Court or other Officer as aforesaid, upon application of the Officer charged with the execution of such process, as well before as after any action brought against such Officer, may issue a Summons, calling before the said Court, as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in the Court of Judicature in respect of such claim shall be stayed, and the Judge of the Court of Judicature, on proof of the issue of such Summons, and that the Goods and Chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action, after the issue of such Summons out of such Court of Requests; and the Commissioners of such Court of Requests shall adjudge upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings as to them shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such Court.

XXVI. If any person shall bring any suit in any Court of Judicature in the said Settlement in respect of any grievance committed by the Clerk, Bailiff, or Officer of any Court of Requests within the jurisdiction of such Court of Judicature under colour or pretence of the process of the said Court of Requests, and upon the trial of the action, no greater damages shall be found for the plaintiff than the sum of two hundred and fifty dollars, no costs shall be awarded to the plaintiff in such action, unless the Judge shall certify in Court, upon the back of the record, that the action was fit to be brought in the Court of Judicature.

XXVII. In all cases where any conviction shall be had for any offence committed against this Act, the form of conviction may be in the words or to the effect following (that is to say). Be it remembered that on this day of _____ in the year _____

A. B. is convicted before _____ a Magistrate for the _____ (or before a Commissioner of 1862) of having (state the offence) and I (or we) the said _____ do adjudge the said _____ to forfeit, and pay for the same the sum of _____ for to be committed to _____ for the space of _____] given under _____ hand (_____) and seal (_____) the day and year aforesaid.

XXVIII. No order, verdict of judgment, or other proceeding made concerning the matters aforesaid shall be quashed or vacated for want of form.

No order, &c. to be quashed for want of form.

XXIX. Where any distress shall be made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser on account of any defect or want of form in the information, summons, conviction, warrant of distress or other proceeding relating thereto, nor shall the party distraining be deemed a trespasser from the beginning, on account of any irregularity which shall afterwards be committed by the party so distraining, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action upon the case.

XXX. All actions and prosecutions to be commenced against any person for any Limitation of actions, thing done in pursuance of this Act shall be commenced within three calendar months after the fact committed, and not afterwards, and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action is brought, or if after action brought a sufficient sum of money shall have been paid into Court, with costs by or on behalf of the defendant.

A.

In the Court of Requests in and for the Station of (as the case may be).

FORM OF WARRANT.

I hereby direct you to distrain the Goods and Chattels on the Premises of A. B. situate in _____ in the _____ for the sum of _____ dollars, being the amount of _____ months' rent due to C. D., for the same, on the _____ day of _____ last, according to the provisions of the Act No. _____ of _____ dated 1st day of May.

(Signed and Sealed)

To
E. F.,

Sworn Bailiff and Appraiser.

B.

In the Court of Requests in and for the Station of (as the case may be).

FORM OF INVENTORY AND NOTICE.

(State particulars of Goods seized.)

TAKE Notice that I have this day seized the Goods and Chattels contained in the above Inventory for the sum of _____ dollars being the amount of _____ months' rent due to C. D., at _____ last, and that unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Commissioners of the Court of Requests to the contrary, the same will be appraised and sold, pursuant to the provisions of the Act No. _____ of _____

(Signed) E. F.,

Sworn Bailiff and Appraiser.

To
A. B.

C

In the Court of Requests in and for the Station of
SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR
HOUSE RENT.

Sums sued for.	Affidavit, &c., Warrant to Distrain.	Order to sell.	Commission.	Total.	REMARKS.
	Dol. ct.	Dol. ct.	Dol. ct.	Dol. ct.	
1 and under 5 Dollars.					
5 " " 10 "					
10 " " 15 "					
15 " " 20 "					
20 " " 25 "					
25 " " 30 "					
30 " " 35 "					
35 " " 40 "					
40 " " 45 "					
45 " " 50 "					
50 " " 60 "					
60 " " 80 "					
80 " to 100 "					

The above scale is intended to include all expenses, except in suits where the tenant disputes the landlord's claim, and witnesses have to be subpoenaed, in which case each subpoena, for sums under must be paid for at each, and above that amount, and also where peons were kept in charge of property distrained per day must be paid per man.

