



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

Published by Authority.

THURSDAY, 15TH JANUARY 1863.

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

HOME DEPARTMENT (Legislative).

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 17th December 1862, and was referred to a Select Committee, who will make a report thereon after the 2nd March 1863 :—

No. 29 of 1862.

A Bill to provide further for the solemnization of Marriages in India of persons professing the Christian Religion.

Whereas it is expedient to provide further for the solemnization of marriages in India by persons professing the Christian Religion : It is enacted as follows :—

PART I.

As to the persons by whom and places at which Marriage may be solemnized.

I. From and after the day of

Marriages otherwise than in the presence of a Marriage Registrar, or by Minister of Church of Scotland, by whom and where to be solemnized.

persons, one of whom is a person, or both of whom are persons, professing the Christian religion—except Marriages in the presence of a marriage

Registrar under the provisions of the Act of Parliament 14 and 15 Vic. c. 40 (entitled "*An Act for Marriages in India*") or of Act V. of 1852 of the Governor General in Council (for giving effect to the provisions of an Act of Parliament, passed in

the 15th year of the reign of Her present Majesty, entitled "*An Act for Marriages in India*"), and except marriages between persons, one or both of whom are members of or hold communion with the Church of Scotland, solemnized by an ordained Minister of the Church of Scotland under the provisions of the Act of Parliament 58 Geo. III. c. 84 (entitled "*An Act to remove doubts as to the validity of certain Marriages had and solemnized within the British Territories in India*"), or of Act XXIV. of 1860 of the Governor General in Council (for the solemnization of Marriages in India by ordained Ministers of the Church of Scotland)—shall, unless as hereinafter provided, be solemnized by any person not being in holy orders, or at any other place than a Church or Chapel, or some other place of, or generally used for, public worship.

II. Unless as hereinafter provided, any marriage between persons one or both of whom shall be a person or persons professing the Christian religion, not being a marriage before a Marriage Registrar under the provisions of the said Act of Parliament 14 and 15 Vic. c. 40, or of the said Act V. of 1852 of the Governor General in Council, or a marriage between persons, one or both of whom are members of or hold communion with the Church of Scotland, solemnized by an ordained Minister of that Church, which shall be solemnized in India after the day of by a person not being in holy orders, or which shall be solemnized in any other place than in a Church or Chapel, or some place of, or generally used for, public worship shall be null and void.

III. After the day of it

Mode of solemnizing marriages by Minister of Church of Scotland not being a Marriage Registrar.

shall not be lawful for any Minister of the Church of Scotland, not being a marriage Registrar, to solemnize any marriage under the provisions of the said Act of Parliament 58 Geo. III. c. 84, or of the said Act XXIV. of 1860, of the Governor General in Council at any other place than a Church, Chapel, or some place of, or generally used for, public worship; unless the same be solemnized in the presence of a Marriage Registrar, according to the provisions of the said Act of Parliament 14 and 15 Vic. c. 40, and of the said Act V. of 1852 of the Governor General in Council.

IV. Any marriage solemnized after the last

Marriages not so solemnized to be null and void.

mentioned day by a Minister of the Church of Scotland and at any other place than a Church, Chapel, or some place of, or generally used for, public worship, unless the same be solemnized in the presence of a Marriage Registrar, according to the provisions of the said Act of Parliament 14 and 15 Vic. c. 40, and of the said Act V. of 1852 of the Governor General in Council, shall be null and void.

V. The preceding sections of this Act shall

Preceding sections not to apply to marriages solemnized by licensed Clergymen of the Church of England or Surrogates.

not apply to any marriage solemnized by a person in holy orders of the Church of England under a license from the Bishop of the diocese, or from any Surrogate authorized in that behalf by the Bishop according to the conditions of such license.

VI. All marriages solemnized in India before

Saving of certain marriages solemnized by persons not in holy orders. &c.

the day of by persons not in holy orders, or not otherwise expressly authorized to solemnize such marriages under any of the Acts of Parliament or Acts of the Governor General in Council mentioned in Section I. of this Act, whether the same were solemnized in a Church, Chapel, or some place, of or generally used for, the purpose of worship or not, if not otherwise invalid, shall be deemed to be valid to all intents and purposes.

PART II.

As to the mode of solemnizing Marriages under this Act.

VII. In every case of marriage between persons,

one or both of whom shall be a person or persons professing the Christian religion, intended to be solemnized in India

after the day of next otherwise than under the provisions of the said Act of Parliament 14 and 15 Vic. c. 40, or of the said Act V. of 1852, of the Governor General in Council, or otherwise than by publication of banns or by license according to the rites and ceremonies of the Church of England, one of the parties shall give notice in writing in the form prescribed by Schedule A to this Act annexed, or to the like effect to the person in holy orders, or in the case of a marriage intended to be solemnized under the provisions of the said Act of Parliament, 58. Geo. III. c. 84, or of the said Act XXIV. of 1860, of the Governor General in Council, to the ordained Minister of the Church of Scotland whom he shall desire to solemnize the said marriage, and shall state therein the name or

names and the profession or condition of each of the parties intending marriage, the dwelling place of each of them, and the time (not being less than four days) during which each has dwelt there, and the Church, Chapel, or other place of, or generally used for, public worship in which the marriage is to be solemnized. Provided that if either party shall have dwelt in the place stated in the notice during more than one calendar month, it may be stated therein that he or she hath dwelt there one month and upwards.

VIII. The person in holy orders, or the Minister of the Church of Scotland, to whom such

Publication of notice.

notice shall have been delivered, if he shall be entitled to officiate in the Church, Chapel, or place of public worship in which it is intended to solemnize the said marriage, shall publish every notice of marriage received by him, by causing the same to be published and affixed in some conspicuous part of the said Church, Chapel, or place of, or generally used for, public worship in which it is intended that the said marriage shall be solemnized. If such person in holy orders or Minister shall not be entitled to officiate as a Minister in such Church, Chapel, or place of, or generally used for public worship, he shall at his option either return the said notice to the person delivering the same to him, or shall deliver the same to some other person in holy orders, or Minister of the Church of Scotland, entitled to officiate in such place of worship who shall thereupon cause the same to be so published, and affixed in the said Church, Chapel, or place of, or generally used for, public worship.

IX. When one of the parties intending marriage

(not being a widow or widower) is under twenty-one years of age, every person in holy orders or Minister as aforesaid, who shall receive such a notice, and who shall not forthwith return such notice to the party delivering the same under the last preceding section, shall, within 24 hours after the receipt by him thereof, send or cause to be sent by the post or otherwise a copy of such notice to the Marriage Registrar of the District.

X. The Marriage Registrar of the District on

receiving any such notice shall affix the same in some conspicuous place in his own office, or if he is a Minister of the Christian religion, in his own Church, Chapel, or place of worship.

XI. If there be more Registrars than one in

any District, the local Government shall appoint one of such Registrars to be Senior Registrar, and such notice as aforesaid shall be sent to such Senior Registrar, who, on receiving the same, shall besides affixing it in the manner laid down in the last preceding section, send or cause to be sent a copy of such notice to all the other Marriage Registrars in the same District, who shall likewise affix the same in their own offices or Churches, Chapels, or places of worship as aforesaid.

XII. Any person in holy orders or Minister

of the Church of Scotland, who shall consent or intend to solemnize any such marriage as aforesaid.

Issue of certificate of notice given and declaration made.

said, on being required so to do by or on behalf of the party by whom the notice was given, and upon one of the parties intending marriage making such declaration as hereinafter required, shall issue under his hand a certificate of such notice having been given and of such declaration having been made. Provided no lawful impediment, according to the law of England, be shown to the satisfaction of such person or Minister why such certificate shall not issue, and the issue of such certificate shall not have been sooner forbidden in the manner hereinafter mentioned by any person authorized in that behalf.

XIII. Provided that where by such declaration it appears, or when it is otherwise known to such person in holy orders or Minister that one of the parties intending marriage and not being a widower or widow is under twenty-one years of age, such person or Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of such notice of marriage.

