



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

Published by Authority.

THURSDAY, 18TH DECEMBER 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 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 November 1862:—

HOME DEPARTMENT—Legislative.

We, the undersigned, the Members of the Select Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations, to whom the Bill relating to Emigration to the British Colonial Dependency of Seychelles was referred, have the honour to report that no communication has been received on the subject of the Bill, and that we have no amendment to suggest.

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

The 14th 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 19th November 1862, and was referred to a Select Committee with instructions to make their Report thereon in two weeks:—

GOVT. INDIA BILLS—113

No. 53 of 1862.

A Bill to amend Act XI. of 1862 (to amend the duties of Customs on Goods Imported and Exported by Sea).

Whereas it is expedient to amend the law relating to Customs Duties; It is enacted as follows:—

I. Article 18 of Schedule A of the said Act New Article substituted XI. of 1862, and the Note for Article 18 of Schedule thereto, are repealed, and, instead thereof, the following words shall be read as Article 18, and the Note thereto:—

ARTICLE 18.—Machinery used exclusively for purposes of agriculture, navigation, mining, or manufacture, or for Railway purposes, and materials forming necessary component parts of such machinery Free.

And the Officer in charge of the Custom House, subject to the orders of the Local Government acting under the general instructions of the Government of India, shall decide what Articles come within the definition of such machinery or materials forming component parts thereof, and such decision shall be final in law.

II. The following Proviso shall be read after Proviso after Article 23 Article 23 of the said Schedule A. Schedule A:—

Provided that 10 per cent. *ad valorem* shall be charged on all Spirits used exclusively in arts and manufactures, or in chemistry, subject to such

rules as the local Government shall, from time to time, prescribe for ascertaining that such Spirits are unfit for use as a beverage and incapable of being converted to that purpose. And the Officer in charge of the Custom House, subject to the general instructions of the local Government, shall decide what Spirits fall within this Proviso, and his decision thereon shall be final in law.

III. The following additional Article shall be
Additional Article of read as part of Schedule
Schedule A. A of the said Act:—

Firewood.....Free.

IV. This Act shall be read and taken as part
Act to be read as part of of the said Act XI. of
Act XI. of 1862. 1862.

STATEMENT OF OBJECTS AND REASONS.

This Bill proposes three amendments in Schedule A of Act XI. of 1862 (*to amend the Duties of Customs on Goods imported and exported by Sea*).

The first amendment proposed is in Article 18 of the Schedule relating to Machinery.

Previously to the passing of Act VII. of 1859, Machinery of all kinds imported by sea into the Presidencies of Bengal and Madras was liable to a duty of 3½ per cent. when imported on British Bottoms, and of 7 per cent. when imported on Foreign Bottoms. The same duties were chargeable at Bombay until the enactment of Act I. of 1852. Under the two Acts just mentioned Machinery imported for the improvement of the communications and the development of the resources of the country was allowed to be admitted free of duty, and by Act X. of 1860 the exemption was extended to Machinery of all kinds. The same general exemption is contained in Act XI. of 1862, which now regulates the rates of Custom duties on Goods imported or exported by Sea throughout the British Territories in India.

It is considered that the later enactments have carried the exemption from duty farther than was requisite or proper, and that they involve an unnecessary sacrifice of Customs Revenue. Under Article 18 as it now stands, it must be obvious that many articles included under the head of Machinery may be admitted free of duty, for the exemption of which no special or adequate ground exists. It is proposed therefore to revert to the rule in force previously to the passing of Act X. of 1860, and to confine the exemption from duty to Machinery used exclusively for purposes of agriculture, navigation, mining, or manufacture, or for Railway purposes and materials forming necessary component parts of such Machinery. The latter part of the Article, amended as proposed, appears a proper concession in favour of component parts of Machinery used exclusively for the purposes mentioned in the former part of the Article.

A slight alteration is also proposed in the Note to Article 18, in order to give the local Governments, acting under the general instructions of the Government of India, authority to control the Officers of their respective Custom houses in construing the Article in question. A similar provision is contained in the new Customs Bill as regards the administration of the Department generally. There seems no doubt that the provision will conduce to the convenience of the public, while it will

leave full power in the hands of the Supreme Government to issue such instructions as it may consider necessary for the protection of the Customs Revenue, and for maintaining uniformity of practice in the several Presidencies.

The next alteration proposed is in Article 23 of the Schedule, which relates to the duty on Spirits. Under that Article, methylated Spirits, or Spirits used exclusively in arts or manufactures, or in chemistry, are liable, on importation by sea, to the same duty as Spirits intended for human consumption as a beverage. It is thought that, with a view to the promotion of arts and manufactures, a distinction should be made between Spirits exclusively used for the purposes thereof, and Spirits used for other purposes. Spirits of Wine under certain restrictions are allowed to be used duty free in the United Kingdom, and when the Bill to amend the Law relating to the Abkaree Revenue of Bengal was before the late Legislative Council, a Section was proposed, the object of which was to place the law in India on the same footing in this respect as the law at home, but the proposition was opposed on two grounds. The first ground was that the state of the Finances at the time would not admit of our giving up any source of Revenue, and that, while we were imposing new taxes which would bear heavily on the poorer and lower classes, we ought not to remit any existing tax, however wise it might be on principle to do so. The second ground was that no proper means existed in this country to prevent frauds on the Revenue.

With regard to the first of these grounds, the improvement which has taken place in the state of the Finances since this ground of objection was urged, has enabled the Government to remove the taxes alluded to as those which would affect the poorer and lower classes, and Financial considerations no longer appear to offer any obstacle to granting some remission of duty, which has again been asked for, in favour of Spirits used in manufactures and arts or in chemistry. The Government of Bengal supports the recommendation of the Board of Revenue at Calcutta for a reduction of the present duty on methylated Spirits, and these authorities seem to anticipate no difficulty in adopting measures which will prevent any abuses from taking place consequent on an alteration of the law. It is not, however, proposed to admit methylated Spirits free of duty. What is proposed is, that such Spirits shall be charged with duty at the rate of 10 per cent. *ad valorem*. The importation will also be subject to such rules as the Government shall, from time to time, prescribe for ascertaining that the Spirits are unfit for use as a beverage, and incapable of being converted to that purpose. Spirits distilled in the country, and which may be intended to be used in arts or manufactures or in chemistry, will be dealt with separately.

The third and last alteration proposed in the Schedule is the addition of an Article to exempt firewood, when imported by Sea, from the payment of duty, thereby placing firewood on the same footing as coke and coal, which are admitted free of duty. Owing to the large consumption on the Railways and other causes, firewood has risen greatly in price, and in some parts of the country it is becoming very scarce. It is desirable to encourage its importation as much as possible, but the present high duty is found to operate as a

serious impediment. The amount of Customs Revenue realized on this article is very trifling, and on Financial grounds there is no object in retaining the duty.

(Signed) H. B. HARRINGTON.

The 5th November 1862.

M. WYLIE,

Depy. Secy. to 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 19th November 1862, and was referred to a Select Committee with instructions to make their report thereon in six weeks:—

No. 54 OF 1862.

A Bill to define the jurisdiction and to regulate the procedure of the Courts of Civil Judicature in British Burmah, and to provide for the extension of certain Acts to the said Territory.

Whereas it is expedient to define the limits of the jurisdiction of the Courts of Civil Judicature in British Burmah; and whereas it is also expedient that the Code of Civil Procedure should have effect throughout British Burmah subject to certain alterations and provisos, and that provision should be made for extending the operation of certain Acts to the said Territory; It is enacted as follows:—

I. The Code called the Civil Code of the Province of Pegu is hereby repealed.

II. There shall be six grades of Courts in British Burmah, which shall be in addition to any Grades of Civil Courts Recorders' Courts, Courts of Small Causes, or other Courts established under any Act which may be hereafter passed, namely:—

1. The Court of the Extra Assistant of the third class, or the Myooke's Court.

2. The Court of the Extra Assistant of the second class, or the Tseekay's Court.

3. The Court of the Assistant Commissioner, and the Court of the Extra Assistant of the first class.

4. The Court of the Deputy Commissioner.

5. The Court of the Commissioner, and

6. The Court of the Chief Commissioner.

III. The Court of the Extra Assistant of the third class, or the Myooke's Court, shall have power to receive, try, and determine suits of every description not exceeding 500 Rupees in value or amount.

IV. The Court of the Extra Assistant of the second class, or the Tseekay's Court, shall have power to receive, try, and determine suits of every description not exceeding 3,000 Rupees in value or amount.

V. The Court of the Assistant Commissioner and the Court of the Extra Assistant of the first class shall have power to receive, try, and determine suits of every description not exceeding 5,000 Rupees in value or amount.

VI. The Court of the Deputy Commissioner shall have power to receive, try, and determine suits of every description exceeding 5,000 Rupees in value or amount, and appeals from the decisions, and, where an appeal is allowed by the Code of Civil Procedure, from the orders of the Courts of the Extra Assistants of the third class or the Myooke's Courts, and of the Courts of the Extra Assistants of the second class, or the Tseekay's Courts, and of the Courts of the Assistant Commissioners and Extra Assistants of the first class, in the District of such Deputy Commissioner.

