

THE



Bombay Government Gazette.

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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 12th January 1893:—

Bill No. 1 of 1893.

A Bill for Settling Bonds of the Municipal Corporation of the City of Bombay producing an annual income of one lakh and twenty-five thousand rupees and a Mansion-house and hereditaments called "Petit Hall" in the Island of Bombay, the property of Sir Dinshaw Manockjee Petit, Baronet, so as to accompany and support the title and dignity of a Baronet lately conferred by Her Present Majesty Queen Victoria on him for and during the term of his natural life, and from and immediately after his decease to hold to his second son, Framjee Dinshaw Petit, Esquire, and the heirs male of his body lawfully begotten, and in default of such issue with remainder to the heirs male of the body of the said Sir Dinshaw Manockjee Petit and for other purposes connected therewith.

WHEREAS by Letters Patent of Her Majesty Queen Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, dated at Westminster on or about the first day of September in the fifty-fourth year of Her Reign, and by Warrant under the Queen's sign-manual, Her said Majesty made known that she, of Her special Grace, certain knowledge and mere motion, had erected, appointed and created her trusty and well beloved Sir Dinshaw Manockjee Petit, of "Petit Hall," in the Island of Bombay,

Knight, to the dignity, state and degree of a Baronet, and him, the said Sir Dinshaw Manockjee Petit for Her Majesty, her heirs and successors, she did erect, appoint and create a Baronet of the United Kingdom of Great Britain and Ireland by the said Letters Patent, to hold to him, for and during the term of his natural life, and from and immediately after his decease to hold to Framjee Dinshaw Petit, Esquire, second son of the said Sir Dinshaw Manockjee Petit, and the heirs male of his body lawfully begotten and to be begotten, and in default of such issue with remainder to the heirs male of the body of the said Sir Dinshaw Manockjee Petit lawfully begotten and to be begotten;

And whereas in fulfilment of an engagement in that behalf made with Her Majesty's Government the said Sir Dinshaw Manockjee Petit is desirous of settling in perpetuity such property on himself and on the said Framjee Dinshaw Petit and the heirs male of their respective bodies who may succeed to the said Baronetcy, as shall be adequate to support the dignity of the title conferred on him and them as aforesaid;

And whereas the said Sir Dinshaw Manockjee Petit is seised of a Mansion-house and hereditaments situate in the Island of Bombay called "Petit Hall," and has an absolute estate of inheritance therein, and is desirous, in fulfilment of the aforesaid engagement, of settling bonds or debentures of the Municipal Corporation of the City of Bombay producing an annual income of one lakh and twenty-five thousand rupees, and the said Mansion-house and hereditaments, to the uses, upon the trusts and for the purposes hereinafter limited and declared, concerning the same respectively;

And whereas the said Sir Dinshaw Manockjee Petit is also desirous that the said Framjee Dinshaw Petit and the heirs male of his body, and also the heirs male of the body of the said Sir Dinshaw Manockjee Petit, to whom the said title and dignity of Baronet shall descend, shall, at the time of such descent upon them respectively, take and bear the names of "Dinshaw Manockjee Petit" in lieu of any other name or names whatever which they respectively may bear at the time of such descent on them respectively; and he is also desirous that the Accountant-General, Bombay, the Collector of Bombay and the Chief Presidency Magistrate, Bombay, all for the time being, shall be trustees of the aforesaid Municipal bonds, Mansion-house and hereditaments, and be likewise the trustees for carrying into execution the general purposes and powers of this Act, with relation to the same securities and also with relation to the same Mansion-house and hereditaments;

And whereas the said Sir Dinshaw Manockjee Petit is desirous of settling the said bonds and the said Mansion-house and hereditaments so as aforesaid agreed to be settled by him for the purpose of supporting the dignity of the said Baronetcy, to the uses, upon the trusts and for the purposes hereinafter limited and declared concerning the same respectively;

And whereas it is expedient that the aforesaid purposes should be effected by an Act of the Council of the Governor General making Laws and Regulations;

It is enacted as follows:—

1. That Arthur Frederick Cox, Esquire, the Accountant-General of Bombay, James MacNabb Campbell, Esquire, the Collector of Bombay, and Charles Philip Cooper, Esquire, the Chief Presidency Magistrate of Bombay, and their successors, the Accountant-General of Bombay, the Collector of Bombay, and the Chief Presidency Magistrate of Bombay, for the time being, shall be and they are hereby created a Corporation with perpetual succession and a common seal under the style and title of "The Trustees of the Dinshaw Manockjee Petit Baronetcy," and that the said Arthur Frederick Cox, James MacNabb Campbell, and Charles Philip Cooper, and their said successors (hereinafter styled "The Corporation," shall be and they are hereby constituted, as such Corporation, the Trustees for executing the powers and purposes of this Act.

2. The said Framjee Dinshaw Petit and the heirs of Sir Dinshaw Manockjee Petit to take his name. heirs male of his body and all other the heirs male of the body of the said Sir Dinshaw Manockjee Petit, to whom the said title and dignity shall descend, pursuant to the limitations of the Patent whereby the said dignity was granted, shall take upon themselves respectively the names of "Dinshaw Manockjee Petit" in lieu and in the place of any other name or names whatever; and the said Framjee Dinshaw Petit and also such heirs male of his body and all such other the heirs male of the said Sir Dinshaw Manockjee Petit severally and successively, shall be called by the names of "Dinshaw Manockjee Petit," and by those names shall name, style and write themselves, respectively, upon all occasions whatever.