XIV. Before any such certificate as aforesaid shall be issued by any person in holy orders or Minister as aforesaid, one of the parties intending marriage shall appear personally before such person in holy orders or Minister, and shall make a solemn declaration that he or she believes that there is not any impediment of kindred or affinity or other lawful hinderance to the said marriage, and when either or each of the parties, not being a widower or widow, is under the age of twenty-one years, that the consent of the person whose consent to such marriage is required by law has been obtained thereto, or that there is no person resident in India having authority to give such consent as the case may be.

XV. The father, if living, of any party under twenty-one years of age, such party not being a widower or widow, or if the father be dead, the guardian or guardians of the person of the party so under age lawfully appointed, or one of them, and in case there be no such guardian, then the mother of such party, if unmarried, shall have authority to give consent to the marriage of such party, and such consent is hereby required for the marriage of such party so under age, unless there be no person authorized to give such consent resident in India.

XVI. Every person, whose consent to a marriage is required as aforesaid, is hereby authorized to prohibit the issue of the certificate by any

such person in holy orders or Minister of the Church of Scotland as aforesaid, at any time before the issue of such certificate, by notice in writing to such person or Minister, subscribed by the person so authorized as aforesaid, with his name and place of abode, and his or her character in respect of either of the parties, by reason of which he or she is so authorized.

XVII. If any such notice prohibiting the marriage shall be received by such person in holy orders or Minister as aforesaid, he shall not issue his certificate, and shall not solemnize the said

marriage until he shall have examined into the matter of the said prohibition, and is satisfied that the person prohibiting the said marriage is not authorized by law so to do, or until the notice of the said prohibition be withdrawn by the person who gave the same.

XVIII. When any Native Christian about to be married takes a notice of marriage to a person in holy orders or a Minister of the Church of Scotland as aforesaid, or applies for a certificate from such person or Minister, such person or Minister shall, before issuing such certificate ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, and if not, shall translate or cause to be translated the said notice or certificate to such Native Christian in the language of such Native Christian, or in some language which he understands.

XIX. The certificate to be issued by such person in holy orders or such Minister of the Church of Scotland as aforesaid, may be in the form prescribed by Schedule B to this Act annexed, or to the like effect.

XX. After the issue of the certificate by such person in holy orders or Minister of the Church of Scotland, marriage may be solemnized between and by the parties therein described according to the provisions of Part I of this Act, or according to such form or ceremony as such person in holy orders or Minister shall see fit to adopt.

XXI. Every marriage solemnized in India after the day of

Time for solemnization of marriage by person in holy orders, &c.

after that date by an ordained Minister of the Church of Scotland under the provisions of the said Act of Parliament 53 Geo. III. c. 84, or of the said Act XXIV. of 1860, of the Governor General of India in Council shall be so solemnized between the hours of 6 in the morning and 7 in the evening.

XXII. Whenever a marriage is not solemnized within two calendar months after the date of the certificate which shall have been issued by such person in holy orders or Minister as aforesaid, such certificate and all other proceedings thereon shall be void, and no person shall proceed to solemnize the said marriage until new notice shall have been given and certificate thereof issued in the manner aforesaid.

XXIII. Provided that whenever any marriage has been solemnized by a person in holy orders, or a Minister of the Church of Scotland in accordance with the provisions of Part I. of this Act, it shall not be necessary in support of such marriage to give any proof in respect of the dwelling of the parties or of the consent of any person, whose consent is thereunto required by law, or of the notice of marriage or of the certificate or the translation thereof respectively, or in respect of the hours between which the same may have been solemnized, nor shall any evidence be given to

Procedure before issue of certificate in the case of a Native Christian.

After issue of certificate marriage may be solemnized.

New notice and certificate required after two months.

Proviso as to marriage solemnized according to Part I.

Procedure on receipt of such notice by person in holy orders, &c.

Notice by person whose consent is required, prohibiting marriage.

Consent of father or guardian necessary to the marriage of a person under 21 years of age.

prove the contrary in any suit touching the validity of such marriage.

XXIV. Part II. of this Act shall not apply to any marriage solemnized after publication of banns or by license from the Bishop of the diocese, or by any Surrogate duly authorized by him on that behalf according to the rites and ceremonies of the Church of England.

PART III.

As to the Registration of Marriages in India.

XXV. All marriages solemnized in India between persons both or one of whom shall profess the Christian religion after the day of except marriages solemnized under the Act of Parliament 14 and 15 Vic. c. 40, and Act V. of 1852, of the Governor General in Council, shall be registered in the manner herein prescribed. Provided that no omission or defect in such registration shall invalidate any marriage not otherwise invalid.

XXVI. All marriages solemnized by persons in holy orders of the Church of England shall be registered by the person in holy orders solemnizing the same in the register of marriages of the station or district in which the marriage shall be solemnized, according to the form now in use under the orders of the Government contained in the *Calcutta Gazette* of 14th July 1841.

XXVII. Every person in holy orders of the Church of England shall send four times in every year in duplicate, authenticated by the signature of such person, of the register of marriages solemnized at or in any station or district at which such person shall have any spiritual charge, to the Registrar of the Archdeaconry to which such person shall be subject, or within the limits of which such station shall be situated. Such quarterly return shall contain all the entries of marriages contained in the said register from the 1st day of January to the 31st day of March, from the 1st April to the 30th June, from the 1st July to 30th September, and from the 1st October to the 31st December, of each year respectively, and shall be transmitted by such person within two weeks from the expiration of each of the quarters above specified. The said Registrar upon receiving the same shall transmit one duplicate to the Secretary to the Government in the Home Department at the Presidency in which such Archdeaconry shall be.

XXVIII. All marriages solemnized by ordained Ministers of the Church of Scotland under the Act of Parliament 58 Geo. III. c. 84, and Act XXIV. of 1860, of the Governor General in Council, in any of the Presidency Towns, or in the Chief Town of any Lieutenant Governorship, or within the distance of 20 miles from any such Presidency Town, or Chief Town, shall continue to be certified by the Ministers solemnizing the same in the manner required by the said Act of Parliament and Act respectively.

XXIX. All marriages solemnized by ordained Ministers of the Church of Scotland under the last mentioned Act of Parliament and Act solemnized at a greater distance than 20 miles from any such Presidency Town, or Chief Town, shall be registered and certified under the provisions contained in the next following Section of this Act, and not otherwise.

XXX. After the solemnization of any marriage under this Act by any person in holy orders, not being a Clergyman of the Church of England, or by a Minister of the Church of Scotland, at a greater distance than 20 miles from any Presidency Town, or Chief Town as aforesaid, the person solemnizing the same shall forthwith register such marriage in duplicate in a marriage register-book to be kept by him for that purpose, or according to the form prescribed by Schedule C. annexed to this Act, and also in a certificate attached to the marriage register-book as a counterfoil.

XXXI. The entry of any marriage with the certificate in the marriage register-book shall be signed by the person in holy orders, by whom the said marriage has been solemnized, and also by the parties married and attested by two witnesses, and every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry and the marriage register-book.

XXXII. The person solemnizing the said marriage shall forthwith separate the certificate from the marriage register-book, and transmit it within one calendar month from the time of the solemnization of the said marriage to the Marriage Registrar of the district in which such marriage was celebrated, or if there be more Registrars than one, to the Senior Registrar, who shall cause the same to be copied into a book to be kept by him for that purpose, and shall transmit all the said certificates which he shall have received during the month with such number and signature or initials added thereto, to the Secretary to the Government of the Presidency or Lieutenant-Governorship within which he resides, together with the certificates, from his own marriage register-book, which he shall transmit under the 12th Section of the said Act of Parliament 14 and 15 Vic. c. 40, but distinct therefrom.

XXXIII. Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied and also a number to be entered by the Registrar, indicating the number of the entry of the said copy in the said book according to the order in which each certificate was received by the said Registrar.