VII. The Court of the Commissioner shall have power to hear and determine appeals from the original decisions, and, where an appeal is allowed by the Code of Civil Procedure or by this Act, from the orders passed by the Courts of the Deputy Commissioners in the Division of such Commissioner. The Commissioner may also receive a second appeal from the decisions of the Courts of the Deputy Commissioners in his Division passed in regular appeal, reversing or modifying the decision of the Court of original jurisdiction, if, on a perusal of the grounds of appeal and of the judgments of the Courts below, copies of which shall be filed with the petition of Appeal, a further consideration of the case shall appear to him to be requisite for the ends of justice. The decision or order of the Commissioner on such second appeal, whether for rejecting the appeal, or for confirming, modifying, or reversing the decision of the lower Appellate Court, shall be final, and no special appeal shall be allowed in such case to the Chief Commissioner from the decision of the Deputy Commissioner passed in regular appeal, or from the decision or order of the Commissioner of the Division passed on such second appeal.

VIII. The Court of the Chief Commissioner shall, except as provided in the last preceding Section, and in Section XVIII. of this Act, have power to hear and determine special appeals from the decisions passed in regular appeal by the Deputy Commissioners and by the Commissioners of Divisions.

IX. Every suit shall be instituted in the Court of the lowest grade competent to try it.

X. It shall be lawful for the Deputy Commissioner to withdraw any suit instituted in any Court subordinate to such Deputy Commissioner, and to try such suit himself or to refer it for trial to any other Court subordinate to his authority, and competent in respect of the value of the suit to try the same. And it shall be lawful for the Chief Commissioner, or for the Commissioner of a Division, to order that the cognisance of any suit or appeal which shall be instituted in any Court

subordinate to such Chief Commissioner or Commissioner shall be transferred to any other Court subordinate to his authority, and competent, in respect of the value of the suit or appeal, to try the same.

XI. If the suit be for land or other immovable property situate within the limits of different Districts within the same Division, the suit may be brought in any Court otherwise competent to try it within the jurisdiction of which any portion of the land or other immovable property in suit is situate, but in such case the Court in which the suit is brought shall apply to the Commissioner of the Division for authority to proceed with the same. If the suit is brought in any Court subordinate to the Court of the Deputy Commissioner, the application shall be submitted to the Commissioner of the Division through the Deputy Commissioner to whom such Court is subordinate.

Suits for immovable property situate in different Districts.

XII. If the Districts within the limits of which the property is situate are subject to different Commissioners, the application shall be submitted to the Commissioner to which the suit is brought is subject, and the Commissioner to which such application is made may, with the concurrence of the Commissioner to which the other District is subject, give authority to proceed with the suit.

XIII. Except when otherwise provided in any Regulation or Act for the time being in force, an appeal shall lie from the decisions of the Courts of the Courts authorised by this Act to hear appeals from the decisions of those Courts.

XIV. The memorandum of appeal prepared in the form and containing the particulars mentioned in the Code of Civil Procedure, shall be presented in the Court empowered to hear the appeal within the period hereinafter specified, unless the appellant shall show sufficient cause, to the satisfaction of such Court, for not having presented the memorandum of appeal within such period; that is to say, within thirty days if the appeal lie to the Court of a Deputy Commissioner, and six weeks if the appeal lie to a Commissioner of a Division. The period shall be reckoned from and exclusive of the day on which the judgment appealed against was pronounced, and also exclusive of such time as may be requisite for obtaining a copy of the decree from which the appeal is made. Appeals from orders, when such appeal is allowed by the Code of Civil Procedure or by this Act, shall be presented within the same period as appeals from decisions.

Memorandum of appeal to be presented to the Appellate Court within specified time.

XV. In cases of appeal preferred to a Deputy Commissioner under Section VI., or to a Commissioner under Section VII. of this Act, it shall not be necessary to summon the respondent in the first instance; and if upon

Deputy Commissioner and Commissioner may confirm decision of lower Court appealed from without summoning the respondent.

the perusal of the petition of appeal, and of the judgment of the Court below, or of the whole or any part of the record of the original suit, in the presence of the appellant or of his duly constituted agent, the Deputy Commissioner or the Commissioner, as the case may be, shall see no reason to alter the decision appealed from, it shall be competent to him to confirm the same, recording his reasons for rejecting the appeal. In such case, the Deputy Commissioner or the Commissioner shall cause the order for confirmation to be made known to the respondent through the Court from whose decision the appeal was made.

XVI. Applications for a second appeal under Section VII. of this Act shall be preferred in the manner and within the period prescribed in the last preceding Section for regular appeals, to the Commissioner of a Division, and if the Commissioner shall see fit to admit any such second appeal, it shall be heard and determined in every respect as an ordinary regular appeal.

XVII. Applications for the admission of a special appeal, which the Chief Commissioner is empowered by Section VIII. of this Act to receive and determine, may be on any of the grounds specified in Section 372 of the Code of Civil Procedure. The application shall be presented within ninety days reckoned from and exclusive of the day on which the judgment of the lower Appellate Court was pronounced, and also exclusive of such time as may be requisite for obtaining a copy of the decree appealed against, unless the applicant shall show sufficient cause, to the satisfaction of the Chief Commissioner, for not having presented the application within such period. The application shall be subject to all the conditions, whether as regards Stamp duty, remission of a portion thereof when the application is made *in forma pauperis*, or otherwise contained in the said Code in cases of application for the admission of a special appeal to the Sudder Court.

XVIII. No special appeal shall lie from any decision or order which shall be passed in regular Appeal by any Court after the passing of this Act, in any suit of the nature cognizable in Courts of Small Causes under Act XLII. of 1860, when the debt, damage, or demand for which the original suit shall be instituted shall not exceed the sum of Five hundred Rupees.

XIX. If in any case of regular Appeal in which, under the last preceding Section, no special appeal is allowed, or in any case of second Appeal admitted under Section VII. of this Act, any question of law, or usage having the force of law, or the construction of a document affecting the merits of the case shall arise, on which the Court trying the Appeal shall entertain reasonable doubts, the Court may, either of its own motion or on the application of either of the parties to the Appeal, draw up a statement of the case, and submit such statement, with its own opinion, for the decision of the Chief Commissioner. The provisions contained in Sections 29 to 34 of Act XXIII. of 1861 (*to amend Act VIII. of 1859, for simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter*) shall

No special appeal from decision of any Court in suits cognizable in Small Cause Courts.

Reference of question to the Chief Commissioner.

be applicable to the statement so submitted, and the Chief Commissioner shall proceed in the case under the Rules contained in the said Sections for the direction of the Sudder Court so far as the same are applicable.

XX. Applications to be allowed to appeal in

Applications to appeal in *forma pauperis* shall be written on Stamp paper of the value of one Rupee

if the Appeal lie to the Court of the Deputy Commissioner, and on Stamp paper of the value of two Rupees if the Appeal lie to the Court of the Commissioner or to the Court of the Chief Commissioner, and shall be presented in the Court competent to receive the same within the period prescribed by this Act for the presentation of Appeals from decisions, or when the application is made to the Chief Commissioner within the period prescribed by this Act for the presentation of an application for the admission of a special Appeal.

XXI. Any person considering himself aggrieved

On what grounds review of Judgment may be applied for. by a decree of a Court of original jurisdiction from which no Appeal shall have been preferred to a superior Court, or by a decree passed in appeal from which no second or special Appeal shall have been admitted, or by a decree of the Court of the Chief Commissioner, from which either no Appeal shall have been preferred, to Her Majesty in Council, or any Appeal having been preferred no proceedings in the suit shall have been transmitted to Her Majesty in Council, and who, from the discovery of new matter or evidence which was not within his knowledge, or could not be adduced by him at the time when such decree was passed, or from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed against him, may apply for a review of judgment by the Court which passed the decree.

Time for presentation of application for review. Such application shall be presented within the period of ninety days from the date of the decree sought to be reviewed, unless the applicant shall show good and sufficient reason for not presenting it within such period.

XXII. Act XIX of 1841 (for the protection of

Extension of certain Acts to British Burmah. *moveable and immovable Property against wrongful Possession in cases of successions*), Act XL of 1858 (*for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal*) and Act IX. of 1861 (*to amend the law relating to Minors*) are hereby extended to British Burmah.

All cases or proceedings arising under the said Acts or under Act XXXV. of 1858 (*to make better provision for the care of the estates*

Trial of cases or proceedings under the above and other Acts. *of Lunatics not subject to the jurisdiction of the Supreme Court of Judicature*) or Act XXVII. of 1860 (*for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*) shall be received and determined by the Deputy Commissioner of the District, subject to the provisions in the said Acts contained, respectively, as to jurisdiction and otherwise. All orders passed by the Deputy Commissioners in such cases or proceedings

Appeal.

such cases or proceedings

shall be open to appeal to the Commissioner of the Division, provided that no such appeal shall be allowed unless it be presented within thirty days from the date of the order appealed against, or unless the party making the appeal can show good and sufficient cause to the satisfaction of the Commissioner for not presenting the appeal within such period. The order of the Commissioner on any such Appeal shall be final.