3. Immediately from and after the passing of this Act, bonds of the Municipal Corporation of the City of Bombay producing an annual income of not less than one lakh and twenty-five thousand rupees shall be transferred into the name of the Corporation, who shall hold the same upon the trusts and for the purposes hereinafter expressed concerning the same, (that is to say,) upon trust to continue to hold the said bonds until the same shall be discharged by the Municipal Corporation of the City of Bombay or shall be sold by the said Trustees at their discretion, and on such discharge or sale to invest the sum to be received on such occasion in or on any stocks, funds or securities of or the principal or interest of which is guaranteed by the Government of the United Kingdom of Great Britain and Ireland or the Government of India; and in like manner, as often as the same shall become necessary, to alter, vary and change such stocks, funds and securities for others of the same or like nature; and upon further trust from time to time to pay and apply the dividends, interest and annual income of the said bonds, stocks, funds and securities unto and for the benefit of the said Sir Dinshaw Manockjee Petit during his natural life; and from and immediately after his decease for the benefit of the said Framjee Dinshaw Petit if he shall survive the said Dinshaw Manockjee Petit during his natural life; and from and immediately after the death of the survivor of them the said Sir Dinshaw Manockjee Petit and Framjee Dinshaw Petit for the benefit of the person who, as heir male of the body of the said Framjee Dinshaw Petit or of the said Sir Dinshaw Manockjee Petit, as the case may be, shall for the time being have succeeded to and be in the enjoyment of the title of Baronet conferred by the said Letters Patent as aforesaid notwithstanding any rule of law or equity to the contrary, and upon failure and in default of heirs male of the body of the said Framjee Dinshaw Petit and Sir Dinshaw Manockjee Petit, to whom the same title and dignity of Baronet may descend, upon trust for the said Sir Dinshaw Manockjee Petit, his executors, administrators and assigns, which ultimate remainder or reversion it shall be lawful for the said Sir Dinshaw Manockjee Petit, his executors, administrators and assigns, at any time or times, during the continuance of the said title and dignity of Baronet, and until there shall be a failure of heirs male of the body of the said Sir Dinshaw Manockjee Petit as aforesaid to assign, transfer, bequeath and dispose of by deed or will or other assurance or assurances.

4. The Corporation during the minority of any person for the time being entitled to and in enjoyment of the said dignity of Baronet under the limitations of the said Letters Patent shall pay and apply for and towards the maintenance, education and benefit of such Baronet, in each and every year during such his minority as aforesaid, so much only of the annual interest, dividends and income of the said Trust Funds and premises as the Corporation shall in their discretion think proper, and shall from time to time invest the residue of the said annual dividends, interest and income of the said Trust Funds and

premises in and upon stocks, funds and securities of or the principal or interest of which is guaranteed by the Government of the United Kingdom of Great Britain and Ireland or the Government of India, and shall upon such Baronet attaining his majority pay over, transfer and assign to him or as he shall direct and for his absolute benefit the said investments and all accumulations thereof.

5. The Mansion-house and other hereditaments called "Petit Hall" situate in the Island of Bombay, with their rights, members and appurtenances, of which the said Sir Dinshaw Manockjee Petit is seised to him and his heirs, shall, by force of this Act, from and immediately after the passing thereof, stand limited unto and to the use of the Corporation upon the trusts hereinafter declared, (that is to say,) upon trust for the said Sir Dinshaw Manockjee Petit for and during the term of his natural life and from and immediately after his decease upon trust for the said Framjee Dinshaw Petit for and during the term of his natural life, provided he shall survive the said Sir Dinshaw Manockjee Petit, and from and immediately after the decease of the survivor of them the said Sir Dinshaw Manockjee Petit and Framjee Dinshaw Petit upon trust for the heirs male of the body of the said Framjee Dinshaw Petit who may succeed to the title of Baronet conferred by the said Letters Patent as aforesaid, and, upon failure and default of heirs male of the body of the said Framjee Dinshaw Petit to whom the same title and dignity of Baronet may descend as aforesaid, upon trust for the heirs male of the body of the said Sir Dinshaw Manockjee Petit who may succeed to the said title, and upon failure and default of such last-mentioned heirs male upon trust for the said Sir Dinshaw Manockjee Petit, his heirs and assigns for ever, which ultimate remainder or reversion it shall be lawful for the said Sir Dinshaw Manockjee Petit and his heirs and assigns at any time or times during the continuance of the said title and dignity of Baronet, and until there shall be a failure of heirs male of the body of the said Sir Dinshaw Manockjee Petit, as aforesaid, to grant, convey, devise and dispose of by deed or will or by any other assurance or assurances by which such an estate in remainder or reversion is capable by law of being conveyed or disposed of by Parsee inhabitants of British India.

6. Provided always that in case any person to whom for the time being the said title of Baronet shall have descended shall, for the space of one whole year after he shall by virtue of this Act become entitled to the dividends, interest and income of the said stocks, funds and securities, or to the possession or receipt of the rents and profits of the said hereditaments, or being then under age shall for the space of one whole year after he shall attain the age of twenty-one years, refuse or neglect to use the names of "Dinshaw Manockjee Petit" as hereinbefore enacted, or in case any such person having so used those names shall, for the space of six calendar

months consecutively during his natural life, discontinue so to use such names, then, in any or either of the said cases, the estate or interest in the said trust funds and premises of the person who shall so refuse or neglect to use or having used shall so discontinue to use the said names of "Dinshaw Manockjee Petit" shall during the remainder of his respective natural life be suspended; and that during any and every such suspension, the dividends, interest and income of the said stocks, funds and securities, and the possession and actual occupation and also the rents and profits of the said hereditaments shall devolve and belong to the person who, as heir male of the body of the said Framjee Dinshaw Petit or the said Sir Dinshaw Manockjee Petit, as the case may be, would have succeeded to and been in the enjoyment of the title of Baronet conferred by the said Letters Patent in case the person so refusing or neglecting to use or discontinuing to use the said names of "Dinshaw Manockjee Petit" had departed this life; but if there should be no such heir male, then to the person or persons who would be entitled to the same in case there had then been a total failure of issue male of the said Sir Dinshaw Manockjee Petit.