XXXIV. The Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate with his signature or initials.

Marriages by the same Ministers at a greater distance than 20 miles from Presidency Town, &c. to be registered and certified as provided in next Section.

Marriage to be registered in duplicate in Marriage Register Book, and also in a counterfoil certificate.

Entries of marriage with certificate in Register Book to be signed.

Certificate to be separated from Marriage Register Book and forwarded to Marriage Registrar for transmission to Government.

Copies of Certificates.

Registrar to add number of copy to the certificate, &c.

tials, and shall at the end of every month transmit the same to the Secretary to the Government of the Presidency or Lieutenant-Governorship as aforesaid.

XXXV. The person solemnizing any such marriage as is provided for in Part III. of this Act shall keep safely the said register-book until the same shall be filled, or if he shall leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person who shall succeed to the duties and spiritual charge in the said district, who shall keep safely the same, and shall enter therein the entries by this Act required to be made in respect of any marriage solemnized by him within the said district, and the person having the control of the book at the time when the same shall be filled shall transmit the same to the Marriage Registrar of the district, or, if there be more Registrars than one, to the Senior Marriage Registrar, who shall transmit the same to the Secretary to the Government at the Presidency as aforesaid, to be kept by him with the records of his office.

XXXVI. Provided that with regard to the marriages so certified, of which it may appear to the Governor General in Council desirable that evidence shall be transmitted to England, the Secretary to the Government shall, at the end of every three calendar months in each year, send all the certificates of marriage sent to him as aforesaid during such three months, signed by him, to the Secretary of State for India, for the purpose of being delivered to the Registrar General of Births, Deaths, and Marriages in India.

XXXVIII. Any person charged with the duty of registering any marriage, who shall discover any error to have been committed in the form or substance of any such entry, may, within one calendar month next after the discovery of such error in the presence of the parties married, or, in case of their death or absence, in the presence of two other creditable witnesses, who shall respectively attest the same, correct the erroneous entry according to the truth of the case by entry in the margin without any alteration of the original entry, and shall sign the marginal entry and add thereunto the day of the month and year when such correction shall be made, and such person shall make the like marginal entry, attested in the like manner, in the certificate thereof; and in case such certificate shall have been already transmitted to the Secretary of Government of the Presidency or place within which he resides, such person shall make and transmit in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

XXXVIII. Every person solemnizing a marriage under this Act and hereby required to register the same, and every Marriage Registrar or Secretary to Government who shall have the custody for the time being of any register of marriages, or of any certificate or copies of certificate under this Act shall, at all reasonable times, allow searches

to be made of any register-book, or of any certificate, or duplicate, or copies of certificate in his custody, and shall give a copy under his hand of any entry or entries in the same on the payment of the fees hereinafter mentioned, that is, for every search extending over a period of not more than one year the sum of one rupee and four annas additional for every additional year, and the sum of one rupee for every single certificate.

XXXIX. All fees received by a Marriage Registrar or Secretary shall be accounted for and paid over by him to Government, and all fees received by a person solemnizing a marriage, not being a Marriage Registrar, may be retained by such person.

XL. Every certified copy purporting to be signed by the person entrusted under the Act with the custody of any marriage register, or certificate, or duplicate certificate required to be kept or delivered under this Act, of any entry of a marriage in such a register, or of any such certificate, or duplicate certificate shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein without further proof of such register of certificate, or duplicate copy, or of any entry therein respectively, or of such copy.

XLI. Nothing contained in Part III. of this Act shall apply to the register or certificate of any marriage solemnized under the Act of Parliament 14 and 15 Vic. c. 40, or Act V. of 1852, of the Governor General in Council.

PART IV.

As to the marriage of certain Native Christians.

XLII. And whereas it is expedient to make provision for the marriage of certain Native Christians to whom the provisions of the said Statute 14 and 15 Vic. c. 40 and the said Act V. of 1852 of the Governor General of India in Council are found not to be suitable, it shall be lawful for the local Government of any Presidency or place, or the Chief Commissioner of any province, to issue a license to any person not in holy orders, authorizing such person to grant certificates of marriage between Native Christians being converts from any religion in India and between the descendants of such Native Christians.

XLIII. It shall not be a necessary preliminary to the grant of a certificate by any person licensed under the last preceding section, that any notice of marriage should have been given by either of the parties to such marriage, or that any certificate should have been issued of any notice having been given under the provisions of the said Act V. of 1852 or otherwise, and every marriage between Native Christians as aforesaid, applying for a certificate under this part of the

Act, shall be certified under this part of the Act if the following conditions be fulfilled and not otherwise:—

1. The age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years.

2. The man and the woman shall not stand to each other within the prohibited degrees of consanguinity or affinity.

3. Neither of the parties intending to be married shall have a wife or husband still living.

4. In the presence of the person so licensed, and of at least two witnesses, each of the parties shall say to the other:—

“I call upon these persons here present to witness that I, A. B, do take thee C. D, to be my lawful wedded wife or (husband),” or words to the like effect.

XLIV. When in respect to any marriage falling under this part of the

On marriage being performed it shall be the duty of the licensed person to grant a certificate thereof.

the duty of the person licensed as aforesaid, in whose presence the said declaration shall have been made, to grant a certificate of such marriage on the application of either of the parties to such marriage on the payment of a fee of four annas. Such certificate shall be signed by such licensed person, and shall be received as conclusive evidence of such marriage having been performed in any suit touching the validity of such marriage, and no evidence to prove the contrary shall be received in any such suit.

XLV. The local Government or the Chief Commissioner may at any time revoke any license granted by such Government or Chief Commissioner under Section XLIII. of this Act.

XLVI. The grant or revocation of any license under Sections XLII. and XLV. respectively of this Act shall be notified in the Official Gazette.

XLVII. All marriages performed between Native Christians as aforesaid or their descendants, in accordance with the provisions of Section XLIII. of this Act, shall be good and valid to all intents and purposes.

XLVIII. A register-book of all marriages of which certificates shall be granted under Section XLIII. of this Act, shall be kept by the person granting such certificates in his own vernacular. Such register-book shall be kept according to such form as the local Government shall from time to time prescribe, and true extracts therefrom duly authenticated shall be deposited at such places and at such times as the local Government shall direct.

XLIX. Every person licensed under this Act to grant certificates of marriage, and who shall have the custody of a

register-book under the last preceding section, shall at all reasonable times allow search to be made in such book in his custody, and shall give a copy certified under his hand of any entry or entries in the same on the payment of the fees hereinafter mentioned, that is to say, for every search extending over a period not exceeding two years the sum of eight annas, and two annas additional for every additional year.

PART V.

As to Penalties.

L. Every person who shall knowingly and wilfully make any false oath or declaration, or sign any false notice or certificate, required by the said Statute 14 and 15 Vic. c. 40 for the purpose of procuring any marriage, and every person who shall forbid the issue of a Marriage Registrar's certificate by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false, shall, on conviction, be liable to the punishment prescribed by Section 193 of the Indian Penal Code.

LI. Whoever not being authorized to solemnize a marriage under the said Act of Parliament 14 and 15 Vic. c. 40, or Act V. of 1852 of the Governor General in Council, or under the Act of Parliament 53 Geo. IV. c. 84, or Act XXIV. of 1860 of the Governor General in Council, and not being a person in holy orders shall, from and after the day of knowingly and wilfully solemnize a marriage between persons, one or both of whom shall be a person or persons professing the Christian religion, in the absence of a Registrar of the district in which such marriage is solemnized, shall be punished with imprisonment of either description as defined in the Indian Penal Code, which may extend to ten years, and shall also be liable to fine, or in lieu of a sentence of imprisonment for seven years or upwards, to transportation for a term of not less than seven years and not exceeding ten years, or if the offender be an European or American, to penal servitude according to the provisions of Act XXIV. of 1855.