XXIII. Except as is in this Act otherwise

Procedure of Civil Courts in British Burmah to be regulated by Code of Civil Procedure. provided, the proceedings in Civil suits of every description between party and party brought in the Courts of Civil Judicature

in British Burmah mentioned in Section II. of this Act, shall be regulated by the said Code of Civil Procedure, and, except as otherwise provided by this Act, or by any Law which may hereafter be passed, by no other Law or Regulation.

XXIV. Act XIV. of 1859 (to provide for the

Limitation of Suits), as amended by Act XIV. of 1862, is hereby extended to the Province of Pegu.

Act XIV. of 1859 extended to Pegu. and shall take effect therein from the date on which this Act comes into operation in British Burmah in supersession of any law of limitation in force in the said Province. Provided that all suits pending in any of the Civil Courts in the said Province upon the date upon which this Act comes into operation in British Burmah shall, so far as regards the provisions in this Section contained, be tried and determined as if this Act had not been passed.

XXV. Except as otherwise provided in this

Powers vested in Sudder Court to be exercised by the Chief Commissioner. Act, the powers vested in the Sudder Court by the Code of Civil Procedure shall be exercised in British Burmah by the Chief Commissioner.

XXVI. Except as provided in Section XIX.

L levy of Stamp Duties. of this Act, the Stamp Duties prescribed by Schedule B, annexed to Act X. of 1862 (*to consolidate and amend the law relating to Stamp Duties*), for Instruments and Writings in the Sudder Court and the Courts subordinate to the Sudder Court, shall be chargeable on Instruments and Writings in the Court of the Chief Commissioner and the several Courts subordinate to the Chief Commissioner.

XXVII. The local jurisdiction of a Deputy

Construction of District Court as used in Code of Civil Procedure. Commissioner shall be deemed a District for the purpose of this Act, and the Court of such Deputy Commissioner shall be deemed the District Court within the meaning of the Code of Civil Procedure.

XXVIII. This Act shall come into operation on the 1st day of January 1863.

STATEMENT OF OBJECTS AND REASONS.

This Bill, while maintaining all the existing classes of Courts in British Burmah, defines the jurisdiction to be exercised by each class of Courts, and lays down rules for the admission of Regular as well as Second and Special Appeals, which, it is considered, will greatly improve the administration of Civil Justice in that branch of the Department.

Special Appeals will be admissible under the Bill on the same grounds on which such Appeals may be admitted in the Regulation Provinces, that is, on the ground of the decision of the Court below, being contrary to some law or usage having the force of law, or of a substantial error or defect in law, or in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits. Special Appeals will be cognizable by the Chief Commissioner alone in his capacity of Judicial Commissioner, or principal Civil Judge of the Province. In order to keep the law settled, it is obviously desirable that there should be only one tribunal for the determination of the questions which may arise in Special Appeal. But it is proposed that the Divisional Commissioners shall be allowed, on certain conditions, to admit a Second Appeal from the decisions passed in Regular Appeal by the Officers subordinate to them. No such Appeal is allowed in the Regulation Provinces, but, looking to the comparatively short period that British Burmah has been subject to our rule, and to other circumstances, it is thought desirable that, for a time at least, the Appellate Authorities immediately over the District Officers should possess larger powers of interference with the decisions of their subordinates than are exercised by the corresponding Authorities in our older Provinces.

The Bill proposes to extend the Code of Civil Procedure, with some modifications, to British Burmah generally. The Code is already in force, under an order of the Supreme Government, in the entire Territory, with exception to the Province of Pegu, in which the proceedings of the Civil Courts are regulated by a Code prepared by Major Sparks, the Commissioner of Pegu, and which bears that Officer's name. Major Sparks' Code does not differ very materially from the Code of Civil Procedure, but it is considered that there should be a uniform Code for the whole Province. The modifications proposed to be made in the Code in its application to British Burmah do not affect the general principles on which the Code is based. They relate chiefly to the powers to be exercised, in certain matters, by the controlling Authorities, and are considered desirable to adapt the Code to the peculiarities of the Province.

It was thought that the Governor General in Council, acting under the authority conveyed in one of the concluding Sections of the Code, might extend the Code, by an order in Council, to the Province of Pegu, but the learned Advocate General has given it as his opinion that as, subsequently to the passing of the Code, the Supreme Government sanctioned Major Sparks' Code being introduced into the Province of Pegu, and the order conveying such sanction has since received the force of law by a Section in the Indian Councils Act of last year, an Act of the Legislature is necessary to repeal Major Sparks' Code, and to authorise the substitution for it, within the Province of Pegu, of the Code of Civil Procedure contained in Act VIII. of 1859.

The Bill further proposes to extend to the Province of Pegu, in supersession of the Law of Limitation contained in Major Sparks' Code, the general Law of Limitation contained in Act XIV. of 1859, which is already in force in the remaining portion of the Territory. The opinion given by the Advocate General that a new law is necessary to introduce the Code of Civil Procedure into the

Province of Pegu, in the place of Major Sparks' Code, applies equally to the general law of Limitation. Major Sparks has proposed two slight alterations in the general Law of Limitation, should it be determined to extend that law to British Burmah; and the Chief Commissioner agrees with him, and thinks that, so far as British Burmah is concerned, the two alterations proposed by Major Sparks should be made general. One of these alterations relates to claims for the partition of joint undivided Estates, and the other to Mortgages. The first alteration appears to me to be unnecessary, and to have been proposed under a mistaken view of the law. The other proposed alteration ought not, in my opinion, to be adopted. The other Acts which the Bill proposes to extend to British Burmah have been, for some time, in force in other parts of India, and have been found to work well; and, as cases such as those to which the provisions of these Acts are applicable, must frequently occur in British Burmah, where no law now exists for their disposal, the extension of the Acts to the Province seems desirable.

(Signed) H. B. HARRINGTON.

The 5th 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 19th November 1862, and was referred to a Select Committee with instructions to make their Report thereon in six weeks:—

No. 55 of 1862.

A Bill to regulate the admission of Appeals to Her Majesty in Council from certain Judgments and Orders in Provinces not subject to the General Regulations.

Whereas it is expedient to regulate the admission of Appeals to Her Majesty in Council from certain judgments and orders in Provinces not subject to the General Regulations; It is enacted as follows:—

1. If a party in a suit is desirous of preferring an Appeal to Her Majesty in Council from any final judgment, decree, or order made on Appeal or revision by the Court of highest Civil jurisdiction in any Province in British India not subject to the General Regulations, or from any such final judgment, decree, or order made in the exercise of original jurisdiction by the said Court, in any case in which the sum or matter at issue is above the amount or value of 10,000 Rupees, or in which such judgment, decree, or order shall involve, directly or indirectly, any claim, demand, or question, to or respecting property amounting to or of the value of 10,000 Rupees, or from any other final judgment, decree, or order made either on appeal or otherwise as aforesaid, when the said Court shall declare that the case is a fit one for appeal to Her Majesty in Council, such Court shall admit such Appeal, subject to such rules and orders as shall be in force, or shall, from time to time, be made in that behalf by Her Majesty in Council in respect of such Appeals from Her Majesty's High Courts of Judicature in British India.

II. It shall further be lawful for such Court, at its discretion, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of such Court in any such proceeding as aforesaid (not being of Criminal jurisdiction), to grant permission to such party to appeal against the same to Her Majesty in Council, subject to such rules, regulations, and limitations as shall be in force, or as shall, from time to time, be declared by Her Majesty respecting Appeals from final judgments, decrees, orders, and sentences of Her Majesty's said High Courts of Judicature.

III. On the admission or permission of the Appeal by the Court as hereinbefore provided, the Court shall forthwith cause notice to be given to the other party that the Appellant has preferred an Appeal to Her Majesty in Council.

IV. The Court, if applied to, may either order the judgment or determination appealed against to be enforced, taking sufficient security for the performance of such order or decree as Her Majesty in Council may make on the Appeal; or it may direct, on similar security being found, that no order for enforcing the judgment or determination shall be issued pending the Appeal, and that, if any such order has been issued, it shall, so far as it has not been executed, be suspended.

V. In either of the cases mentioned in the last preceding Section, the Court shall require the Appellant to find security for costs of Appeal. Appellant to find security for costs of Appeal.

VI. If a party who is desirous of preferring an Appeal to Her Majesty in Council in any of the cases mentioned in Section I. or Section II. of this Act, shall require the assistance of the said Court for obtaining security from the other party for staying execution of the judgment, decree, order, or sentence that has been passed, or for any other purpose, he shall present his Petition to the said Court within six calendar months from the date of the judgment or determination appealed against.

VII. If at any time pending an Appeal under this Act, the security taken from either party appears inadequate, whether from the increase or improvement of the property forming the subject of appeal, or from the insolvency of the securities, the Court before which the Appeal is pending may, on the application of the other party, require further security.

VIII. In default of such further security being found, if the original security was furnished by the Appellant, the Court may issue an order for enforcing the judgment or determination appealed against as if no such original security had been given, and if the original security was furnished by the respondent, the Court, so far as may be practicable, shall compel him to deliver up the property forming the subject

of appeal, which shall be disposed of in conformity with such of the rules in force as may be applicable to the particular case.