7. It shall be lawful for the said Sir Dinshaw Manockjee Petit and Framjee Dinshaw Petit, and for any person upon whom the said title of Baronet shall from time to time descend when in the actual enjoyment of the said title and who shall not refuse, neglect or discontinue to use, for the respective periods hereinbefore in that behalf mentioned, the said names of "Dinshaw Manockjee Petit" as hereinbefore enacted, either before or after his marriage with any woman or women by any deed or deeds, writing or writings, with or without power of revocation to be by him sealed and delivered in the presence of two or more credible witnesses (but subject and without prejudice to any annuity or annuities, if any, which shall be then subsisting and payable by virtue of any appointment made under and in pursuance of this present power), to limit and appoint unto any woman or women whom he shall marry for her or their life or lives, and for her or their jointure or jointures in bar of dower or other legal or customary rights any annuity or yearly sum not exceeding the sum of ten thousand rupees, clear of all taxes, charges and deductions, whatsoever to commence and take effect immediately after the decease of the person limiting or appointing the same and to be issuing and payable out of the dividends, interests and annual income of the said stocks, funds and securities, and to be paid and payable by equal half-yearly payments on the thirtieth day of June and the thirty-first day of December, the first of the said half-yearly payments to be made on the half-yearly day which shall first happen after the decease of the person who shall have appointed such annuity or yearly sum: Provided always that in case any person on whom such title shall descend shall have refused or neglected to use the names of "Dinshaw Manockjee Petit" or shall discontinue to use such names for six calendar months consecutively during his natural life, every such limitation and appointment, either previously or afterwards made by him, shall be and become inoperative and invalid, and

no such annuity thereby created or appointed shall take effect or be payable, or chargeable, on the said stocks, funds and securities, notwithstanding any such limitation or appointment.

8. Provided always that the said dividends, interest and annual income of the said stocks, funds and securities shall not at one and the same time be subject to the payment of more than the yearly sum of twenty thousand rupees for or in respect of any jointure or jointures which shall be made in pursuance of the power hereinbefore contained, so that if by virtue of or under the same power the said dividends, interest and annual income would, in case this present provision had not been inserted, be charged at any one time with a greater yearly sum for jointures in the whole than the yearly sum of twenty thousand rupees, the yearly sum which shall occasion such excess or such part thereof as shall occasion the same shall during the time of such excess abate and not be payable.

9. The said Mansion-house and hereditaments called "Petit Hall," with their rights, members and appurtenances, shall not be subject to any right, interest or estate whatsoever which the wife of the said Sir Dinshaw Manockjee Petit or Framjee Dinshaw Petit or the wives of any of the persons who shall successively become entitled thereto may or might have or claim to have in the said Mansion-house and hereditaments under any custom or law of the Parsees, or otherwise howsoever.

10. Save as regards the ultimate remainders or reversions, hereinbefore limited in trust for the said Sir Dinshaw Manockjee Petit, his heirs, executors, administrators and assigns respectively, so long as the said title and dignity of Baronet shall endure, and until there shall be a failure of heirs male of the body of the said Sir Dinshaw Manockjee Petit, to whom the said title and dignity of Baronet might descend pursuant to the limitations of the Patent whereby the said dignity was granted, neither the said Sir Dinshaw Manockjee Petit nor the said Framjee Dinshaw Petit, nor any of the heirs male of their respective bodies in whose favour trusts are hereinbefore declared of the dividends, interest and annual income of the said bonds, stocks funds and securities or of the said Mansion-house and hereditaments called "Petit Hall," shall transfer, dispose of, alien, convey, charge or encumber the said bonds, stocks, funds, and securities or any part thereof, or the dividends, interest and annual income thereof or of any part thereof, or the said Mansion-house or hereditaments, or any part thereof, for any greater or larger estate, interest or time than during his natural life, and for such portion thereof only as he shall continue to use the names of "Dinshaw Manockjee Petit," nor shall any such person as aforesaid either alone or jointly with any other or others of them or with any other person or persons whomsoever have any power to discontinue or bar the estates tail hereinbefore limited in trust for the heirs male of the respective

bodies of the said Framjee Dinshaw Petit and Sir Dinshaw Manockjee Petit, or either of them, or any estate or interest hereby or herein created or declared in trust or for the benefit of any person or persons for whose benefit trusts are declared by this Act of the dividends, interest and annual income of the said bonds, stocks funds and securities, or of the said Mansion-house hereditaments and the rents and profits thereof, or to prevent any such person or persons from succeeding to, holding or enjoying, receiving or taking the same premises according to the true intent of the provisions hereinbefore contained, nor shall the same premises or any of them be held by any Court of law or equity to have vested in any such person as aforesaid for any greater estate or interest than during his life and only during such portion thereof as he shall continue to use the names of "Dinshaw Manockjee Petit," and every attempt to make any conveyance, assignment or assurance contrary to the intention of this Act shall be, and is hereby, declared and enacted to be void.

11. If at any time or times hereafter the said Sir Dinshaw Manockjee Petit or any other person or persons shall be desirous of augmenting the funds and securities for the time being subject to the trusts of this Act, and for that purpose and with that intent shall at his or her own expense transfer and deliver to the Corporation any stocks, funds or securities of or the principal or interest of which is guaranteed by the Government of the United Kingdom of Great Britain and Ireland or the Government of India, then and as often as the same shall happen the said Corporation may, with the previous consent of the Governor of Bombay in Council, accept such stocks, funds and securities, and the same shall thenceforth be held by the said Corporation upon the same trusts as are declared by this Act with regard to the said bonds of the Municipal Corporation of the City of Bombay, or upon such of them as shall then be subsisting and capable of taking effect.

12. With the previous consent of the Governor of Bombay in Council it shall also be lawful for the said Sir Dinshaw Manockjee Petit, and for every person on whom the said title and dignity of Baronet shall descend, and for any other person or persons to appropriate to the further support of the dignity of the title of Baronet conferred by the said Letters Patent any immovable property in the Presidency of Bombay suitable for that purpose, and wherein he, she or they shall possess an absolute estate of inheritance free from incumbrances, and upon every such occasion it shall be lawful for the Governor of Bombay in Council by a resolution of the Government of Bombay to declare that any such immovable property shall be held by the Corporation upon the trusts declared by this Act, in which case such last-mentioned immovable property shall thenceforth by virtue of this Act be vested in the Corporation upon the said trusts or such of them as shall then be subsisting or capable of taking effect in the same manner and to the same effect as if such immovable property had originally been included and described in this Act.