LI. Whoever shall, from and after the day of knowingly and wilfully solemnize a marriage between persons, one or both of whom shall be a person or persons professing the Christian religion, in any other place than a Church, Chapel, or other place of, or generally used for, public worship, in the absence of any Registrar of the district in which such marriage is solemnized, shall be liable to imprisonment of either description as defined in the Indian Penal Code, which may extend to a term of ten years, and shall also be liable to fine, or in lieu of a sentence of imprisonment for seven years or upwards, to transportation for a term of not less than seven years and not exceeding ten years, or if the offender be an European or American, to penal servitude according to the provisions of Act XXIV. of 1855.

LII. Whoever shall, from and after the day of knowingly and wilfully solemnize a marriage between persons, one or both of whom shall be a person or persons professing the Christian religion, in any other place than a Church, Chapel, or other place of, or generally used for, public worship, in the absence of any Registrar of the district in which such marriage is solemnized, shall be liable to imprisonment of either description as defined in the Indian Penal Code, which may extend to a term of ten years, and shall also be liable to fine, or in lieu of a sentence of imprisonment for seven years or upwards, to transportation for a term of not less than seven years and not exceeding ten years, or if the offender be an European or American, to penal servitude according to the provisions of Act XXIV. of 1855. Provided that this section shall not apply to

Proviso.

any Clergyman of the Church of England who shall solemnize a marriage under a license from the Bishop of the diocese, or from any Surrogate duly authorized in that behalf by the said Bishop, whether such license expressly sanctions the solemnization of the marriage otherwise than in a Church, Chapel, or some place of, or generally used for, public worship or not.

LIII. Whoever shall, from and after the day of

Punishment for solemnizing a marriage at an unauthorized hour, &c.

knowingly and wilfully solemnize a marriage between persons, one or both of whom shall be a person or persons professing the Christian religion, at any time otherwise than between the hours of 6 in the morning and 7 in the evening, or in the absence of at least two witnesses, and whoever shall knowingly and wilfully solemnize such a marriage, when one of the parties to such marriage, not being a widower or widow is under 21 years of age, or within fourteen days after the receipt by him of notice of such marriage, no order for the issue of a certificate in less than fourteen days having been made by a competent Court, shall be punished with imprisonment of either description as defined in the Indian Penal Code for a term which may extend to three years, and shall also be liable to fine.

LIV. Whoever, being a Marriage Registrar

Punishment for Registrars issuing certificates, or solemnizing marriages without publication of notice, &c.

appointed under the provisions of Act V. of 1852, shall knowingly and wilfully issue any certificate for marriage, or solemnize any marriage under Act V. of 1852, without publishing or affixing in some conspicuous place the notice of such marriage as directed by the said Act, or after expiration of two calendar months after a certificate in respect of a marriage shall have been issued by him, shall solemnize such marriage, or shall, without an order of a competent Court authorizing to do so, solemnize any marriage when one of the parties intending marriage (not being a widow or widower) is under twenty-one years of age, before the expiration of fourteen days after the entry of such notice as is required by the said Act, or without sending or causing to be sent by the post or otherwise a copy of such notice of marriage to the Registrar of the District, or, if there be more Registrars than one, to the Senior Registrar of the district, or shall issue any certificate, the issue of which shall have been prohibited as in this Act directed by any persons authorized to prohibit the issue thereof, shall be punished with imprisonment of either description, as defined in the Indian Penal Code, for a term which may extend to five years, and shall also be liable to fine.

LV. Whoever, being a person authorized under the provisions of this Act

Punishment for persons authorized under this Act, solemnizing marriages without publication of notices &c.

to solemnize a marriage, and not being a person in holy orders of the Church of England solemnizing a marriage under a license from the Bishop of the diocese, or a Surrogate duly authorized in that behalf, who shall knowingly and wilfully issue any certificate for marriage under this Act, or solemnize any marriage between such persons as aforesaid, without publishing or causing to be affixed the notice of such marriage as directed in Part II. of this Act, or after the expiration of two

calendar months after the certificate shall have been issued by him, or shall knowingly and wilfully issue any certificate for marriage, or solemnize a marriage between such persons, when one of the persons intending marriage, not being a widower or widow, is under 21 years of age, or before the expiration of fourteen days after the receipt of notice of such marriage, or without sending or causing to be sent by the post or otherwise a copy of such notice to the Registrar, or, if there be more Registrars than one, to the Senior Registrar of the district, or shall knowingly and wilfully issue any certificate, the issue of which shall have been forbidden under this Act, by any person authorized to forbid the issue, or shall knowingly and wilfully solemnize any marriage which shall have been forbidden by any person authorized to forbid the same, shall be punished with imprisonment of either description as defined in the Indian Penal Code for a term which may extend to four years, and shall also be liable to fine.

LVI. Whoever, not being licensed to grant a certificate of marriage under Part IV. of this Act,

Punishment for unlicensed person granting certificate of marriage under Part IV.

shall grant such certificate intending thereby to make it appear that he is so licensed, shall be punished with imprisonment of either description as defined in the Indian Penal Code for a term which may extend to five years, and shall also be liable to fine.

LVII. Whoever shall wilfully insert or cause to be inserted any false

Punishment for making false entries.

entry in any such register-book or authenticated extract therefrom, as is mentioned in Section XLVIII. of Part IV. of this Act, shall be liable to the punishment prescribed by Section 193 of the Indian Penal Code.

LVIII. Offences punishable under this Act

Jurisdiction. shall be tried under the provisions of the Code of Criminal Procedure by the

Court of Session as defined in the said Code of criminal procedure, provided that no European British subject shall be liable to be tried for any offence punishable under this Act except by one of Her Majesty's High Courts of Judicature in India. In cases beyond the limits of the Presidency towns of Calcutta, Madras, and Bombay charges against European British subjects for any offence under this Act shall be investigated, and the committal for trial shall be made under the provisions of Sections 39, 40, and 41 of the Code of Criminal Procedure, and the trial of European British subjects under this Act by any of the said High Courts shall be under the procedure by which the proceedings of the said High Courts are regulated.

LIX. Except as provided in the last preceding

Code of Criminal Procedure applicable to investigations and committals under this Act.

section, the provisions of the Code of Criminal Procedure shall apply to the investigation and committal in all cases of charges under this Act, provided that a summons shall ordinarily issue in the first instance, and provided also that offences punishable under this Act shall be bailable.

SCHEDULE (A).—See Section VII.

NOTICE OF MARRIAGE.

To the *Rev. John Brown*, a Minister of the Church of Scotland at Calcutta.

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say),

NAME.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.	Church, Chapel, or place of worship in which the marriage is to be solemnized.	District in which the other party resides when the parties dwell in different Districts.
<i>Martha Green.</i>	<i>Widower.</i>	<i>Carpenter.</i>	<i>Of full age.</i>	<i>16, Clive Street.</i>	<i>23 days.</i>	<i>St. Andrew's Church, Calcutta.</i>	
<i>Spinster.</i>							
<i>.....</i>							
<i>Minor.</i>							
<i>20, Hastings' Street.</i>							
<i>More than a month.</i>							

Witness my hand this *sixth* day of *May*, *One thousand eight hundred and sixty-three.*

(Signed) JAMES SMITH.

(The *Italics* in this Schedule are to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.)

SCHEDULE (B).—See Section XIX.

REGISTRAR'S CERTIFICATE.

I, the Reverend John Brown, a Minister of the Church of Scotland at Calcutta in Bengal, do hereby certify that on 6th day of May 1863 notice was duly entered in my marriage notice book of the marriage intended between the par-

ties therein named and described, delivered under the hand James Smith, one of the parties (that is to say),

NAME.	Condition.	Rank or Profession.	Age.	Dwelling Place.	Length of Residence.	Church, Chapel, or place of worship in which the Marriage is to be solemnized.	District in which the other party resides when the parties dwell in different Districts.
<i>Martha Green.</i>	<i>Widower.</i>	<i>Carpenter.</i>	<i>Of full age.</i>	<i>16 Clive street.</i>	<i>23 days.</i>	<i>St. Andrew's Church, Calcutta.</i>	
<i>Spinster.</i>							
<i>.....</i>							
<i>Minor.</i>							
<i>20, Hastings' Street.</i>							
<i>More than a month.</i>							

and that the declaration required by Section XIV of this Act has been duly made by the said (*James Smith*).