IX. In every case of Appeal under this Act, the Court shall certify and transmit to Her Majesty in Council, under the seal of the Court, two true and correct copies of all evidence, proceedings, judgments, decrees, and orders, had or made in the case appealed, so far as the same have relation to the matters of appeal, together with a copy of the reasons given by such Court for or against the judgment or determination appealed against.

X. The expense of preparing the two aforesaid copies, and of translating into English so much of the original documents as may not be in that language, shall be defrayed by the party prosecuting the Appeal.

XI. The Court shall cause the deposit by the Appellant, within the time allowed for furnishing security for costs of Appeal, of such a sum as shall be sufficient to cover the expense of making the two aforesaid copies, and when such deposit shall have been made, and not till then, to declare the Appeal admitted, and to give notice thereof to the Appellant and respondent respectively.

XII. Either party, on application, may obtain one or more authenticated copies of any of the papers in the suit on paying the reasonable expenses incurred in preparing them.

XIII. Either party, in like manner, may obtain an authenticated copy of any local regulation or law which he may require in the Appeal.

XIV. The orders or decrees of Her Majesty in Council, when duly certified, shall be enforced and executed, under the directions of the said Court, by the Judge or Officer by whom the suit was originally tried, in such manner and according to the rules and laws applicable to the execution and enforcement of original orders or decrees made by such Judge or Officer.

XV. Any party desirous of enforcing or obtaining execution of any such decree or order made in Appeal as aforesaid, shall present a petition for that purpose to the Court which made the first decree or order appealed from, and the said petition shall be accompanied by a certified copy of the decree or order made in Appeal and sought to be enforced or executed.

XVI. An Appeal shall lie from any decree or order made by such last mentioned Court relating to the enforcement or execution of any such decree or order made in appeal as aforesaid in the same manner and subject to the same laws, rules, and regulations as an Appeal from an order or decree made upon a petition for the enforcement of execution of the decree or order first appealed from would have been.

XVII. Nothing herein contained shall be

Court of highest Civil jurisdiction may execute decrees by order of Her Majesty in Council.

constructed so as to prevent the said Court of highest Civil jurisdiction from enforcing or obtaining execution of a decree or order made or passed by Her Majesty in Council, if Her Majesty in Council shall think fit to decree or order the said Court to enforce or execute the same.

Saving of Her Majesty's power as to receiving or rejecting Appeals.

XVIII. Nothing in this Act contained shall be understood to bar the full and unqualified exercise of Her Majesty's pleasure upon all Appeals to Her, either in rejecting any she may consider inadmissible, or in receiving any she may judge admissible.

XIX. The words "British India" denote the Territories which are or may become vested in Her Majesty by the said Statute 21 and 22 Vic. c. 106, entitled "An Act for the better Government of India."

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to extend to the Non-Regulation Provinces the Rules relating to the admission of Appeals to Her Majesty in Council, and to the execution of the decrees passed on such Appeals which are now in force in the Regulation Provinces of the three Presidencies.

The right of Her Majesty to admit appeals from decisions passed by the Courts in the Non-Regulation Provinces, equally with appeals from the decisions passed by the Courts in the Regulation Provinces, is not questioned. But there is no law empowering the Courts in the Non-Regulation Provinces to allow or even to receive Appeals from their decisions to the Queen in Council, or of their own authority, to transmit the records of the cases in which the appeal is made, or a translation of the papers, to England. The consequence is that parties wishing to appeal to the Queen in Council from decisions passed by the Courts in the Non-Regulation Provinces, are compelled to prefer their Appeals direct to the Privy Council, and an order has to be sent from home for the translation of the papers and their transmission to England. This necessarily adds to the expense of the Appeal, and also causes delay in the hearing and decision of the Appeal. The present Bill is introduced in consequence of the receipt of a communication from the Registrar of the Privy Council intimating that, in the opinion of the Lords of the Judicial Committee of the Privy Council, measures should be taken to place the prosecution of Appeals from the highest Civil tribunals in the Non-Regulation Provinces on the same footing as Appeals to Her Majesty in Council from the Courts in the Presidencies of Bengal, Madras, and Bombay.

It is proposed shortly to revise the existing rules relating to Appeals to Her Majesty in Council from the Courts in this country, and to frame a new Code of Rules to regulate such Appeals; but some time must necessarily elapse before the new Code is ready for promulgation.

(Signed) H. B. HARRINGTON.

The 5th 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 26th November 1862, and was referred to a Select Committee, who will make a report thereon after the 1st March 1863:—

No. 56 OF 1862.

A Bill to provide for taking Land for works of public utility to be constructed by private persons or Companies, and for regulating the construction and use of works on land so taken.

Whereas it is expedient to enable the Government to take land for the construction of works of

Preamble. public utility by private persons or Companies; and whereas it is proper at the same time to protect the rights of all persons from whom land shall be so taken or be proposed to be taken, and also to determine the manner in which such works may be undertaken and shall be managed after their construction, as well as to secure to the public under suitable regulations the use of works constructed on land so taken, It is enacted as follows:—

AS TO THE CONSTRUCTION OF THE ACT.

I. The following words and expressions shall have the several meanings hereby assigned to them, unless when a contrary intention appears from the context.

Words in the singular number shall include the plural, and words in the plural shall include the singular.

Words importing the masculine gender shall include females.

The words "the work" shall signify the public work proposed to be undertake.

The words "the Government" shall mean the Local Government, or the head of the Executive Administration of the Province in which the public work is proposed to be constructed.

The words "the Collector" shall include any officer exercising by authority of Government the duties of a Collector of Land Revenue by whatever name his office may be designated.

The words "the promoters" shall mean the person or persons who propose to construct the work, or are empowered to construct it, whether a single person or a Company.

The words "work under this Act" shall imply a work definitively registered as hereinafter provided by this Act.

The words "the Owner" or "the Company" shall signify the parties in charge of any public work under this Act, or referred to in this Act, whether as promoters, proprietors, lessees, agents, assignees or otherwise, and whether a single person or a Company.

The word "Lands" shall include messuages, lands, tenements, and hereditaments of any tenure.

The word "Conditions" shall signify the special conditions of agreement between the promoters or

owners of a work under this Act and the Government referred to in Section XI. of this Act.

The word "Toll" shall include any rate or charge or other payment to be made for any use of a work under this Act, or for any service performed in connexion with the use of any such work.

II. A work of public utility within this Act shall be held to mean any bridge, road, railroad, tramroad, canal for irrigation or navigation, tank, work for the improvement of a river or harbour, dock, quay, jetty, water-work, gaswork, mine, iron or copper work, drainage work or electric telegraph; also all works subsidiary to any such work. It shall be lawful for the Governor-General in Council, from time to time, by a declaration to be made to that effect and published in the Official Gazette, to order that any other class of works other than those named above shall be included among works of public utility within this Act.

AS TO THE PRELIMINARY PROCEEDINGS TO BE TAKEN AND THE REGISTRATION OF WORKS.

III. The promoters of any work of public utility who shall desire to proceed under this Act shall make a preliminary application in writing to the Government explaining the general object and nature of the work, and its intended locality. Every such application shall further be accompanied by a statement of the estimated cost of the construction of the said work, and the mode in which the promoters propose to provide the funds for constructing, maintaining, and working the same.

IV. If the Government shall not be satisfied with any such application or statement it may reject or call for further information, &c. it, or it may call on the promoters to supply any further information, or to amend such application or statement on any point on which such further information or amendment shall to the Government seem requisite.

V. If the promoters shall desire to undertake any preliminary survey on account of the proposed work before preparing and submitting the statement aforesaid, they shall declare the same in their preliminary application, and it shall be lawful for the Government, if satisfied of the expediency of permitting such survey, to issue a certificate authorising the same. Such certificate shall declare the names of the persons entitled to use it, the time for which it shall be in force, and the district or districts or locality for which it shall be valid, and shall contain such further regulations for the guidance of the persons using the said certificate as to the Government shall from time to time seem fit. The persons named in such certificate shall be authorised to enter upon any lands in the manner and for the time declared in such certificate.

to undertake any survey or other investigation necessary for the proper prosecution of the proposed work and while acting under the authority given in the said certificate, such persons shall be deemed to be public servants whose duty is to make a survey under Clause 10 of Section 21 of the Indian Penal Code. Provided that such persons shall not be authorised to enter any house or building or the curtilage of any house or enclosed garden without the assent of the occupier, or to cut down any tree or otherwise injure or destroy any property.

VI. It shall be lawful for the Government,

before issuing a certificate as aforesaid, to call on the promoters to deposit, as caution money, such sum and in such manner as the Government shall in each case determine to be applied by the Government to make good any damage done in the course of such survey by the persons using the said certificate. And any surplus remaining in the hands of the Government after the payment of any claims for damage which shall have been proved to the satisfaction of the Government shall be repaid to the promoters on their demand within three months after the expiry of such certificate.

