



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

Published by Authority.

THURSDAY, 29TH JANUARY 1863.

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

HOME DEPARTMENT (Legislative).

The following Report of a Select Committee was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 7th January 1863:—

HOME DEPARTMENT.—Legislative.

We, the undersigned, the Members of the Select

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

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

3. Statement of Appeal and Original Suits.

4. From Secretary to Chief Commissioner, British Burmah, to Secretary, Government of India, Foreign Department, dated 27th March 1862.

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

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

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

8. From Chief Commissioner, British Burmah, to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Signed) H. B. HARRINGTON.

” HENRY S. MAINE.

” C. J. ERSKINE,

” R. S. ELIS.

The 2nd January 1863.

M. WYLLIE,

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

The following Report of a Select Committee was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 7th January 1863:—

HOME DEPARTMENT.—*Legislative.*

We the undersigned, the Members of the Select Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations, to whom the Bill to regulate the admission of Appeals to Her Majesty in Council from certain judgments and orders in Provinces not subject to the general Regulations was referred, have the honour to report that no communication has been received on the subject of the Bill.

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

We recommend that the Bill be passed with these amendments.

(Signed) H. B. HARRINGTON,

” HENRY S. MAINE,

” C. J. ERSKINE,

” A. A. ROBERTS.

The 7th January 1863.

M. WYLLIE,

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

The following Report of a Select Committee was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 7th January 1863:—

HOME DEPARTMENT.—*Legislative.*

We the undersigned, the Members of the Select Committee of the Council of the Governor General of India for the purpose of making Laws and Regulations, to whom the Bill to amend the law for regulating the Police of the several stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca was referred, have the honour to report that no communication has been received on the subject of the Bill.

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

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

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

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

(Signed) H. B. HARRINGTON,

” HENRY S. MAINE,

” W. S. FITZWILLIAM,

” R. S. ELLIS,

” C. J. ERSKINE,

” D. COWIE.

The 7th January 1863.

M. WYLLIE.

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

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 7th January 1863, and was referred to a Select Committee with instructions to make their report thereon in three weeks:—

No. 62 OF 1862.

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

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

I. Sections XI., XII., XIII., XVIII., and XIX.

of Act XXVII. of 1856

Sections repealed. (for appointing Municipal

Commissioners, and for levying rates and taxes in the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca), are repealed.

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

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

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

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

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

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

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

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

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

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

STATEMENT OF OBJECTS AND REASONS.

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

(Signed) H. S. MAINE.

The 17th December 1862.

M. WYLIE,

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

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 7th January 1863, and was referred to a Select Committee with instructions to make their report thereon in three weeks:—

No. 64 OF 1862.

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

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

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

II. All the provisions of Act XXXI. of 1855, and of the Schedule thereto as modified by Act XLIX. of 1860 (relating to Vessels carrying emigrant Passengers to the British Colonies) shall extend and apply to Native Inhabitants of the British Territories in India who shall emigrate to the Danish Colony of Saint Croix, and that Act shall be read as if the words "or the Danish Colony of Saint Croix" had been inserted therein after the words "Saint Lucia and Grenada," or "Saint Lucia or Grenada," wherever those words occur in the said Act.

III. This Act shall take effect as to the said Colony of Saint Croix from the day when the Governor General of India in Council shall notify in the *Calcutta Gazette* that such Regulations have been provided and such measures taken as the Governor General in Council deems necessary for the protection of such emigrants during their residence in the said Colony of Saint Croix and in respect of their return to India.

IV. All the provisions of Act XIX. of 1856 (to enable the Governor General of India in Council to suspend the operation of certain Acts relating to the Emigration of Native Laborers) shall apply to Emigration to the said Colony of Saint Croix.

Act XIX. of 1856 to apply to Emigration to St. Croix.

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

STATEMENT OF OBJECTS AND REASONS.

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

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

(Signed) HENRY S. MAINE.

The 24th December 1862.

M. WYLIE,

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

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 24th December 1862, and was referred to a Select Committee with instructions to make their report thereon in four weeks:—

No. 60 OF 1862.

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

WHEREAS it is expedient to amend certain Articles of War enacted in the said Act XXIX. of 1861; It is enacted as follows:—

I. Sections I. to XVII., and Section XXVIII. of Regulation XXII. of the Bombay Code (to declare Sections repealed.)

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

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

ARTICLE 3.

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

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

No Non-Commissioned Officer shall be reduced to the ranks for any stated period; nor suspended from his rank; nor reduced from a higher to a lower grade of Non-Commissioned Officer.

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

ARTICLE 32.

Who shall wantonly and intentionally defile any place dedicated to religious worship, or shall insult the religious feelings of any person.

ARTICLE 73.

The Commander in Chief of the Presidency may appoint a General or other Court Martial, and may confirm, mitigate, or commute or remit the sentence of such Court. He may issue his Warrant to any General or other Officer under his

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

ARTICLE 78.

A General Court Martial may sentence for any crime, which by these Articles is made liable to such sentence, any Officer to death or to transportation for life, or for any period not less than seven years, or in cases falling under Article 22 or Article 66, to imprisonment with or without hard labour for any period not exceeding three years, and with or without solitary confinement; or may sentence any Soldier to death, or to transportation for life, or for any period not less than seven years, or to imprisonment for any period not exceeding fourteen years, for any crimes which are by these Articles of War expressly made liable to any such sentence and for such crimes only. No Court Martial, inferior to a General Court Martial, shall have power to pass a sentence of death, or transportation or imprisonment for any longer period than three years.