Date of notice entered 6th May 1863.
Date of certificate given 20th May 1863.

The issue of this certificate has not been prohibited by any person authorized to forbid the issue thereof.

Witness my hand this *Twentieth* day of *May*, *One thousand eight hundred and sixty-two.*

(Signed) JOHN BROWN,
Minister of the Church of Scotland.

This certificate will be void unless the marriage is solemnized on or before the *20th* day of *July* 1863.

(The *Italics* in the Schedule are to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.)

SCHEDULE (C.) See Section XXX.

MARRIAGE REGISTER BOOK.

No.	WHEN MARRIED.			NAME OF PARTIES.		Age.	Condition.	Rank or Profession.	Resided at the time of Marriage.	Fathers' name and Surname.
				Christian.	Surname.					
	Day.	Month.	Year.							
1	26th	May	1863	James	White	26 years	Widower ...	Carpenter..	Agra....	William White
				Martha ...	Duncan.....	17 years	Spinster ...		Agra....	John Duncan.

Married in the Presbyterian Chapel, Agra.

John Young, Minister of the Church of Scotland.

This marriage was solemnized between us { *James White,*
Martha Duncan } in the presence of us { *John Smith.*
John Green.

CERTIFICATE OF MARRIAGE.

No.	WHEN MARRIED.			NAME OF PARTIES.		Age.	Condition.	Rank or Profession.	Residence at the time of marriage.	Father's Name and Surname.
				Christian.	Surname.					
	Day.	Month.	Year.							
1	26th	May	1863	James	White	26 years	Widower ..	Carpenter..	Agra....	William White
				Martha ..	Duncan ..	17 years	Spinster ..		Agra....	John Duncan.

Married in the Presbyterian Chapel, Agra.

John Young, Minister of the Church of Scotland.

This marriage was solemnized between us { *James White,* } in the presence of us { John Smith.
Martha Duncan, } { John Green.

STATEMENT OF OBJECTS AND REASONS.

This Bill was prepared by the late Mr. Ritchie, with exception to Part IV. relating to the marriage of certain Native Christians.

Mr. Ritchie, in a paper left by him, thus explained the Objects and Reasons of the Bill. He said "the object of this Bill is to put an end to the state of uncertainty which now exists in regard to marriages in India of persons, one or both of whom are of the Christian religion, but which are not solemnized in any of the modes expressly recognized by the law as valid.

"These modes are three in number, two of them being generally applicable to all persons of whatever denomination of the Christian religion and one being applicable only to a particular class.

"The first consists in the performance of the marriage ceremony by a Clergyman in holy orders, according to the sense in which the English law understands that term, that is a Clergyman who has been episcopally ordained. No particular rite or religious ceremony is legally requisite to this form of marriage, but the presence of a Clergyman in orders at the time of the mutual promise to become man and wife is essential. The Clergyman need not be of the same religious denomination as either of the parties. But the Clergyman of a denomination which does not recognise episcopacy, and who has not been ordained by a bishop, confers no special privilege by his presence, and stands on the same footing in this respect as a layman.

"This was the only form of marriage recognised by the English common law as valid as was decided in 1844 in the House of Lords in the well-known case of the Queen *versus* Mills.

"In 1818 it was provided by an Act of Parliament that marriages between persons, one or both of whom were of the Church of Scotland, solemnized by ordained Ministers of that Church as by law established, or by a Chaplain of the East India Company in India, should be of the same force and effect as if they were solemnized by ordained Clergymen of the Church of England, according to the rites and ceremonies of the Church of England.

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"This privilege was recently extended by the Legislative Council to ordained Ministers of the Church of Scotland other than Government Chaplains (see Act XXIV. of 1860).

"Until the present reign no other positive law regarding the solemnization of marriages existed in India. But there was a general impression in consequence of Lord Stowell's famous decision in *Dalrymple versus Dalrymple*, that the presence of a Clergyman in orders required by the English Marriage Act was not essential to the validity of a marriage in any part of the British dominions beyond the operation of these Acts; and that a simple contract of marriage in words showing it was to take effect at once would suffice. The House of Lords in Mills' case decided upon the opinion of the English judges that the English common law of marriage as above stated obtained in Ireland, though the Marriage Act did not extend there, and that the presence of ordained Clergymen in orders was thus essential. In consequence of the doubt thus thrown upon the validity of marriages in India in the absence of a Clergyman in orders, the Statute 14 and 15 Vic. c. 40, commonly called the Indian Marriage Act, was passed. This was followed by Act V. of 1852, which gives effect to the provisions of the Statute.

"Under these Acts marriages in the presence of a Marriage Registrar have been legalized. No religious ceremony is necessary, but it is optional to the parties to go through any religious ceremony they please. The Act of Parliament legalized all *past* marriages solemnized in India by persons not in holy orders, not being otherwise invalid by declaring them valid in law to all intents and purposes.

"But the doubt which existed as to the validity of such marriages at common law was not cleared up in regard to marriages contracted after the Statute; for it was provided that nothing in the Act shall invalidate any marriage which might be solemnized in India by any person in holy orders, or under the Statute of George the 3rd already cited, or any other marriage which under the law in force for the time being in India might have been there solemnized if the Act had not been passed, provided that the Governor General in Council might provide by laws and regulations for the registration of such marriages."

The doubt thus left open as to marriages contracted since 1851 still exists. On the one hand

In the case of *Malcolm versus Cristal*.
Perry's Oriental Cases.

as Dean of the Arches, have held that the principle laid down in the *Queen versus Millis* could not be applied to a country such as India or Australia in which, on the first introduction of English laws and institutions, there were no Clergymen in holy orders before whom marriage could be celebrated, and the House of Lords by passing a Divorce Bill founded on Sir Erskine Perry's decision, has to some extent, though by no means conclusive, sanctioned that view. On the other hand, the Court of Exchequer has held that the decision in question extended to invalidate a marriage performed between British subjects in Beyrout solemnized before a Baptist Clergyman not in orders. And the Statute of 1818 and the Act of 1860 in favour of marriages performed by Ministers of the Scotch Church seem to show that the Legislatures both in England and in India considered that the English common law applied to Indian marriages.

"It is almost impossible to determine which of these views is correct, though I am inclined to think that the former is right in principle. But the result of the doubts is, that there is a distressing degree of uncertainty as to the validity of many marriages solemnized since 1851, and that a great deal of fraud in regard to the performance of a sham marriage ceremony by persons having no special qualification but pretending to be qualified, has passed unpunished.

"In 1854 it was brought to the notice of the Government that a person who had once been a schoolmaster, but had never been ordained to the ministry in any way professed to have authority to marry, and did perform the ceremony of marriage between several couples of Native Christians in the Backergunge district. Similar practices have been found to have prevailed in other districts, but as the person officiating did not profess to be a Marriage Registrar, but only to have authority to marry, and as, according to my view of the law, the marriages thus solemnized were legal, and the person referred to, therefore, as a witness did assist in rendering the marriages effectual it was found impossible to punish him for his imposition.

"It is felt to be time to put an end to the uncertainty which now surrounds the question, and which, on so important a subject as the validity of marriages, ought not to be allowed to continue for a day longer than can be avoided.

"One ground upon which it is supposed that the Legislature in India left the question unsettled for the last few years, was that a law effectually dealing with the subject of Christian marriage must to some extent affect or interfere with the provisions of the English Statute of 1851, which it was beyond the power of the Legislative Council as then constituted to touch. The difficulty is now removed, as the India Councils Act contains no restriction upon the interference with the Act of Parliament passed in the year abovementioned, and the proposed change of the law is quite within the competency of the Council as now constituted.