13. The Corporation shall keep the said Mansion-house called "Petit Hall," and all the out-buildings and offices thereof, and also all other messuages or buildings

Insurance of Mansion-house, and application of moneys received in respect of insurance.

which may from time to time be added thereto or substituted therefor, or which may hereafter become subject to any of the trusts of this Act, adequately insured in the name of the said Corporation or of the persons for the time being constituting the same against loss or damage by fire, and may apply any portion of the income of the funds for the time being subject to the trusts of this Act to that purpose, and in case the hereditaments and premises so insured or any part thereof shall be destroyed or damaged by fire, the moneys received in respect of such insurance shall either be laid out under the direction of the said Corporation in re-building or reinstating the hereditaments and premises so destroyed or damaged by fire, or, upon the application of the person for the time being entitled to and in the enjoyment of the said dignity of Baronet and with the consent of the Governor of Bombay in Council, to be notified by a resolution of the Government of Bombay, may be laid out in the purchase of other hereditaments in the Presidency of Bombay suitable for the support of the dignity of the said title, in which last-mentioned case the hereditaments so purchased shall immediately from and after the completion of the purchase thereof be and become subject to the uses and trusts of this Act or such of them as shall then be subsisting and capable of taking effect in the same manner and to the same effect as if such last mentioned hereditaments had expressly been named or described in the fifth section of this Act. Until such insurance moneys shall have been so laid out the Corporation may invest the same or any part thereof in any of the Government securities specified in section 17.

14. The said Mansion-house and premises called "Petit Hall," and all additions thereto, and also all other messuages and hereditaments which from

Mansion-house and other hereditaments to be kept in repair.

time to time may be or become subject to the trusts declared by this Act, or any of them, shall be kept in good repair, order and condition by and at the expense of the person for the time being in the enjoyment of the title of Baronet conferred by the said Letters Patent, and in case any such person shall at any time neglect or refuse to keep the said Mansion-house, hereditaments and premises or any of them in such good order and condition, it shall be lawful for the Corporation to keep or cause the same to be kept in good order and condition and to defray the expense incident thereto from the income of the funds for the time being subject to the provisions of this Act.

15. The Corporation shall hold the said Mansion-house and hereditaments known as "Petit Hall," and also any other hereditaments for the time being vested in them by

Power of Corporation to sell or exchange Mansion-house or other hereditaments.

virtue of this Act, upon trust with the consent of the person entitled to and in the actual enjoyment of the title of Baronet conferred by the said

Letters Patent, and with the consent of the Governor of Bombay in Council to be notified as aforesaid, to sell or exchange for other lands or hereditaments in the Presidency of Bombay the said Mansion-house and hereditaments, and also any other such hereditaments as aforesaid, and upon any such exchange to give or receive any money for equality of exchange.

16. And it is hereby declared that any such sale as aforesaid may be

Powers of Corporation in respect of such sale or exchange.

made either by public auction or private contract, and that the Corporation may make any stipulations as to title or evidence or commencement of title or otherwise in any conditions of sale or contract for sale or exchange of the said hereditaments or any part thereof, and may buy in or rescind or vary any contract for sale or exchange and re-sell or re-exchange without being responsible for any loss occasioned thereby.

17. And it is hereby declared that the said Corporation shall receive

Investment of moneys received on such sale or exchange.

all moneys which may become payable upon any such sale or exchange as aforesaid, and with all convenient speed invest the same either in the purchase of any stocks, funds or securities of or the principal and interest of which is guaranteed by the Government of the United Kingdom of Great Britain and Ireland or the Government of India, or in the purchase of other lands or hereditaments situate in the Presidency of Bombay and suitable for the support of the dignity of the said title, yet so as that every such purchase of lands or hereditaments be made with the consent in writing of the person then entitled to and in the actual enjoyment of the said title.

18. And it is hereby declared that the stocks, funds and securities and

Investments and lands resulting from such sale or exchange to be held on trusts declared by this Act.

the lands or hereditaments, respectively, so to be purchased or taken in exchange as aforesaid shall from and immediately after the completion of the purchase or exchange thereof, respectively, be held upon the trusts in and by this Act declared of and concerning the said bonds of the Municipal Corporation for the City of Bombay and the said Mansion-house and premises called "Petit Hall," respectively, or such of them, respectively, as may then be subsisting and capable of taking effect.

19. It shall be lawful for the Corporation out

Reimbursement of expenses of Corporation.

of the money which shall come to their hands by virtue of the trusts and provisions of this Act to retain and reimburse themselves all costs, damages and expenses which they shall or may sustain, expend or disburse in or about the execution of the aforesaid powers, trusts and provisions, or in relation thereto.

20. Saving always to the Queen's Most

Saving existing rights.

Excellent Majesty, Her heirs and successors, and to all and every other person and persons, bodies politic and corporate, and his, her and their respective heirs, successors, executors and administrators

and every of them (other than and except the said Sir Dinshaw Manockjee Petit, his devisees, heirs and assigns), all such estate, right, title, interest, claim and demand whatsoever of, into, out of or upon the said Mansion-house and hereditaments called

“Petit Hall,” or any part or parts thereof, as they, every or any of them, had before the passing of this Act, and would, could or might have had, held or enjoyed in case this Act had not been passed.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to settle the endowment of the Baronetcy conferred on Sir Dinshaw Manockjee Petit.

It has been framed on the lines of Act XX of 1860 and has been settled in concert with Sir Dinshaw's advisers and the Government of Bombay.

The 11th January 1893.

(Signed) ALEX. EDW. MILLER.

J. M. MACPHERSON,
Offg. Secretary to the Government of India.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 12th January 1893 :—

Bill No. 2 of 1893.

Bill to amend the Presidency Small Cause Courts Act, 1882.