Punishment of Commissioned Officers.

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

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

Punishment of Non-Commissioned Officers and Soldiers.

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

intervals between the periods of solitary confinement of not less duration than such periods of solitary confinement.

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

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

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

Punishment for "Disgraceful Conduct."

A General, or District, or Garrison Court Martial may, in addition to corporal punishment or to imprisonment, sentence a Soldier convicted of disgraceful conduct to forfeiture of all advantage as to additional pay and claim to pension on discharge, which otherwise might have accrued from the length or nature of his former service; or to forfeiture of such advantage absolutely, whether it may have accrued from past service, or might accrue from future service.

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

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

Every Soldier sentenced to confinement in the Quarter Guard or Defaulters' Room, or in a Solitary Cell, or in any other place of imprisonment, shall forfeit all claim to pay and allowances during such confinement, and shall be entitled to receive subsistence only according to the rates laid down in the Regulations.

ARTICLE 82.

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

provisions of these Articles of War, and shall have the like powers.

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

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

Clause 2.

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

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

Any Commanding Officer or other Officer holding a trial under this Article shall be deemed a Court Martial, and the words "Court Martial"

in these Articles of War, shall be deemed to include such Commanding Officer or other Officer holding a trial.

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

ARTICLE 117.

No person who shall have been acquitted or

No person to be tried a second time for the same offence.	convicted by a Court Martial of any offence, shall be liable to be tried a second time by the same
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or any other Court Martial for the same offence. Provided that any person may be tried for the offence of murder, and punished for that offence, notwithstanding he may have been tried and punished for the act which caused death, if at the time of his conviction for the said act, death shall not have resulted, or shall not have been known by the Court which passed sentence to have resulted.

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

ARTICLE 166.

The Regulations by which in any Presidency

Regulations respecting Bazar and Cantonment Police, and Panchayets declared in force.	the Office and powers of Commissariat Officers, or Officers in charge of the Police in any Cantonments, or Superintendents of Military Bazaars, are at present defined and controlled; or by which Panchayets are constituted and guided, shall continue to be in full force, and to be observed at the several Presidencies respectively.
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III. This Act shall be read and taken as part of the said Act XXIX. of 1861.

STATEMENT OF OBJECTS AND REASONS.

This Bill is intended to amend the Articles of War, Numbers 3, 32, 73, 78, 82, 117, and 166, as contained in Act XXIX. of 1861, and is based on the recommendation of the Government of India in the Military Department. The accompanying papers show the Articles as they stand in the Act,

contrasted with the same Articles as proposed to be revised. The Bill takes the form of a repeal of the existing Articles, and the substitution for them in Act XXIX. of 1861, of new Articles of the same numbers. A shorter form might have been adopted, especially in respect of Article 78, but it would not have been so clear and practically useful to the Military Authorities.

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

Article 166.—Certain words in this Article, namely, the words, “or by which jurisdiction is given to Courts Martial over offences committed by persons amenable to the Articles of War, within certain limits beyond or around Cantonments,” have effect in the Bombay Presidency alone, and appear to keep alive a Military jurisdiction under Regulation XXII. of 1827 of the Bombay Code; whereas it was the undoubted intention of the Legislature, under Article 124 of Act XXIX. of 1861, to provide that any offence committed by any Officer or Soldier within the jurisdiction of any Criminal Court in India, and triable by such Court, should be tried by such Court only. But these words in Article 166 appear to be inconsistent with that intention, and the Bombay Government desire the removal of all doubt by the omission of the words from Article 166, and the Military Authorities and Government of Madras, as well as the Commander in Chief and the Supreme Government, assent to the omission. The Honorable Mr. Erskine has also suggested, with the approval of the government of Bombay, the repeal of parts of Regulation XXII. of 1827, and the whole of Regulation II. of 1829, of the Bombay Code.

Article 82.—Considerable doubt seems to have arisen as to the real meaning and intention of this Article; chiefly with respect to the powers of Officers in Command of Detachments. The subject was fully considered by the Military Authorities at the different Presidencies, and a suggested form of amendment, which was circulated by the Government of India, was assented to. The principal effect of the amendment is to define distinctly what Commanding Officer is meant in in the 4th paragraph of Article 82 of Act XXIX. of 1861, which now stands at the commencement of Clause 2 of the amended Article, and to give summary powers to an Officer Commanding a Detachment in a situation beyond the Sea, or out of the British Territories in India, or when on service in the Field; or in cases of emergency. In the 3rd paragraph a clerical error, which

appeared in the original Draft Articles sent from the Military Department in 1860, in all other copies of the Bill, and in Act XXIX. of 1861, is corrected by the introduction of the word “not” before “numerically” in the 3rd line.

Article 73.—This Article is only altered by the words “no sentence adjudging or involving forfeiture of additional pay,” being substituted for the words “no sentence including forfeiture of additional pay,” and the words, “sanctioned by the Commander in Chief,” being substituted for the words “confirmed by the Commander in Chief.” The reasons for these changes appear in the letter from the Adjutant General, Fort Saint George, dated 20th March 1862, to the Secretary to the Government of India.

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

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

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

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

(Signed) HENRY S. MAINE.

The 10th December 1862.

M. WYLIE,

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