"The only effectual mode of dealing with the question appears to be to pass a law declaring that for the future no marriages between persons, one or both of whom shall profess the Christian religion shall be valid in law unless it be celebrated in one of the three modes already expressly recognized by law. There will be no hardship in thus declaring the law now, for the Marriage Acts of 1851-52 have been ten years in operation. Their provisions are generally well known throughout India, and the facilities for contracting marriage under those Acts have been rendered as great by the appointment of Registrars at every place of any importance, both in our Dominions and in those Foreign States in alliance with Great Britain (for which the Statute also provides) as can reasonably be desired.

"In regard to past marriages, it is proposed to declare that all marriages previously contracted in the presence of persons not in holy orders, if not otherwise invalid, shall be deemed good and valid. This is the course which had been adopted on

occasions on which Parliament has prescribed a stricter rule for the future than that which had previously existed, or had been supposed to exist in regard to marriages.

"The Bill provides that for the future no marriage between persons, one or both of whom profess the Christian religion, shall be valid unless it be solemnized either (1) in the presence of a Clergyman in holy orders, or (2) in the presence of a Marriage Registrar according to the provisions of the Indian Marriage Acts, or (3) in the case of persons, one or both of whom are of the Church of Scotland by law established, in the presence of a Minister of that Church.

"In regard to marriage by Clergymen in holy orders, other than those of the Church of England or of Scotland, provision is made for the registration of such marriages by the Clergyman, and for the transmission by him periodically of such registers to the nearest Marriage Registrar.

"Punishment is provided for all persons who falsely pretend to have authority to perform a marriage ceremony or to give validity by their presence to a marriage."

The object of Part IV., which has been added to the Bill since it was framed by Mr. Ritchie, is to meet the cases of the numerous classes of Native Christians scattered over the British Territories in India. These classes number several thousand persons, the majority of whom are far away from Clergymen in holy orders or Ministers of the Church of Scotland, or Marriage Registrars, and their Pastors are frequently natives like themselves.

It is impossible to expect from these classes of Native Christians a general observance of the rules contained in Act V. of 1852 (for marriages in India), though there can be little doubt that the Act is applicable to them, and no one really supposes that the marriages of the Karen Native Christians for instance, and other, like them, are attended with all the prescribed formalities of notices, certificates, registers, &c. &c.

It has been suggested that it would be better to leave Native Christians to what is called their own law of marriage, which is considered by some high authorities to have been preserved to them under Sections 21, 14, and 15, Vic. cap. 40, that is

the simple law of marriage *per verba de presenti*, with the option of availing themselves of the provisions of the present Bill as drawn by Mr. Ritchie should they think proper to do so. But there appears to be considerable difference of opinion as to whether marriages between Native Christians, solemnized in the manner abovementioned, are really valid. The point is one which ought not to be left in uncertainty, and in order effectually to clear up the doubts that now exist, legislation of some kind would seem to be required. Moreover, assuming the legality of marriages between Native Christians, resting simply on the verbal declaration of the parties thereto, some provision of law would appear to be absolutely necessary for the registration of such marriages, and for affording easy means of establishing the same.

It is considered that the provisions contained in Part IV. of the Bill, as it is now drawn, will do all that is really required in respect to the solemnization of the marriages of Native Converts to Christianity who may be prevented by distance or any other cause from availing themselves of the other provisions of the Bill, and that while the Part in question makes sufficient provision for the due regulation of such marriages, for preserving an official record of the same, and for preventing abuses, it will be found to afford to all classes of Native Christians a simple, convenient, and inexpensive mode of solemnizing their marriages, and of establishing the marriage when proof may be required either in respect to the succession to property or otherwise.

One of the conditions contained in Section XLIII. of Part IV. of the Bill as essential to the granting of a certificate of marriage under that Part is, that the parties shall not stand to each other within the prohibited degrees of affinity or consanguinity.

It is to be observed that this is no new provision as respects Native Christians, though probably it is not always attended to. There seems to be no doubt that the legal impediments of kindred or affinity in respect of marriage which apply to European Christians, apply equally to Native Christians, and so long as such impediments apply to European Christians, it is considered to be impossible, with any degree of propriety, to exempt Native Christians from them, or to make any distinction in this respect between the two classes.

(Signed) H. B. MARINGTON.
The 5th February 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 17th December 1862, and was referred to a Select Committee, who will make a report thereon after the 20th March 1863:—

No. 59 of 1862.

A Bill to amend Act XXI. of 1856 (to consolidate and amend the Law relating to the Abkarre Revenue of Fort William in Bengal), and Act XXIII. of 1860 (to amend the said Act XXI. of 1856).

Whereas it is expedient to amend Act XXI. of 1856, and Act XXIII. of 1860, with respect to spirits which may be used ex-

clusively in Arts and Manufactures, or in Chemistry: It is enacted as follows:—

I. It shall be lawful for the Board of Revenue, or other Chief Revenue authority, to permit spirits to be removed from any licensed distillery for the purposes aforesaid on payment of duty calculated at 10 per cent. on the value of the spirits, provided that no spirits shall be removed under this Act until they have been effectually and permanently rendered unfit for human consumption.

II. The Board of Revenue or other Chief Revenue authority, with the sanction of the local Government, shall, from time to time, prescribe rules for ascertaining and determining that spirits proposed to be removed have been rendered unfit for human consumption. Revenue authority, with the sanction of the local Government, shall, from time to time, prescribe rules for ascertaining and determining that spirits proposed to be removed have been effectually and permanently rendered unfit for human consumption, as required by Section I. of this Act; for causing such spirits, to be so rendered, if necessary, by its own officers at the expense of the person who wishes to remove them; and for regulating the maximum quantity to be passed out, and for fixing the value of the spirit on which the *ad valorem* duty shall be levied.

III. Every person who shall wilfully contravene any rule prescribed by the Board of Revenue, or other Chief Revenue authority, under the last preceding section of this Act shall be liable to a penalty not exceeding five hundred rupees for every such offence.

IV. Every person who shall attempt, or shall connive at an attempt, or render fit for human consumption spirits removed from a distillery under the provisions of this Act, shall be liable to a penalty not exceeding one thousand rupees; and the possessor of such spirits on which such attempt has been made, or which may have been rendered fit for human consumption, shall be liable to a penalty not exceeding five hundred rupees.

V. In every case of conviction under the last preceding section the liquor or spirits with the cask or vessel containing the same, and the cart, boat, and animal or animals employed in carrying such liquor or spirit shall be liable to confiscation.

VI. This Act shall be read and taken as part of Act XXI. of 1856.

STATEMENT OF OBJECTS AND REASONS.

This Bill is supplemental to that part of the bill lately introduced to amend the law relating to the Duties of Customs on goods imported and exported by Sea, which provides that spirits so imported exclusively for the purposes of Arts and Manufactures or Chemistry shall be admitted at a less rate of duty than spirits similarly imported for human consumption as a beverage. In explaining the

Preamble.

objects and reasons of the part of the Bill just referred to, I stated that spirits distilled in the country and intended to be used exclusively for the purposes mentioned would be dealt with separately. The present Bill proposes to place home-made spirits intended to be used exclusively in Arts and Manufactures or in Chemistry on the same footing as respects duty, as methylated spirits exported by sea for similar purposes and to render them liable to a duty of 10 per cent. *ad valorem*, instead of the comparatively high rate per gallon now charged. The Bill also contains what appear to be suitable provisions to prevent frauds upon the Revenue consequent upon the proposed relaxation of the existing law.

(Signed) H. B. HARRINGTON.

The 24th November 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 24th December 1862, and was referred to a Select Committee with instructions to make their report thereon in four weeks:—

No. 60 of 1862.

A Bill to amend Act XXIX. of 1861 (to consolidate and amend the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army).

WHEREAS it is expedient to amend certain Articles of War enacted in the said Act XXIX. of

Preamble.

1861; It is enacted as follows:—

I. Sections I. to XVII., and Section XXVIII. of

Sections repealed.