WHEREAS it is expedient to amend the Presidency Small Cause Courts Act, 1882 ; It is hereby enacted as follows :—

1. (1) This Act may be called the Presidency Small Cause Courts Act, 1893 ; and

(2) It shall come into force on the first day of

2. (1) For the proviso to the first paragraph of section 7 of the Presidency Small Cause Courts Act, 1882, herein referred to as "the said Act," the following shall be substituted, namely :—

"Provided that no person shall be appointed to be a Judge of such Court, or be authorised to exercise the powers of a Judge of such Court, unless he is of five years' standing—

(a) as a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland, or

(b) as an advocate, vakil or attorney of a High Court of Judicature established under the Indian High Courts Act, 1861, or

(c) as a Judge of a Court of Civil Judicature, or

(d) partly in one and partly in another of such capacities :

and that no person other than a barrister, member of the Faculty of Advocates or advocate of a High Court of such standing as aforesaid shall be appointed to be Chief Judge of such Court."

(2) The last paragraph of section 7 of the said Act is hereby repealed.

Substitution of new section for section 9, Act XV, 1882, and temporary continuance of existing procedure and practice.

"9. (1) The High Court may from time to time, by rules having the force of law,—

(a) prescribe the procedure to be followed and the practice to be observed by the Small Cause Court either in supersession of or in addition to any provisions which were prescribed with respect to the procedure or practice of the Small Cause Court on or before the thirty-first day of December 1892, in or under the Presidency Small Cause Courts Act, 1882, or any other enactment for the time being in force, and

(b) cancel or vary any such rule or rules.

"Rules made under this section may provide, among other matters, for the exercise by one or more of the Judges of the Small Cause Court of any powers conferred on the Small Cause Court by this Act or any other enactment for the time being in force."

(2) The law, and any rules and declarations made, or purporting to be made, thereunder, with respect to procedure or practice, in force, or treated as in force, in the Small Cause Court on the thirty-first day of December 1892, shall be in force, unless and until cancelled or varied by rules made by the High Court under this section.

4. After section 18 of the said Act the following shall be added, namely :—

18A. The Small Cause Court may allow a plaintiff to abandon a suit against defendant resident out of jurisdiction, which a several liability is alleged on a cause of action arising either wholly or in part within the local limits of the jurisdiction of the Court to abandon the suit as against any defendant who does not reside or carry on business or personally work for gain within such local limits, and to sue for a decree against such defendants only as do so reside, carry on business or personally work for gain."

5. After section 19 of the said Act the following shall be added, namely :—

19A. When the right of a plaintiff and the relief claimed by him in the Small Cause Court depend upon the proof or disproof of any right to or interest in immoveable property or any other title which the Court cannot finally determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title. When the Court so returns a plaint, it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure and make such order with respect to costs as it may think just, and the Court shall, for the purposes of the Indian Limitation Act, 1877, be deemed to have been unable to entertain the suit by reason of defect of jurisdiction. When a plaint so returned is afterwards presented to a High Court, credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which according to the practice of the High Court are credited to the Government."

6. Section 23 of and the second schedule to the said Act are hereby repealed.

7. For Chapter VI of the said Act the following shall be substituted, namely :—

Substitution of new Chapter for Chapter VI, Act XV, 1882.

XV of 1882.

XV of 1882.

24 & 25 Vict.,
. 104.

XV of 1882.

XIV of 1882.

XV of 1877.

"CHAPTER VI.

"NEW TRIALS AND APPEALS.

"37. Save as otherwise provided by this Chapter or by any other enactment for the time being in force, every decree and order of the Small Cause Court in a suit shall be final and conclusive.

"38. Where a suit has been contested, the Small Cause Court may, on the application of either party, made within eight days from the date of the decree or order in the suit (not being a decree passed under section 522 of the Code of Civil Procedure), order a new trial to be held, or alter, set aside or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings:

Provided that nothing in this section shall apply to any suit in which an appeal to the High Court would lie under the next section of this Act.

Explanation.—Every suit shall be deemed to be contested in which the decree is made otherwise than by consent of or in default of appearance by the defendant.

"39. Save as otherwise provided by any enactment for the time being in force, an appeal shall lie to the High Court from every decree of the Small Cause Court made in any suit of which the amount or value of the subject-matter exceeds one thousand rupees.

"40. (1) When hearing any suit in which an appeal from the decree to be made therein would lie under the last foregoing section to the High Court, the Judge of the Small

Cause Court shall record a memorandum of the substance of the evidence and a statement of the grounds of his decision.

"(2) The period of limitation for an appeal to the High Court under the last foregoing section shall be the same as that provided by law for an appeal from a decree of the High Court in the exercise of its original jurisdiction, and the High Court shall have all the same powers and jurisdiction in respect of and incidental to every such appeal as if it were an appeal from a decree of such Court in the exercise of such original jurisdiction."

8. In the construction of section 14 of the said Act the investigation of any claim preferred to or objection made to the attachment of any property attached in execution of a decree of the Small Cause Court shall be deemed to be the trial of a suit.

9. Notwithstanding anything contained in Chapter X of the Presidency Small Cause Courts Act, 1882, the Local Government may, with the previous sanction of the Governor General in Council, declare by notification in the local official Gazette—

- (1) that the fees to be levied on plaints presented to the Small Cause Court shall be regulated by Chapter III and Schedule I of the Court-fees Act, 1870; or
- (2) that the fees to be levied for serving or executing processes issued by the Small Cause Court or served or executed under its direction or control shall be regulated by Chapter IV of the Court-fees Act, 1870;

and thereupon the fees leviable on plaints or for processes, as the case may be, shall be regulated accordingly.

STATEMENT OF OBJECTS AND REASONS.

1. THE object of section 2 of the Bill for the introduction of which leave is asked is to determine, more precisely than Act XV of 1882 does, the qualifications of the persons who may be appointed to be, or to exercise the powers of, Judges of Presidency Courts of Small Causes.

2. The effect of section 3 will be to leave to the High Court all powers of making rules with respect to the procedure and practice of Presidency Small Cause Courts.