VII. The promoters shall, with all convenient

despatch after the submission to the Government of their preliminary application, publish the same, but not the statement that accompanies it, unless they so wish, in the Official Gazette, and also, if possible, in at least two Newspapers (one of which shall be printed in English) in some Town in the Province in which the work is proposed to be executed, and shall repeat such publication at least six times within a period of two months from the date of submission of such application to the Government; and shall further cause to be delivered within the same period to the Collector of every district in which any part of such work is proposed to be constructed or such other Officer as the Government shall from time to time direct, six copies of such application with a faithful translation of the same into the vernacular language of the country; and shall in like manner publish from time to time and deliver as aforesaid copies and translations of any amended applications submitted to the Government.

VIII. The Collector or other officer as aforesaid

shall, on receipt of such copies of the preliminary application, make public its contents in the localities where the work is proposed to be constructed in such manner as to him seems best.

IX. At any time not sooner than three months

after the receipt of the said application and statement of or of any amended application or statement, the Government, on being satisfied by the promoters that the above conditions have been complied with shall be authorised to consider finally such application, and any objections that shall have been raised against the construction of the proposed work, and to declare whether the said work may be provisionally registered under this Act or not.

X. Provided that previously to declaring

Procedure before provisional registry of a railway or tramway in continuation of an existing line or a branch thereof.

that any work may be provisionally registered under this Act, being a railway or tramway in continuation of or forming a branch of any existing line, or being a line that might reasonably be expected to be united with any existing railway either as a continuation or a branch, and at the same time being at some one point within 50 miles distance of such existing railway, the Government shall afford to the owners of such existing line reasonable time and opportunity to declare whether they offer any opposition to the proposed line, and on a full consideration of such opposition and of the application of the promoters and of any objections aforesaid and of the relative public advantages of all proposals made in the matter, the Government shall be authorised to declare its decision on the said application.

XI. Provided further that before declaring its

Government may impose special conditions on promoters.

decision as aforesaid, the Government shall inform the promoters of any special conditions that the Government shall consider it necessary to impose on them, having regard to the special circumstances of each case in respect to the provision of the land for the proposed work, the construction, maintenance, or working of the same, the regulation of the use of the said work as regards the security and convenience of the public, and such other matters as to the Government may from time to time seem right.

XII. The Government, on causing a work to

Duration of provisional, and right of definitive registry.

be provisionally registered under this Act, shall determine for what period, being not less than six months, such registry shall be in force. And at any time within such period the promoters may claim to have the registry made definitive as hereinafter provided.

XIII. Unless for any cause the Government

Promoters to deposit caution money before definitive registry.

shall otherwise determine, the promoters, before they are entitled to claim the definitive registry of the proposed work, shall deposit with the Government, in such manner as shall be approved by the Government, a sum not exceeding 10 per cent. on the whole estimated cost of the said work as caution money to be disposed of in the manner agreed in the said conditions, unless it be otherwise dealt with as hereinafter provided. And any sum remaining in the hands of the Government from any caution money lodged under Section VI of this Act shall be held to be a payment in part of the caution money required under this Section.

XIV. The promoters, before such claim for

And to complete agreement under special conditions.

definitive registry shall be admitted, shall further complete an agreement with the Secretary of State for India in Council through the Government under the conditions aforesaid, or under such other conditions as may be agreed between the said promoters and the Government. And thereupon the

Government shall cause such agreement with the conditions thereof to be published in the Official Gazette, and shall declare that the work is definitively registered as a public work under this Act.

XV. It shall be lawful for the Government,

Definitive registry of works already in operation, &c.

on the application of a Company, to cause to be definitively registered under this Act any public work undertaken by such Company under an agreement with the Secretary of State or the Government, whether it be already in operation or in course of construction or contemplated before the passing of this Act, as though such work had been proposed to be undertaken under the provisions of this Act hereinbefore contained.

Provido.

Provided that, at the time of so registering any work the Government shall cause the said contract to be published in the Official Gazette with all the conditions attaching thereto, and declare that the said work has been so registered definitively.

XVI. It shall be lawful for the Government

Government may apply any public land, &c. for purposes of any public work to be constructed by private persons.

to apply any land in its lawful possession, also any public road or place for the purposes of any public work to be constructed at the expense and risk of

any private person or Company. Provided that

Provido.

every such work shall be held to be a public work under this Act, and shall be definitively registered accordingly, and that the conditions under which such work is undertaken shall be published in the Official Gazette; also that the prosecution and construction of every such work shall be subject to the provisions of Section X. of this Act.

XVII. The Government may from time to

Government may vary conditions under Section XI.

time, with the assent of the owners of any work under this Act, vary the conditions to be agreed to under Section XI. of this Act. Provided that

Provido.

such variation shall forthwith be published in the Official Gazette, and that after such publication the amended conditions shall be in force in supersession of those first made.

XVIII. After the definitive registry of any work

Issue of certificate for Government, authorising entry on lands and surveys after registry.

under this Act, it shall be lawful for the Government from time to time in such wise as to it shall appear fit, to issue certificates to authorise the Company, their servants, and agents to enter upon any lands and to undertake such surveys or levels or other examinations as may be necessary for the proper prosecution of the said work; also to dig and bore into the subsoil, and to indicate the intended boundaries of the land to be taken and the positions of the proposed works, by suitable land marks, and to perform all other necessary preliminary acts of the like nature, and such certificates shall declare the names of the persons entitled to use them, the time for which they shall be in force, and the districts or locality for which they shall be valid, and shall contain such further regulations for the guidance of the persons using them as to the

Government shall from time to time seem fit. And while acting under the authority given in the said certificate, such persons shall be deemed to be public servants whose duty it is to make a survey under Clause 10 of Section 21 of the Indian Penal Code. Provided, however, that such persons shall not enter any house or building or the curtilage of any house or enclosed garden without giving 24 hours' notice, or without the assent of the occupier thereof, nor shall they cut down any tree or otherwise injure or destroy any property unless the same be essentially necessary.

XIX. The Company shall, on the completion of the necessary surveys and the like, submit to the Government such drawings, maps, and plans, of the proposed work, as well as of the land required for it, as the Government shall in each case require. And thereupon the Government shall appoint one or more Commissioners, who may be Government Officers, to examine the said drawings, maps, and plans, and to determine finally, in concert with the agents of the Company, the exact position of the work or of the parts thereof, as well as the boundaries of the land to be taken for the said work, and shall notify such appointment in the Official Gazette, and shall cause such notification to be published in the district where the work is proposed to be undertaken in such manner as shall seem best to the Government.

XX. The Commissioners appointed as aforesaid shall proceed at any time, but not sooner than 30 days after such notification, to settle, in concert with the agents of the Company, the exact position of the work or of the parts thereof, and thereafter with all practicable despatch to examine the boundaries of the land proposed to be taken for the work, and the said Commissioners may call upon the Company to make any variation in their project and in the position of the works or any part of them and in the boundaries of the land proposed to be taken, that may to the said Commissioners seem necessary to secure the safety or convenience of the public, or to prevent any undue interference with private property, or for any other reasonable cause, and any such variation if agreed to by the Company shall thereon be considered to be finally adopted; but if the Company shall not agree, the question in dispute shall be submitted to the Government, and the decision of the Government shall be final, provided that the Company shall not be bound to carry out the proposed work if any variation be insisted upon by the Government to which the Company will not assent.

XXI. The Government shall be authorised to extend the periods allowed for giving any notices or for performing any acts required under the foregoing Sections as from time to time may seem to it proper.

AS TO THE TAKING LANDS, THE TITLE THEREIN, AND THE PAYMENT THEREFOR.

XXII. When the boundaries of the land required for the work shall have been settled as aforesaid, and the Company shall have caused the said

land to be measured and suitable land-plans to be prepared of the same, the Government shall cause a declaration to be made under the signature of a Secretary to the Government, or some Officer duly authorised to certify the orders of the Government, that the land aforesaid is required for the said work, and such declaration shall be conclusive that the land may be taken under this Act. After making such declaration the Government may proceed to take any such land as though it had been required to be taken at the public expense and for a public purpose, and as though a declaration had been made as required under Act VI of 1857 (*for the acquisition of land for public purposes*).

XXIII. The boundaries as determined by the Commissioners, and the plans and measurements aforesaid of the said land when verified and found to be correct or when duly corrected by the Collector or other Officer appointed to proceed under the said Act VI of 1857, shall be held to be the boundaries, plans, and measurements required under Section IV of the said Act, so far as the said lands are concerned.

XXIV. If at any time land shall be required for any necessary or reasonable extension of or addition to any work under this Act, it shall be lawful for the Government

to make all requisite declarations for the purpose of obtaining such land under this Act, after such and only such of the preliminary proceedings and inquiries heretofore required as to the Government shall in each case seem sufficient for the protection of the rights of the public and of individuals concerned. Provided that nothing shall be done contrary to the provisions of Section X. of this Act, and that all proceedings for the actual taking possession of the land shall be conducted in accordance with the provisions of the said Act VI of 1857.