Regulation XXII. of the Bombay Code (*to declare and define Military Authority in its relations to the Civil Power and to the Community at large*) except Sections III. and VII. in so far as they regulate the jurisdiction, in small suits, of the Superintendents of Bazaars; Chapter VI. of the same Regulation; and Regulation II. of 1829 of the Bombay Code (*for establishing Rules and Articles for the better government of the Native Officers and Sepoys in the service of the United Company of Merchants of England trading to the East Indies under the Presidency of Bombay*) are hereby repealed.

II. The Articles of War numbered respectively, 3, 32, 73, 78, 82, 117, and 166 in the said Act XXIX. of 1861, are hereby repealed, and in lieu thereof the following Articles of War shall be read and taken as Articles 3, 32, 73, 78, 82, 117, and 166 respectively, of the said Act XXIX. of 1861:—

ARTICLE 3.

A Non-Commissioned Officer or Soldier shall be liable to dismissal or discharge by order of the Governor General of India in Council, or of the Governor in Council, or the Commander in Chief of the Presidency to which he belongs; and the Commander in Chief shall have power to reduce any Non-Commissioned Officer to the ranks.

The Commanding Officer of a Regiment or Corps shall have power to dismiss or discharge any Soldier below the rank of a Non-Commissioned Officer, and to dismiss, discharge, or reduce to the ranks any Non-Commissioned Officer belonging to such Regiment or Corps.

Every such dismissal or discharge shall involve forfeiture of claim to pension.

No Non-Commissioned Officer shall be reduced to the ranks for any stated

Proviso as to reduction and suspension. period; nor suspended from his rank; nor reduced from a higher to a lower grade of Non-Commissioned Officer.

Every Non-Commissioned Officer or Soldier discharged the service shall be furnished by the Certificate of discharge. Commanding Officer of the Regiment or Corps to which he belonged with a discharge certificate in the Vernacular language of such Non-Commissioned Officer or Soldier. Such certificate shall express the authority for, and cause of, the discharge, and the period of the entire service in the Army of such Non-Commissioned Officer or Soldier, and shall be accompanied with an English translation.

ARTICLE 32.

Who shall wantonly and intentionally defile

Defiling place of religious worship. any place dedicated to religious worship, or shall insult the religious feelings of any person.

ARTICLE 73.

The Commander in Chief of the Presidency

Powers of the Commander-in-Chief to appoint Courts Martial. may appoint a General or other Court Martial, and may confirm, mitigate, or commute or remit the sentence of such Court. He may issue his Warrant to any General or other Officer under his command, having the command of any body of Troops in the service of Her Majesty, empowering such Officer to appoint District or Garrison Courts Martial, as occasion may require, for the trial of any offence committed by any Officer, or Soldier, or Follower in the Service of Her Majesty, not being a European British subject of Her Majesty; and to confirm and mitigate, or commute or remit the sentence of any such Court Martial. No sentence, adjudging or involving forfeiture of additional pay, or of claim to pension on discharge, or of any prospective advantage, shall be carried into effect until sanctioned by the Commander in Chief of the Presidency to which the offender belongs. The Commander in Chief may remit any forfeiture awarded, and may order the restoration of any advantage of which the offender has been deprived by such forfeiture.

ARTICLE 78.

A General Court Martial may sentence for any

Death, transportation, or imprisonment. crime, which by these Articles is made liable to such sentence, any Officer to death or to transportation for life, or for any period not less than seven years, or in cases falling under Article 22 or Article 66, to imprisonment with or without hard labour for any period not exceeding three years, and with or without solitary

confinement; or may sentence any Soldier to death, or to transportation for life, or for any period not less than seven years, or to imprisonment for any period not exceeding fourteen years, for any crimes which are by these Articles of War expressly made liable to any such sentence and for such crimes only. No Court Martial, inferior to a General Court Martial, shall have power to pass a sentence of death, or transportation or imprisonment for any longer period than three years.

Punishment of Commissioned Officers.

A General Court Martial may sentence a Commissioned Officer to be dismissed the service, or to be suspended from rank and pay allowances for a stated period; or to be placed one or more steps lower in the list of his rank, by an alteration of the date of the Commission, and such Officer shall lose the corresponding benefit of length of service.

No Court Martial, inferior to a General Court Martial, shall have power to try a Commissioned Officer.

Punishment of Non-Commissioned Officers and Soldiers.

A General, or District, or Garrison, or Regimental Court Martial may sentence a Non-Commissioned Officer to be reduced to the ranks; or may sentence a Non-Commissioned Officer or Soldier to be dismissed the service; or to be placed one or more steps lower in the list of the rank which he holds, whereby such Non-Commissioned Officer or Soldier shall lose the benefit of the corresponding length of service; or to suffer corporal punishment not exceeding fifty lashes; or to imprisonment which may be with or without hard labour, and which may include solitary confinement for any portion or portions of such imprisonment, not exceeding fourteen days at a time, nor eighty-four days in any one year, with intervals between the periods of solitary confinement of not less duration than such periods of solitary confinement.

No Soldier shall be kept in solitary confinement more than eighty-four days in any one year, whether by the sentence of one or more Courts Martial, or by order of the Commanding Officer of the Regiment or Corps to which such Soldier belongs.

No sentence of imprisonment shall be awardable by a General Court Martial for any period exceeding two years (except when otherwise expressly provided); nor by a District or Garrison Court Martial for any period exceeding one year; nor by a Regimental Court Martial for any period exceeding six calendar months.

No Non-Commissioned Officer shall be sentenced to imprisonment or corporal punishment without being first reduced to the ranks.

Punishment for "Disgraceful Conduct."

A General, or District, or Garrison Court Martial may, in addition to corporal punishment or to imprisonment, sentence a Soldier convicted of disgraceful conduct to forfeiture of all advantage as to additional pay and claim to pension on discharge, which otherwise

might have accrued from the length or nature of his former service; or to forfeiture of such advantage absolutely, whether it may have accrued from past service, or might accrue from future service.

No Soldier shall be tried for disgraceful conduct by any Court Martial inferior to a District or Garrison Court Martial.

A Court Martial may, in addition to any punishment involving dismissal or discharge, sentence any Officer or

Soldier, whom it is authorised to try, to forfeiture of arrears of pay and allowances due at the time of dismissal or discharge, or of such portion thereof as may be required to make good any loss or damage arising out of his misconduct. A Court Martial, in addition to any punishment, not involving dismissal or discharge, may sentence any Officer or Soldier to be put under stoppages not exceeding, in the case of an Officer, two-thirds of his pay and allowances, and in the case of a Non-Commissioned Officer or Soldier one-half of his pay and allowances until any loss or damage arising out of his misconduct be made good.

Every Soldier sentenced to confinement in the Quarter Guard or Defaulters' Room, or in a Solitary Cell, or in any

other place of imprisonment, shall forfeit all claim to pay and allowances during such confinement, and shall be entitled to receive subsistence only according to the rates laid down in the Regulations.

ARTICLE 82.

An Officer Commanding a Detachment of his own Regiment or Corps may assemble a Regimental Detachment Court Martial; and an Officer Commanding a Detachment consisting of men of different Regiments or Corps, may assemble a Detachment or Line Court Martial. Every Court so assembled shall be constituted in the manner provided for a Regimental Court Martial under the provisions of these Articles of War, and shall have the like powers.

The provisions of these Articles of War which relate to a Court Martial held in a Regiment or Corps shall, in all practicable cases, be taken to apply to a Court Martial held in a Detachment.

No Officer on detached command of less than three Troops or Companies, or of a Detachment not numerically equal to three Troops or Companies, and not being on the line of march or on board a ship or other vessel, shall carry into effect any punishment awarded by a Court Martial held by his order until the sentence shall have been confirmed by the Officer Commanding the Regiment or Corps to which the offender belongs, or by any other nearest Superior Officer holding a command of not less than a Regiment, who is hereby authorised to confirm every such sentence in like manner as an Officer Commanding a Regiment or Corps might do. Provided that in detached situations beyond the Sea, or out of the British Territories in India, or when on service in the field, or in cases where an immediate example is necessary, and reference cannot be made to such Commanding or Superior Officer without detriment to the service, the Officer Commanding such Detachment may exercise the powers which are vested in an Officer Commanding a Regiment or Corps.