It is based on the opinion expressed, by the Honourable the Chief Justice and Judges of the High Court of Judicature at Fort William in Bengal, in the following paragraph of their Registrar's letter No. 1383, dated the 1st June 1891:—

"2. It seems to the Judges convenient, in the first place, to advert to the enquiry contained in the twelfth paragraph of your letter under reply, and I am to say, with reference thereto, that they concur with His Excellency in Council in thinking that it is desirable, while retaining the Code of Civil Procedure as a basis, to have the procedure of the Small Cause Court regulated by the High Court. The exact application of the provisions of the Statute 44 and 45 Victoria, chapter 68, section 27, would not, the Judges think, quite attain the desired object. They presume, however, that that enactment has been referred to rather as furnishing an analogy than as providing an exact precedent, and they desire, therefore, to recommend that the High Court be empowered to frame by rules having the force of law a procedure for the Small Cause Court either in supersession of or in addition to, the provisions of the Civil Procedure Code, and from time to time to modify such procedure as experience may suggest. The undertaking is no doubt one of considerable difficulty; but the Judges are prepared to accept the responsibility, being satisfied that this is the most practical mode of arriving at a procedure which shall be found satisfactory and adapted to the purposes of the Small Cause Court."

3. Section 4 of the Bill has been suggested by the following remarks in a letter addressed to the Government of Bombay by Mr. W. E. Hart, Chief Judge of the Court of Small Causes, Bombay:—

"16. In regard to the amendment of the present Act, we think that section 18 should be so amended as to enable the Court to allow a plaintiff at or before the first hearing to strike out the name of any defendant

resident beyond the jurisdiction, and take a decree against such defendants as are resident within the jurisdiction, in such suits as there is a several liability, on a cause of action arising within the jurisdiction.

"17. It not unfrequently happens that a plaintiff, in the belief that all his defendants are resident within the jurisdiction, files a suit against them, without previously obtaining the leave of the Court, on a cause of action arising wholly within the jurisdiction, on which they are jointly and severally liable. But when he comes to serve them with the summons he finds that, though some are still resident within the jurisdiction, others had left Bombay before the institution of the suit, and cannot be shown to have acquiesced in it. As the law at present stands, the suit must now wholly fail against all the defendants and the plaintiff be put to the expense of instituting a new suit (if it be not time-barred) either against all the defendants, after obtaining the leave of the Court, or against the resident defendants only without such leave. But in many cases the plaintiff is too late even to adopt this course, and loses his whole claim, the new suit being barred by limitation. The proposed amendment, which could be introduced by means of a proviso after clause (c), would enable him to obtain a decree in the original suit at least against the resident defendants."

In order, however, to prevent cases of improper severance it is provided that the plaintiff must purchase this privilege by abandoning his claim against the non-resident defendants.

4. Section 5 of the Bill based on section 23 of the Provincial Small Cause Courts Act, 1887, has reference to the following remarks in Mr. Hart's letter already referred to:—

"20. On the question of jurisdiction, moreover, some of my colleagues with myself are of opinion that section 19 should be so amended as to debar this Court from the cognizance of suits involving any *question* of title to immoveable property. Clauses (d), (e), (f) and (g) prevent us from entertaining suits for the *determination* of rights in immoveable property. One object of this doubtless is to prevent the time of a Small Cause Court, which ought to be occupied in the speedy determination of petty litigation, being taken up by the protracted hearings generally involved in adjudication on questions of title to immoveable property, which, though insignificant in themselves, may have far-reaching consequences, and are therefore generally keenly contested and can very rarely be summarily disposed of. But under the present law an equal amount of time is liable to be lost over a suit (e.g. for rent, in which the defendant raises a question of title. Some of us think, having regard to the general policy of section 19 and to the anomaly involved in obliging a Court expressly debarred from jurisdiction to determine rights in immoveable property yet to determine questions indirectly involving such rights, which moreover in many instances are doubtless tentatively raised for the very purpose of obtaining indirectly the decision directly forbidden by the Legislature, that so soon as the Court is assured that there is a *bonâ fide* question of title involved in any suit it should be enabled to decline the jurisdiction. This it could do if to clause (g) were added some such words as 'or in which any question arises involving any such right or interest.'

"21. I ought to add, however, that on this particular point we are not unanimous. The Fourth Judge, Mr. Hormusji Dadabhoj, whose opinion has a peculiar value as that of an officer of long experience, both as a pleader and a Judge in this Court, considers that the amendment of section 19 ought to be rather in the direction of extending than of curtailing the jurisdiction of this Court, because the restrictions already imposed have the effect of denying justice to poor litigants with small claims on those causes of action in which jurisdiction is withheld from this Court who are unable to incur the expense of a High Court suit. I had better quote his own words:—

'As suggestions have been invited on other matters, I take this opportunity of prominently bringing to the notice of Government a serious defect in the existing law. Section 29 of Act XV of 1882, among other things, bars the cognizance of the following classes of suits:—

- (1) suits for the recovery of immoveable property;
- (2) suits for the determination of any other right to immoveable property;
- (3) suits for general average loss and suits on policies of insurance on sea-going vessels;
- (4) suits for a dissolution of partnership or for an account of partnership transactions;
- (5) suits for compensation for libel, slander, malicious prosecution or breach of promise of marriage.

'These suits are not filed in the High Court, for the obvious reason that the aggrieved parties could not afford the luxury of a High Court action. The result is a practical denial of justice in such cases. The Court had jurisdiction to entertain these demands, but it was taken away by the Act of 1882.'