XXV. Land may be taken under this Act for a temporary purpose in like manner as under the said Act VI of 1857.

XXVI. All land taken under this Act shall vest absolutely in the Government as though it had been taken for a public purpose under the said Act VI of 1857, and it

shall be lawful for the Government to dispose of any land taken under this Act in any manner that it may think fit. The Government alone shall be responsible for the payment of all claims on account of such land to all persons whatever, and the Company shall in no wise be responsible for any such payment otherwise than to the Government, and then only as is herein declared and provided and as shall be specially agreed in the conditions aforesaid.

XXVII. When all the conditions as aforesaid are applicable to the transfer of the land to the Company shall have been fully complied with, and not till then, the Government shall cause the Company to be placed in possession of such land in accordance with such conditions,

and the title of the Government or of the Company to such land shall not be liable to be questioned on account of any informality in any proceeding taken under this Act.

XXVIII. All expenses attending the proceedings of the Commissioners shall be paid by the Company, and all expenses incurred by the Government in taking up the land required for the Company under the said Act VI of 1857, shall be paid by the said Company, unless otherwise specially agreed; and the Government shall determine the sum due on account of such expenses, and shall be authorised to deduct such amount from any sum lodged as caution money as aforesaid if it be not otherwise paid by the Company; and any sum remaining unpaid both as aforesaid, and on account of land or compensation for which the Company are liable under the said conditions, may on the order of the Government to that effect be levied by distress and sale on the said Company, in the manner provided for distress and sale under Civil process.

XXIX. The Company shall further be liable for all damage done in any of their preliminary operations, and shall duly satisfy and pay all claims of this description; and if at the time of taking possession of the land required for the Company it shall appear that any such claim remains unsatisfied, the Collector or other Officer acting under the said Act VI of 1857 in respect of such land shall be authorised to determine all such claims summarily as though they had been claims arising under the said Act, and all payments on account of such claims shall be made good by the Company as under the last preceding Section.

AS TO THE PUBLIC USE OF WORKS.

XXX. Every work under this Act shall be available for the use of the public in accordance with and to the extent provided by the conditions aforesaid or any Act at the time being in force but not otherwise; and after the publication of the conditions relating to any such works in the *Official Gazette*, all Courts may take judicial notice of the same, and it shall be lawful for any person whatsoever to sue the owners of such work for any damage he may incur by reason of any neglect of the said conditions by the said owners in respect of any such public use of such work as though such person had been a party to the said conditions.

XXXI. The owners of any work under this Act shall be authorised to levy such tolls in such manner as shall be fixed in accordance with the conditions aforesaid, also to refuse the use of such work and to refuse to perform any service in connexion therewith unless such tolls shall be paid in the manner fixed aforesaid, as well as to detain any thing or animal on which such tolls shall be due, and to sell the same if the said tolls shall remain unpaid after a reasonable time has been allowed to elapse for the payment of the same. Provided that no such tolls shall be demanded or taken at any place unless proper tables and lists of such tolls be exhibited at such place in the manner fixed aforesaid.

AS TO THE CONSTRUCTION OF THE WORKS AND THE INSPECTION OF THE SAME.

XXXII. The Government may appoint Inspectors to inspect any work under this Act, also all things appertaining thereto and to the working of the same; but not books or documents otherwise than as shall be provided in the conditions aforesaid. The owners of such work and all persons authorised by them to use the same in connection with any public use of the said work, and their servants and agents, shall be bound to afford to such Inspectors all reasonable facility for their inspection, and all such information as may be reasonably required by them.

XXXIII. If it appear to the Government upon the report of any Inspector, that the use of any work under this Act cannot be continued without danger to the public or to the persons employed thereon, or that rules adequate to the protection of the public under the provisions of this Act, have not been framed and put in force, or that the conditions agreed upon under Section XI. of this Act have not been carried out, the Government may order that all defects shall be made good within a reasonable specified time; and in default of the owners of such work complying with such order within such time or such further time as the Government shall appoint, the Government shall be empowered to direct that the use of such work shall be stopped and discontinued until the defects aforesaid shall be remedied to the satisfaction of the Government.

XXXIV. The Government may, at any time on the report of an inspector during the construction of any work under this Act, direct the Company to construct in connection therewith such culverts, bridges, tunnels, drains, or other works as may be considered by the Government to be necessary to continue to the public any roads, or rights of way, or easements, or the use of any water theretofore available, and to make due provision for the irrigation and drainage of the country so as to prevent the same from being impeded or unnecessarily altered by the construction of the said work. If default be made in complying with any directions given under the provisions of this Section, the Government may order the prosecution of the work to be stopped until such directions shall be complied with to the satisfaction of the Government.

XXXV. Nothing in the last preceding Section shall be construed to render the Company liable to construct any work, or to undertake any thing at variance with the special conditions of agreement under Section XI of this Act.

XXXVI. The owners of every Railway under this Act being of the gauge of five feet six inches shall be bound, unless specially exempted by the Governor-General in Council, to erect all the fixed structures and to construct all the rolling stock in conformity with the standard dimensions determined in that behalf from time to time by the Governor-General in Council, and it shall be lawful for the Government to order the

said owners to make good all defects in such structures or rolling stock and to prohibit their use until such defects shall be made good to the satisfaction of the Government.

XXXVII. The provisions of Act XVIII of 1854 (relating to Railways in India) shall apply to all Railways under this Act; provided that in respect of such Railways the Government shall be authorised to determine from time to time the extent to which fences shall be constructed under Section XX of the said Act XVIII of 1854, and that the owners of such Railways shall not be liable to maintain fences under the said Section otherwise than as shall be so declared and ordered in each case by the Government.

XXXVIII. In case any doubt shall at any time arise as to the necessity for constructing or altering any work to ensure the safety of the public, or to provide for established public rights of way, or other public rights of any sort in connexion with any work under this Act, the decision of the Government on such subject shall be final, and shall not be liable to be called in question in any Court of Justice.

XXXIX. If the owners of a Railway under this Act shall desire to form a connexion with any existing Railway of the same gauge, the owners of the new line shall be authorised to call on the owners of the old line to effect the junction, and if the owners of the old line shall not proceed to effect the junction within a reasonable time, the Government, on being satisfied that the junction may be made with safety to the public and without injury to the existing Railway, or detriment to the traffic thereon, may authorise the owners of the proposed line to form the junction, and to do all necessary acts in that behalf, and to lay down such additional lines of rails, points and crossings as may be necessary for the purpose, at such time and in such manner as the Government shall direct. Provided that if the junction be effected by the owners of the previously existing Railway, the expense of forming the junction, of supplying all necessary works and of keeping in repair and renewing the same shall be paid by the owners of the new line.

XL. If any difference shall arise as to the terms on which the traffic of a branch or junction line of Railway under this Act shall pass over or upon any other line with which it shall be connected, or as to the manner and times of conducting the traffic or of regulating the same over the two lines or either of them, or as to any matter touching any line under this Act used in common by two or more Companies, the Government shall be authorised on the application of either or any one of the said Companies, to hear and determine all such differences, and any order given by the Government in such a case shall be final and binding on all parties, provided that no order shall be so given at variance with any condition of any agreement between the Government and any of the said Companies that shall be applicable to the said lines of Railway.

GOVT. INDIA BILLS—116

AS TO THE MAKING OF BYE-LAWS.

XLII. It shall be lawful for the owners of any work under this Act to make Bye-Laws and Regulations for the guidance

of their servants and agents and of persons employed by them, and for the maintenance of order in the use of such work, and to provide for the safety and convenience of the public or of the persons employed on such work: and all such Bye-Laws and Regulations shall be subject to the approval of the Governor-General in Council, and when so approved all Courts and Magistrates shall take judicial notice of the same, and the Governor-General in Council shall be authorised to cause any alterations to be made in them as shall to him from time to time seem proper. Provided that such Bye-Laws and Regulations be not repugnant to any Law in force in the British Territories in India, for the time being, and that no penalty shall be attached to the infringement of any such Bye-Law or Regulation exceeding a fine of fifty Rupees.

XLIII. The substance of such Bye-laws and Regulations affecting the public shall be published or notified in such places on the said work and in such manner as the Government shall from time to time approve or direct, and no penalty shall be recoverable under such Bye-Laws or Regulations unless the same shall have been published and kept published as aforesaid.

XLIV. No penalty shall be recoverable from any person under any Bye-Laws or Regulations prescribed to regulate the conduct of the agents and servants and persons employed by the owners of any such work unless a copy of such Bye-Laws or Regulations shall have been previously given to such person, or unless proof be given that the Bye-law or Regulations for the infringement of which a penalty is so sought to be enforced was explained to such person before such infringement occurred.

XLV. In the case of a Railway under this Act being of the gauge of five feet and six inches, it is further provided that the Bye-Laws and Regulations shall, unless the Governor-General in Council shall otherwise permit, conform in every respect to the Regulations for Railway Companies under the said Act XVIII of 1854.

AS TO THE LIEN OF THE GOVERNMENT ON ANY WORK.