D.

In the Court of Requests in and for the Station of
 (as the case may be).

A. B. (Plaintiff.)

versus.

C. D. (Defendant.)

A. B., Inhabitant of in the Station of maketh oath and saith, that C. D., who is also an Inhabitant of the Town of is justly indebted to in the sum of dollars for arrears of rent of the House and Premises No. situated at in the Station of due for at month, to wit from to at the rate of dollars per mensem. Sworn before me, the day of 18 Commissioner.

E.

In the Court of Requests in and for the Station of
 (as the case may be).

Take Notice that we have appraised the Goods and Chattels seized on the under the provisions of the Act No. of of which a Notice and Inventory had been duly served upon you under date the and that the said Goods and Chattels will be sold on the at pur-
 suant to the provisions of the said Act.

(Signed) E. F.,

G. H.,

Sworn Bailiffs and Appraisers.

To

A. B.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is simply to enlarge the jurisdiction of the Courts of Requests in the Straits Settlements from thirty-two to one hundred Dollars, or from sixty-four to two hundred Rupees.

GOVT. INDIA BILLS—14

A presentment by the Grand Jury in January 1862 represented the business of the Supreme Court to have increased so much of late as to render it very desirable that an additional Judge should be appointed, and in forwarding the presentment to the Governor, the Honorable the Recorder stated that "the number of petitions in civil causes filed at the Law side involved a quantity of business quite sufficient to occupy the time of any single Judge, independent of the large amount of Equity, Ecclesiastical, Admiralty, Criminal, and miscellaneous matters that necessarily come before the Court, without taking into account the Spring and Autumn Sessions, both Civil and Criminal, at Malacca, which have likewise to be held before the Recorder of Singapore."

In forwarding these remarks of the Honorable the Recorder to the Government of India, the Governor of the Straits Settlement repeated a recommendation he had formerly made for an extension of the jurisdiction of the Courts of Requests as a means of at once materially lightening the labors of the Higher Court, and the Government of India, concurring in the recommendation, requested that a Bill might be brought in to effect the object desired.

The Bill originally introduced into the late Legislative Council provided only for an extension of the jurisdiction of the Courts of requests from thirty-two to one hundred Dollars, but the Select Committee on the Bill recommended that its scope should be enlarged in accordance with suggestions which were made by His Honor the Recorder of Singapore supported by the Governor of the Straits Settlements.

The present Bill includes the amendments recommended by the Select Committee, and in addition to an enlargement of jurisdiction from thirty-two to one hundred Dollars proposes to extend to the Courts of Requests in the Straits Settlements the provisions of Act VII. of 1847 (for regulating distresses for rent) and the following Sections of Act IX. of 1850 (the Small Cause Court Act)—XXIV., XLVII., XLVIII., XLIX., L., LI., LVIII., LIX., LX., LXI., LXIX., LXXXIII., LXXXIV., LXXXVI., LXXXVII., LXXXVIII., CII., CVIII., CIX., CX., and CIX.

(Signed) H. FORBES.

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 26th February 1862, and was referred to a Select Committee who will make a report thereon after the 1st June next:—

A Bill to extend Act XXIII. of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by Authorities in the Mofussil.)