"22. The great objection—to my mind an insuperable one—to Mr. Hormusji's suggestion is that without a material addition to its strength the Court could not undertake the disposal of such cases and remain what it was originally intended to be—a Court of summary procedure for the speedy determination of petty litigation. As it is at present constituted the Judges have not time for the trial of lengthy cases, nor is there in the office an establishment sufficient for the taking of long and complicated accounts. It is true that under the old Act we used to try some of the cases mentioned by Mr. Hormusji from the cognizance of which we are debarred by our present Act. But my experience of such cases was that they invariably took several days in trial. By the present Act our monetary jurisdiction was doubled. This, coupled with the annually increasing litigation in our Court, so increased the work, while no increase of the staff was contemplated, that it was absolutely necessary to limit as much as possible that class of cases which took the longest time to try. It is this consideration, I apprehend, that lies at the bottom of the restriction imposed upon our jurisdiction by section 19. Having in view the general utility of our Court to the public at large in its primary and most necessary character of a Court of summary procedure for the cheap, speedy and final determination of petty litigation, which is mostly concerned with the recovery of small debts, though I yield to none in the desire to afford cheap justice to all, I should, in the interests of the majority of litigants, be most unwilling to adopt Mr. Hormusji's suggestion to extend the jurisdiction of this Court so as to include cases of this class, except upon the terms of an addition to the staff of Judges and the strength of the office establishment. But if this cannot be given, and it should be thought right to give effect to Mr. Hormusji's proposal in the interest of those poor plaintiffs who are unable to meet the expense of a High Court suit in petty cases of ejection, etc., I think it would be found necessary to reduce the pecuniary limit of the jurisdiction of the Court in order to enable it to deal with the increase of work so occasioned."

5. The amendment of section 38 of the Act contained in section 7 of the Bill is suggested by the following paragraph of the letter from Mr. Hart to which reference has already been made:—

“23. Another suggestion, in which we are unanimous, is that section 37 should be so amended as to make it apparent that the limitation of eight days within which application must be made for a new trial is not to be applied in the case of decrees and orders made *ex parte* or to decrees and dismissals by default. As the section stands, it apparently overrides the previous enactment of the Limitation Act, which allows a longer period in the case of a suit determined *ex parte* for an application for a new trial. Construed literally, too, in the case of a decree *ex parte*, it would be necessary for the defendant to apply within eight days of the date of the decree, though he may not come to know of the existence of the suit till long after the expiration of that time. I think the insertion of the word ‘contested’ before the word ‘suit,’ wherever the latter occurs in section 37, would suffice to give effect to our recommendation. Applications for re-hearing in uncontested matters would then fall within the general law of limitation as regards the time within which they must be made. But of course the Court would still exercise a discretion as to refusing them when made unless satisfied that there were sufficient grounds for the non-appearance of the party making it, and the mere fact of the application would not necessarily operate in stay of execution.”

6. The other provisions of section 7 of the Bill are founded upon the following paragraph of a letter, No. 1774 (Judicial), dated the 3rd September 1891, from the Government of Madras:—

“3. It will be observed from the letters of the authorities consulted that there is a general consensus of opinion that—

- (1) the Small Cause Court should retain the power it at present possesses of trying summarily suits between Rs. 1,000 and Rs. 2,000 in value;
- (2) there should be an appeal to the High Court in the case of all suits exceeding Rs. 1,000 in value;
- (3) sections 38 to 40 of Act XV of 1882 should be repealed.

With these opinions His Excellency in Council is in complete accord, and the first in particular he strongly endorses. As regards the institution of regular appeals against decrees in suits valued at more than Rs. 1,000, I am to invite attention to paragraph 6 of the High Court's letter, from which it will be observed that the present system of recording notes of evidence in the Small Cause Court is considered sufficient for the purposes of the Appellate Court.”

7. Sections 8 and 9 of the Bill have been inserted at the suggestion of the Government of Madras.

The 11th January 1893.

(Signed) ALEX. EDW. MILLER.

J. M. MACPHERSON,
Offg. Secretary to the Government of India.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 12th January, 1893 :—

Bill No. 3 of 1893.

THE HABITUAL OFFENDERS BILL.

CONTENTS.

SECTION.

1. Title, extent and commencement.
2. Security for good behaviour of habitual offenders.
3. Power to order police surveillance instead of taking security for good behaviour.
4. Power to order police surveillance in default of security for good behaviour.
5. Power to declare convicted persons to be habitual offenders for the purposes of sections 6 and 7.
6. Power of convicting Court to order habitual offender to be placed under police surveillance in addition to sentence of imprisonment or transportation.
7. Power of Appellate Court to order police surveillance.
8. Appeal and revision in the case of orders for police surveillance.
9. Conferment, continuance and cancellation of powers.
10. Power to accept security for good behaviour in lieu of police surveillance.
11. Power to cancel order for police surveillance.
12. Power to make rules as to police surveillance.
13. Penalties for breach of rules.
14. Arrest of person under police surveillance found beyond prescribed limits.
15. Reports as to persons under police surveillance.
16. Trial of persons previously convicted of offences against coinage, stamp-law or property.
17. Amendment of Act X of 1882, section 349.
18. High Court's power of revision.
19. Power to require payment of compensation for injury caused by certain classes of offences against property.

A Bill to provide for the more effectual surveillance and control of habitual offenders, and for other purposes.

WHEREAS it is expedient to provide for the more effectual surveillance and control of habitual offenders, and for certain other matters hereinafter appearing;

It is hereby enacted as follows :—

1. (1) This Act may be called the Habitual Title, extent and com- Offenders Act, 1893. mencement.

(2) It extends to the whole of British India ; and

(3) It shall come into force on the

2. In section 110 of the Code of Criminal X of 1882.

Security for good be- Procedure, 1882, for the words "receives information that any person within the local limits of his jurisdiction is an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or that he habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury," the following shall be substituted, namely :— "receives information that any person within the local limits of his jurisdiction—

(a) is by habit a robber, house-breaker or thief, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or

(d) habitually commits mischief or extortion, or

(e) in order to the committing of extortion, habitually puts or attempts to put persons in fear of injury, or

(f) is of a character so desperate and dangerous as to render his being at large without security hazardous to the community."

3. When any Presidency Magistrate, District

Magistrate or Sub-divisional Magistrate, or any Magistrate of the first class specially empowered in this behalf by the

Local Government, has required any person referred to in section 110 of the Code of Criminal Procedure, 1882, as amended by this Act, to show cause why he should not be ordered to execute a bond X of 1882. for his good behaviour,

he may, if he shall think fit, instead of making an order under section 118 of that Code requiring such person to execute a bond as aforesaid, order that he be placed under police surveillance for any term not exceeding three years.