XLV. No lands taken or supplied by the Government for any work under this Act; no tree, building, or structure standing on such lands; no machinery nor permanent way fixed to the soil on such lands; nor anything whatsoever on which the Government shall be entitled to re-enter, or of which it shall be entitled to take possession which payment on the determination from any cause of the agreement between the Government and the Company under the conditions aforesaid, shall be liable to be seized or applied in satisfaction of any debts or liabilities of any sort of the Company, nor shall the Company alienate the same or any part thereof in any

way not provided for or consonant with such agreement or conditions.

XLVI. If the owners of a work under this Act shall voluntarily determine to wind up their affairs, or shall be so directed by an order of Court, or shall

Right of Government to terminate contracts with Bankrupt or Insolvent Companies, &c. abandon or determine to abandon such work, or shall commit an act of Bankruptcy or Insolvency, it shall be lawful for the Government thereupon to terminate all contracts then existing between it and the Company in respect of such work, and to re-enter upon and take possession of all things whatsoever to which the Government shall be so entitled under the conditions of such contracts; also of all lands taken at the public expense or supplied to the said Company free of cost, together with all trees, buildings and structures standing on such lands, as well as all machinery and permanent way fixed to the soil on such lands, provided that nothing shall be so taken which shall be expressly excluded from such liability under the conditions aforesaid. But the

Government shall be bound to surrender to a lawful claimant movable property acquired from the Company otherwise than by purchase in certain cases. purchase, which shall not have been fully paid for by the Company, or in lieu of such surrender, if the Government shall so determine, to satisfy all just outstanding claims on account of such property; provided that no such surrender shall be obligatory and no such claim shall be entertained in respect of any thing that shall have been delivered to the said Company more than twelve months before the date of such surrender being required of or such claim being made known to the Government.

AS TO MINES NEAR ANY WORK.

XLVII. Whenever land shall be taken under this Act for the construction of any work, the taking thereof shall not be held to convey or include the right to any mine of coal or other minerals lying under such land, except only such part thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless compensation for the same shall have been expressly allowed in the award made in favour of the persons interested in the land.

XLVIII. If the owner, lessee, or occupier of any mine of coal or of any other mineral lying immediately under any work under this Act, or within forty yards therefrom, shall work the same, it shall be competent to the Government, on the application of the Company, to require such person to abandon such work, or so to work the same as not to endanger the said work, and to construct the works necessary to make it safe. Provided that compensation shall be awarded to such owner, lessee, or occupier in the manner provided for in the said Act VI of 1857, for any loss sustained by him from being compelled to abandon, or alter his mode of working the mine, and also for any necessary works constructed by him (when so required as aforesaid) in order to prevent damage to the

saide work, but all damage or loss to, the Company arising from any improper working of such mines shall be at the risk of the owners, lessees, or occupiers of the said mines, and shall be made good by them.

AS TO OFFENCES AND THE RECOVERY OF PENALTIES.

XLIX. Whoever shall obstruct or commit any contempt of the lawful authority of any public servant in the discharge of any function or in the performance of any thing undertaken under this Act, or shall commit mischief by destroying, defacing, or removing any land-mark fixed by the authority of any such public servant shall be punishable under the provisions of the Indian Penal Code.

L. All penalties for offences under the Bye-Laws and Regulations aforesaid shall be recoverable in the manner provided for offences punishable by fine only in the said Act XVIII of 1854.

STATEMENT OF OBJECTS AND REASONS.

In the early part of the year the late Mr. Ritchie obtained leave to bring in a Bill to provide for the construction by Companies and private persons of Branch Railways, Iron Tram-roads, common Roads or Canals, as feeders to public Railways, High-roads, navigable Rivers or Canals. It was Mr. Ritchie's intention to bring in a Bill substantially the same, in so far as the details were concerned, as the Bill introduced, with a similar object, into the late Legislative Council, though with a somewhat wider scope. The Bill introduced into the Legislative Council was not proceeded with in consequence of the abolition of that Council.

The Bill, framed as intended by Mr. Ritchie, having been considered by the Government in the Public Works Department, it was thought that the scope of the proposed legislation might, with great public benefit, be extended even beyond what was advised by Mr. Ritchie, and that any Bill introduced, instead of being confined in its application to Branch Railways, Iron Tram-roads, common Roads, or Canals, as feeders to other works, might properly embrace many other works of public utility. Section II of the Bill defines the works of public utility to which it is intended that the provisions of the Bill should apply, to be Bridges, Roads, Rail-roads, Tram-roads, Canals for irrigation or navigation, Tanks, Works for the improvement of Rivers or Harbours, Docks, Quays, Jetties, Water-works, Gas-works, Mines, Iron or Copper-works, Drainage-works, or Electric Telegraphs, and also all works subsidiary to such works. The same Section of the Bill further gives power to the Governor-General in Council from time to time by a declaration to be made to that effect, and published in the Official Gazette, to order that any class of works other than those named shall be included among works of public utility within the Act.

It was also considered that the details of the Bill, as proposed by Mr. Ritchie, might be greatly improved, and that they should be made to assimilate more nearly to the laws of the same nature which are in force at home. These considerations have led to an entire remodelling of the Bill.

In framing the Bill it had to be considered whether the Bill should be of general application,

that is, whether its provisions should apply to all India, or whether the application of the Bill should be confined to those parts of India for which the Council of the Governor-General alone can legislate. As a general rule, there can be no doubt that the Government of India should not legislate for the local Governments which have Legislative Councils of their own, on any matters in respect of which those Governments are competent to legislate for themselves. The part of the Indian Councils Act of last year, which relates to legislation, was evidently framed on this principle. But when a law is required for the Empire at large, and whether the law is to be the work of a single Legislature or of several distinct Legislatures, the general principles observed in framing it, and the more essential details, must be the same. I venture to think that there must be a great public convenience in having a single law for all India passed by the Government of India which alone is competent to pass a general law, instead of two or more laws passed by different Legislatures acting independently of one another.

The fact that there are, at the present time, two Branch Railway and other Public Works Bills pending, one before the Council of the Governor of Bombay and the other before the Council of the Lieutenant-Governor of Bengal, the provisions of which differ little, if at all, from the Bill proposed by Mr. Ritchie, and that Mr. Ritchie considered that a Bill such as was proposed by him, was all that was required for the entire country, would seem clearly to show that the legislation needed at this time is of the general character above described, and that consequently there can be no necessity for separate Acts for the different Presidencies, or for the different parts of the same Presidency.

In addition to what I have already mentioned in favour of a general Bill, I may repeat what was stated by Mr. Ritchie in the remarks with which he prefaced his motion for leave to introduce the Bill proposed by him, namely, that as a Railroad for which feeders are to be provided (and the same observation applies to Canals, High-roads, and other public works) may pass through several Districts or different Presidencies, two different Acts might be objectionable.

(Sd.) H. B. HARRINGTON.

The 5th November 1862.

M. WYLLIE,
Depty. 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 November 1862, and was referred to a Select Committee with instructions to make their report thereon in six weeks:—

No. 58 OF 1862.

A Bill to amend the Law for regulating the Police of the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca.

Whereas it is expedient to amend the law for regulating the Police of the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca; It is enacted as follows:—

I. Section III of Act XLVIII of 1860 (to amend Act XIII of 1856, for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca) shall cease to have any effect in any of the said Stations from the time when this Act shall come into operation, provided that nothing in this Section shall be held to revive the operation of Section XV of the said Act XIII of 1856.

II. No person shall be enrolled a member of the Police Force in any of the said Stations, who shall not sign a declaration, in the form provided in the Schedule to this

Act, that he will serve as a member of such Force for such period, not exceeding five years, as shall be fixed by the Governor of the said Settlement, and no person who shall have signed such declaration shall be at liberty to resign his Office, or to withdraw himself from the duties thereof, except with the permission of the Governor of the said Settlement, to be granted on a Certificate of ill health from a Medical Officer of Government, or on a special recommendation of the Commissioner of Police. Provided that nothing in this Section shall interfere with the power of the Commissioner of Police, under Section X of the said Act XIII of 1856, to suspend or dismiss any member of the Police Force whom he shall think remiss or negligent in the discharge of his duty, or otherwise unfit for the same.

III. Every member of the Police Force in any of the said Stations, who shall have signed the declaration hereinbefore mentioned, and who shall desert or withdraw himself from such Police Force, by absenting himself from duty without reasonable excuse for a period exceeding twenty-four hours, or otherwise, shall, on conviction before a Magistrate, forfeit all arrears of pay and allowances that may be due to him at the time of such desertion or withdrawal, and be liable to a fine not exceeding six months' pay and allowances, and on failure of payment thereof to imprisonment, with or without hard labour, for a period not exceeding one month if such fine be not sooner paid; or to imprisonment, with or without hard labour, for a period not exceeding three months; or to both fine and imprisonment.

IV. Whoever in any of the Stations of the Straits Settlement has, or keeps, any Hotel, Tavern, Punch-house, Ale-house, Arrack or Toddy-shop, or place for the sale or consumption of Gunja, Chundoo, or other preparation of Opium, Hemp, or other intoxicating drug, plant, or substance, or any Eating-house, Coffee-house, Boarding-house, Lodging-house, or other place of public resort and entertainment, wherein provisions, liquors, or refreshments are sold or consumed (whether the same be kept or retailed therein or procured elsewhere), without a license from the Commissioner of Police of such Station, shall be liable to a fine not exceeding fifty Rupees for every day that such unlicensed house or place of any

kind is kept open, or that such unlicensed sale is continued; provided that nothing in this Section shall apply to the sale, in reasonable quantities, of any drug, plant, or substance in any Druggist's or Chemist's shop for medicinal purposes only.