Clause 2.

The Commanding Officer of any Detachment of not less than three Troops or Companies, or of any Detachment numerically equal to, or greater than three Troops or Companies; and the Commanding Officer of any European Detachment to which native details are attached (of whatever strength or number such European Detachments or such native details may be); and any Commissary of Ordnance or other Commissioned Officer in charge of any Arsenal, Ordnance Establishment, or any Camp Equipage Dépôt, may summarily try any offence against these Articles of War, committed by any person under his command or who is subject to such Articles (not being a Commissioned Officer); and may on conviction sentence such offender and carry out such sentence without confirmation or any further authority; provided that such sentence shall not exceed the powers of a Regimental Court Martial.

In detached situations beyond the Sea, or out of the British Territories in India, or when on service in the field, or in cases where an immediate example is necessary, and a Court Martial cannot be convened under Clause 1 of this Article without detriment to the service, and reference cannot be made without such detriment to the Officer Commanding the Regiment or Corps to which the offender belongs, or to any other Superior Officer holding a command not less than that of a Regiment who is hereby, in case of such reference, authorised summarily to try, and in case of conviction to sentence the offender and to carry out such sentence under this Clause as if the offender had been under his command; the Officer Commanding any Detachment, though of less than three Troops or Companies or not numerically equal to three Troops or Companies, may exercise the powers of summary trial, of sentencing the offender, and of carrying out such sentence described in this Clause.

Any Commanding Officer or other Officer holding a trial under this Article shall be deemed a Court Martial, and the words "Court Martial" in these Articles of War, shall be deemed to include such Commanding Officer or other Officer holding a trial.

The proceedings of such summary trial shall be conducted, so far as may be practicable, and shall be recorded in the same manner as is provided in Article 81 for summary trials by an Officer Commanding a Regiment or Corps, and shall, in like manner, be signed and forwarded to the Officer Commanding the Division within which such Detachment shall be at the time, who is hereby authorised to set aside the trial for the same reasons that an Officer Commanding a Division is authorised by Article 81 to set aside a trial by an Officer Commanding a Regiment or Corps. Provided that every sentence so awarded by an Officer Commanding any such Detachment, or by any other Officer holding a trial under this Article, may be carried out without waiting for its approval by the Reviewing Officer.

ARTICLE 117.

No person who shall have been acquitted or convicted by a Court Martial of any offence, shall be liable to be tried a second time by the same or any other Court Martial for the same offence.

Provided that any person may be tried for the offence of murder, and punished for that offence, notwithstanding he may have been tried and punished for the act which caused death, if at the time of his conviction for the said act, death shall not have resulted, or shall not have been known by the Court which passed sentence to have resulted.

When any person subject to these Articles of War shall have been found guilty by a Court Martial of any Military offence, such Court Martial shall inquire into, and receive evidence of any previous conviction of such person before a Court Martial or a Court of Justice, and shall inquire into the general character of such person, if a Soldier, for the purpose of apportioning the punishment to which he is liable to be sentenced for the offence of which he has been so found guilty. And it shall not be necessary to give any notice to such person, previously to his trial, that such evidence will be received.

ARTICLE 166.

The Regulations by which in any Presidency the Office and powers of Commissariat Officers, or Officers in charge of the Police in any Cantonments, or Superintendents of Military Bazaars, are at present defined and controlled; or by which Panchayets are constituted and guided, shall continue to be in full force, and to be observed at the several Presidencies respectively.

III. This Act shall be read and taken as part of the said Act XXIX. of 1861.

STATEMENT OF OBJECTS AND REASONS.

This Bill is intended to amend the Articles of War, Numbers 3, 32, 73, 78, 82, 117, and 166, as contained in Act XXIX. of 1861, and is based on the recommendation of the Government of India in the Military Department. The accompanying papers show the Articles as they stand in the Act, contrasted with the same Articles as proposed to be revised. The Bill takes the form of a repeal of the existing Articles, and the substitution for them in Act XXIX. of 1861, of new Articles of the same numbers. A shorter form might have been adopted, especially in respect of Article 78, but it would not have been so clear and practically useful to the Military Authorities.

In explaining the alterations, it will be convenient to follow the order of the Articles as mentioned in the accompanying papers, rather than the order in which they appear in the Bill.

Article 166.—Certain words in this Article, namely, the words, "or by which jurisdiction is given to Courts Martial over offences committed by persons amenable to the Articles of War, within certain limits beyond or around Cantonments," have effect in the Bombay Presidency alone, and appear to keep alive a Military jurisdiction under Regulation XXII. of 1827 of the Bombay Code; whereas it was the undoubted intention of the Legislature, under Article 124 of Act XXIX. of 1861, to provide that any offence committed by any Officer or Soldier within the jurisdiction of any Criminal Court in India, and triable by such Court, should be tried by such Court only. But these words in Article 166 appear to be inconsistent with that intention, and the Bombay

Government desire the removal of all doubt by the omission of the words from Article 166, and the Military Authorities and Government of Madras, as well as the Commander in Chief and the Supreme Government, assent to the omission. The Honorable Mr. Erskine has also suggested, with the approval of the government of Bombay, the repeal of parts of Regulation XXII. of 1827, and the whole of Regulation II. of 1829, of the Bombay Code.

Article 82.—Considerable doubt seems to have arisen as to the real meaning and intention of this Article; chiefly with respect to the powers of Officers in Command of Detachments. The subject was fully considered by the Military Authorities at the different Presidencies, and a suggested form of amendment, which was circulated by the Government of India, was assented to. The principal effect of the amendment is to define distinctly what Commanding Officer is meant in in the 4th paragraph of Article 82 of Act XXIX. of 1861, which now stands at the commencement of Clause 2 of the amended Article, and to give summary powers to an Officer Commanding a Detachment in a situation beyond the Sea, or out of the British Territories in India, or when on service in the Field; or in cases of emergency. In the 3rd paragraph a clerical error, which appeared in the original Draft Articles sent from the Military Department in 1860, in all other copies of the Bill, and in Act XXIX. of 1861, is corrected by the introduction of the word "not" before "numerically" in the 3rd line.

Article 73.—This Article is only altered by the words "no sentence adjudging or involving forfeiture of additional pay," being substituted for the words "no sentence including forfeiture of additional pay," and the words, "sanctioned by the Commander in Chief," being substituted for the words "confirmed by the Commander in Chief." The reasons for these changes appear in the letter from the Adjutant General, Fort Saint George,

dated 20th March 1862, to the Secretary to the Government of India.

Article 78.—The only alteration in this long Article is the substitution of the word "sentenced" for "subjected," in the last paragraph. The reasons for this change appear in the same letter of the Adjutant General of Fort Saint George.

Article 3.—The words, "and the Commander in Chief shall have power to reduce any Non-Commissioned Officer to the ranks," are added, on the suggestion of Sir Hugh Rose, as conveyed in the letter of Colonel K. Young, Judge Advocate General, dated 9th May 1862.

Article 117.—The words, "and it shall not be necessary to give any notice to such person, previously to his trial, that such evidence will be received," are here substituted, at His Excellency's suggestion, conveyed in the same letter, for the words, "but no such evidence shall, in any case, be received until the Court shall have ascertained that such person had, previously to his trial, received notice of the intention to produce such evidence on the same. And it is hereby directed that such notice shall be given to all persons previous to trial." The reason for this change is stated in Colonel Young's letter. The notice of trial is, in fact, a notice that evidence of this description will be given.

Article 32.—The only other alteration is in this Article, and consists merely in the substitution of the term "Religious feelings" for "Religious prejudices." This change is in accordance with Section 298 of the Penal Code.

(Signed) HENRY S. MAINE.

The 10th December 1862.

M. WYLIE,

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