WHEREAS it is expedient to extend the provisions of Act XXIII. of 1840 (for executing within the local limits of the jurisdiction of Her Majesty's Courts legal process issued by Authorities in the Mofussil) it is enacted as follows:—

I. The said Act XXIII. of 1840, shall be read as if the words "any Court of Judicature established by Royal Charter or by Royal Letters Patent" were mentioned therein, instead of the words "Supreme Courts of Calcutta, Madras, and Bombay." Provided that no writ, warrant, or other process shall be endorsed under the said Act by any Court of Judicature of the Settlement

of Prince of Wales' Island, Singapore, and Malacca, so as to compel the attendance beyond the limits of the jurisdiction of such Court of Judicature of any person living within such limits, unless special grounds be proved to the satisfaction of the Judge of such Court to whom such endorsement shall be applied for, in support of the application, which grounds shall be recorded in the endorsement of the writ, warrant, or other process.

II. Any Summons, Bill in Equity, or other process

Service of process issued by one Supreme Court, to commence a suit or action, within the local Jurisdiction of another Supreme Court.

issued to commence a suit or action at Common Law or in Equity or on the Ecclesiastical side by any Supreme Court established by Royal Letters Patent in any part of the territories that are or shall be vested in Her Majesty by the Statute 21 and 22 Vic. c. 106 entitled "An Act for the better Government of India," may be served within the local jurisdiction of any other such Court if endorsed for service by a Judge of such other Court as hereinafter provided. The Summons, Bill in Equity, or other process intended for service shall be accompanied by a certificate annexed thereto, signed by a Judge of the Court from which the same is issued, stating some special cause why such Summons, Bill in Equity, or other process should be served within the jurisdiction of some other such Court as aforesaid, and application shall be made to a Judge of such other Court, on production of such Summons, Bill in Equity, or other process, and of such certificate, prior to such service thereof. On such application being made, it shall be in the discretion of such Judge to require proof by affidavit or otherwise that it is proper to allow such service, and on hearing such proof such Judge shall either endorse the Summons, Bill in Equity, or other process for service, or shall endorse thereon the reason for not ordering the service thereof. If such Summons, Bill in Equity, or other process be not endorsed for service as aforesaid, it shall not be served under this Act. When endorsed for service it shall be served in the same manner as if it had originally issued out of the Court in which such endorsement is made.

STATEMENT OF OBJECTS AND REASONS.

THE object of the Bill as originally introduced into the late Legislative Council was to extend the execution of process issued from any of the Civil Courts in British India, to the Straits Settlements.

The law under which Mofussil process is now executed within the jurisdiction of the Supreme Courts at Calcutta, Madras, and Bombay is Act XXIII. of 1840. This Act does not include places within the jurisdiction of the Courts established by Royal Charter in the Straits.

Inconvenience having been experienced from the impossibility of serving process issued by the authorities at Rangoon on parties in the Straits, and it being represented that "important commercial transactions and constant communication take place between Rangoon and the Straits," it was proposed to alter the provisions of Act XXIII. of 1840, so as to include the jurisdiction of the Courts established by Royal Charter in the Straits.

The present Bill includes amendments suggested by the Select Committee appointed to report on the Bill originally introduced and provides *first*, that no process shall be endorsed under Act XXIII. of 1840 so as to compel the attendance beyond the limits of the jurisdiction of any Court established by Royal Charter in the Straits Settlements of any person living within such limits unless it be proved to the satisfaction of the Court that there are grounds for the application for the endorsement; and *second*, that process issued by one Court established by Royal Charter may, at discretion, be served within the local limits of another Court established by Royal Charter, when accom-

panied by a certificate signed by a Judge of the Court from which the process is issued, stating some special cause why the process should be served within the jurisdiction of another Court.

(Signed) H. FORBES.

The 22nd January 1862.

M. WYLIE,

Deputy 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.

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:—

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.

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 Con-

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

tract 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.

(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.

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.

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.

(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.

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 certi-

ficate 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.

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.

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.

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.

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

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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.

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:—

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.

II. All the provisions of the said Act XV. of 1842, as modified by Act XLIX. of 1850 (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.

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.

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.

V. This Act shall take effect as to the said Colonial Commencement of Act. 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.

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 19th 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. HARRINGTON.

M. WYLIE,

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