V. The Commissioner of Police in each of the said Stations shall, from time to time, grant licenses to the keepers of such houses or places of public resort and entertainment

Licenses by Commissioner of Police for keeping Taverns and places of public entertainment.

as aforesaid in the said Stations respectively, and upon such conditions, to be inserted in every such license, as he, with the sanction of the local Government, from time to time, shall order, for securing the good behaviour of the keepers of the said houses or places of public resort and entertainment, and the prevention of drunkenness and disorder among the persons frequenting or using the same, and the said licenses may be granted

Licenses to be granted only to persons who have taken out the requisite Abkaree licenses.

for any term not exceeding one year; provided always, that it shall not be lawful for the said

Commissioner to grant a license to open, or establish, or keep open, any house of public entertainment in which any provisions, liquors, or refreshments of any kind, or in which any Gunja, Chundoo, or other preparation of Opium, Hemp, or other intoxicating drug, plant, or substance, may be sold or consumed, to any person who has not taken out a license for the retail sale of such articles, if a license be necessary, under the Abkaree or Excise Laws for the time being in force; and any such license granted by the Commissioner shall be come void whenever the license necessary under the Abkaree or Excise Laws shall terminate or be recalled. And every holder of such license may be required by the Commissioner to fix, in a conspicuous part of the house or place specified in the license, a board, on which shall be legibly painted, in the English and Vernacular languages, the name of the holder, and the articles he is licensed to deal in. For every

Fees on licenses.

license granted under this Section there shall be levied a fee of one Dollar.

VI. A breach of the conditions of a license

Penalty for breach of license.

granted under the last preceding Section shall, besides forfeiture of the license, be punishable by a fine not exceeding fifty dollars, and such fine shall be recovered from the person licensed, notwithstanding that such breach may have been owing to the default or carelessness of the servant or other person in charge of the shop or place of sale.

VII. This Act shall be read and taken as part

Construction of Act. of the said Act XIII of 1856.

SCHEDULE.

FORM OF DECLARATION.

I, A. B. do hereby declare that in consideration of my being enrolled a member of the Police Force of I will serve in such Force for a period of years.

(Signed) A. B.

Witnesses

C. D.
E. F.

STATEMENT OF OBJECTS AND REASONS.

This Bill is introduced in consequence of a representation from the Governor of the Straits Settlement, who has brought to notice the great inconvenience experienced in that Settlement, owing to there being no law authorising enlistment in the Police Force for a stated period of service, and from the omission of the Straits Settlement from so much of the Police Act of 1860 for regulating the Police in the Presidency Towns of Calcutta, Madras, and Bombay, and the Straits Settlement, as relates to the control over Ale-houses, Coffee-houses, Boarding-houses, Lodging-houses, and the like. The parts of Act XLVIII of 1860 referred to are Sections XI, XII, and XIII. These Sections, as they were originally drawn, were intended to apply to the Straits Settlement. Why the Straits Settlement was afterwards excluded from their operation, I have not been able to discover. There seems no ground for their exclusion, and the Governor of the Straits Settlement appears to have shown good and sufficient reason for the extension of the Sections, for which the Bill makes provision, to the Stations under his government.

With regard to the other point noticed in the representation from the Governor of the Straits Settlement it may be observed that no such law, as that asked for, exists in the Presidency Towns, or, I believe, at home. But the Governor of the Straits Settlement points out that the circumstances of that Settlement and of the Presidency Towns are very different. In the Presidency Towns the rate of pay offered is found sufficient to induce the natives enlisting in the Force to remain in it, and when any member of the Force takes his discharge, his place is easily supplied. In the Straits Settlement, on the contrary, the greatest difficulty is experienced in maintaining the Police Force at its prescribed strength, and the Commissioners complain very much of the constant changes that are taking place, and which render nugatory their exertions to keep the Police Force in an efficient state. The Governor notices that in the Colony of Hong-Kong it has been found necessary, in framing a law to regulate the Police, to require that every Inspector, subordinate Officer, and Peon, shall enlist for five years, previously to the expiration of which period no one entering the Force is at liberty to resign his office, or to withdraw himself from the duties thereof, except with the permission of the Governor, granted on a certificate of ill-health from the Colonial Surgeon, or on a special representation from the Captain Superintendent. It is considered that great advantage would result from the extension of similar provisions to the Straits Settlement, and the first two Sections of the Bill have been framed with a view to a modification of the existing law, in so far as it extends to the Straits Settlement, in the direction recommended by the Governor.

(Signed) H. B. HARRINGTON.

The 12th November 1862.

From the Governor of the Straits Settlement, to the Secretary to the Government of India, Home Department, No. 115, dated Singapore, the 21st August 1862.

Sir,—I have the honour to enclose, for submission to His Excellency the Governor-General in Council, copy of a representation, No. 58, dated

the 30th ultimo, from the Commissioner of Police at Singapore, on the subject of his want of control over Ale-houses, Coffee-houses, Boarding and Lodging-houses, &c., as exercised by the Commissioners of Police at the Presidency Towns in India.

2. There can be no doubt that this control is urgently needed in the Straits, more especially at Singapore. The necessity for its being granted was brought prominently to the notice of the Legislative Council in paragraph 3 of my letter, No. 204 of the 18th October 1860, and I certainly have been at a loss to discover the grounds upon which a power it has been considered advisable to vest in the Commissioners of Police at Calcutta, Madras, and Bombay, has been withheld from the same authority at Singapore, a large sea port, generally crowded with shipping of all nations, and consequently containing a large seafaring population, for whose benefit it is so essential that proper supervision should be exercised over all houses and places of public resort and entertainment.

3. Another question alluded to in my communication above mentioned was, the expediency of modifying the rules under which men are entertained for service in the Police, and authorising their being enlisted for a term of years. This may not be deemed a matter of any great importance in the Presidency Towns, where the pay offered is a sufficient inducement for a Native to remain in the Force, and should he taken his discharge, his place can be immediately supplied, but it is far different in the Straits Settlement, where there is considerable difficulty in maintaining the Force at its prescribed strength, and Commissioners complain sadly of the constant changes that are taking place, rendering all their exertions to keep the Police in an efficient state perfectly nugatory; at the sister Colony of Hong-Kong it has been found requisite in framing the Law for the regulation of the Police, to require, every Inspector, subordinate Officer, and Peon, on entering the Force, to bind himself to serve for the period of five years, previous to the expiration of which he is precluded from resigning his office, or withdrawing himself from the duties thereof, except under the permission of His Excellency the Governor, accorded on a certificate of ill-health from the Colonial Surgeon, or, on a special representation from the Captain Superintendent. In the event of any further amendment of the Police Act, the introduction of a Clause to the above effect as regards the Police in the Straits, would be a great boon to the Settlement.

I have, &c.,
(Sd.) ORFEUR CAVENAGH, *Colonel,*
Governor.

From the Commissioner of Police, Singapore, to the Secretary to Government, Straits Settlement, Singapore, No. 58, dated Singapore, the 30th July 1862.

SIR,—I have the honour to bring to your notice a nuisance which has existed for years, but which

BILLS—117

has been represented even so long ago as Governor Butterworth's time; it is Beer shops, and the great increase of them, over which the Police Authorities have no control, as any person who wishes to open such a shop can do so, without a license or permission of any kind. These places are mostly kept by Sailors who have left their ships and served as barmen, in some public house, and men who are reported to me as convicts, ticket-leave men from the Australian Colonies.

From the Preamble of Acts XLVIII of 1860 it appears evident, that the Legislative Council of India intended that the Police Commissioners of the Straits should be vested with the like power as those of Calcutta, Madras, and Bombay, but unfortunately the important words "*and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca*" have been omitted in the 11th and 12th Sections of the Act.—This being remedied, the evil complained of could be dealt with, and only properly conducted houses would be licensed. May I request you to be good enough to bring this to the consideration of His Honour the Governor, and I feel sure you will support my suggestion.

I have, &c.
(Sd.) THOS. DUNMAN,
Commissioner of Police.

(Sd.) H. B. HARRINGTON.

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

THE following Report of a Select Committee was presented to the Council of the Governors General of India for the purpose of making Laws and Regulations on the 3rd December 1862:—

HOME DEPARTMENT—Legislative.

WE, the undersigned, the Members of the Select Committee of the Council of the Governor-General of India for the purpose of making Laws and Regulations, to whom the Bill "to amend Act XI of 1862 (to amend the Duties of Customs on Goods imported and exported by Sea)" was referred, have the honour to report that we have considered the Bill, and that we have no amendments to suggest.

We have not received any communication on the subject of the Bill.

(Sd.) H. B. HARRINGTON.
" H. S. MAINE.
" W. S. FITZWILLIAM.
" D. COWIE.
" R. S. ELLIS.

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

The 26th November 1862.