4. Should any person ordered under section 118

of the Code of Criminal X of 1882. Procedure, 1882, to give security for good behaviour fail to give such

security at or before the commencement of the period for which such security has been ordered to be given, the Magistrate who made the order requiring security may, instead of directing that the person be committed to, or detained in, prison under section 123 of the same Code, order that he be placed under police surveillance for any term not exceeding three years.

5. When any person is convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or

XLV of 1860.

Power to declare convicted persons to be "habitual offenders" for the purposes of sections 6 and 7.

upwards, and

(a) he is proved to have been previously convicted of any such offence, and

(b) the Court or Magistrate is satisfied, upon the evidence produced before him or it that he habitually commits crime, or depends on crime as a means of livelihood,

the Court or Magistrate may make an order declaring him, for the purposes of sections 6 and 7 of this Act, to be an habitual offender.

6. (1) Any High Court, Court of Session, Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, or any Magistrate of the first class specially empowered by the Local Government

Power of convicting Court to order habitual offender to be placed under police surveillance in addition to sentence of imprisonment or transportation.

in this behalf, may, if it or he shall think fit, when passing a sentence of imprisonment or transportation on an habitual offender, order that he be placed under police surveillance for any term not exceeding seven years from the date of the expiration of the sentence.

[Cf. Act X of 1882, s. 349.]

(2) Whenever a Magistrate of the first class who has not been specially empowered under subsection (1), or a Magistrate of the second or third class has passed a sentence of imprisonment on an habitual offender, and is of opinion that he ought to be placed under police surveillance on the expiration of the sentence, he may record the opinion and submit his proceedings, and forward the offender, to the District Magistrate or the Sub-divisional Magistrate to whom he is subordinate.

(3) The Magistrate to whom the proceedings are submitted may, if he shall think fit, examine the parties and recall and examine any witness who has already given evidence in the case, and call for and take any further evidence; and may, if he shall think fit, order that the offender be placed under police surveillance for any term not exceeding seven years from the date of the expiration of his sentence.

X of 1882.

7. An Appellate Court acting under clause (k)

Power of Appellate Court to order police surveillance.

of section 423 of the Code of Criminal Procedure, 1882, may, if it shall think fit, order that an habitual offender who has been sentenced to imprisonment or transportation be placed under police surveillance for any term not exceeding seven years from the date of the expiration of the sentence.

8. (1) Every order for police surveillance made under section 3 of this

Appeal and revision in the case of orders for police surveillance.

Act shall be subject to the same rights of appeal to and powers of revision by superior Courts and Magistrates as if it had been an order for security to be given made under section 118 of the Code of Criminal Procedure, 1882.

X of 1882.

(2) Every order for police surveillance made under section 6 or section 7 of this Act shall be subject to the same rights of appeal to and powers of revision by superior Courts and Magistrates as if it had formed part of the sentence to which it is attached.

9. The provisions of sections 39, 40 and 41 of the Code of Criminal Procedure, 1882, shall apply in the case of orders by the Local Government conferring powers on Magistrates under section 3 or section 6 of this Act.

10. (1) Any person who has been placed under police surveillance may at any time apply to a Presidency Magistrate, District Magistrate or Sub-divisional Magistrate to have security for his good behaviour taken in lieu of police surveillance.

(2) Should the Magistrate be of opinion that the continuance of police surveillance is necessary, he may reject the application, but shall record his reasons for so doing.

(3) Should the Magistrate be of opinion that security may, without hazard to the community or to any person,* be taken in lieu of police surveillance, then,—

[Cf. Act X of 1882, s. 124, para. 1.]

(a) if the order for surveillance was made by himself or by his predecessor in office or by any subordinate Magistrate, he shall make an order under section 112 of the Code of Criminal Procedure, 1882; and,

X of 1882.

† (b) if the order for surveillance was made by a High Court, a Court of Session or any superior Magistrate, he shall make an immediate report of the case for the orders of such Court or Magistrate, as the case may be, and such Court or Magistrate may, if it or he shall think fit, direct that an order be made under section 112 of the said Code.

[Cf. Act X, 1882, s. 124, para. 2.]

(4) The provisions of Chapter VIII of the said Code shall, as far as may be, apply in the case of every order made under section 112 thereof in pursuance of this section :

Provided that the bond for the good behaviour of the applicant shall, unless the applicant is discharged under section 124 or the bond is cancelled under section 125, continue in force until the expiration of the term for which he was ordered to be placed under police surveillance.

(5) When any person has furnished security for his good behaviour in pursuance of this section, the order on which he was placed under police surveillance shall become void.

11. Whenever a Presidency Magistrate or District Magistrate is of opinion that an order for police surveillance may be cancelled without hazard to the community or to any person, then,—

(a) if the order was made by himself or by his predecessor in office or by some subordinate Magistrate, he may cancel the same, and,

[Cf. Act X, 1882, ss. 124, 125.]

(b) if the order was made by a High Court or a Court of Session, he shall make an immediate report of the case for the orders of such Court, and such Court may, if it shall think fit, cancel the same.

[Cf. Act XXVII of 1871, s. 8.]

12. (1) The Local Government, with the previous sanction of the Governor General in Council, may make rules to provide for all or any of the following matters, namely:—

- (a) the maintenance of registers of persons under police surveillance;
- (b) the form in which the registers shall be made;
- (c) the limits within which persons registered in any locality are permitted to reside;
- (d) the conditions under which persons under surveillance may have their names transferred from one register to another;
- (e) the conditions under which temporary passes may be granted to persons not desiring to change their registered place of abode;
- (f) the conditions to be inserted in any such pass as to—
 - (i) the places to which or the limits within which the holder of the pass is authorized to go,
 - (ii) the officers before whom he shall be bound to present himself from time to time, and
 - (iii) the time during which he may absent himself;
- (g) conditions as to answering at roll-call or otherwise, so that it may be ascertained that the persons whose names are on the register are actually present at given hours or times within the said limits;
- (h) the inspection of the residences of such persons, and the prevention or removal of contrivances for enabling the residents therein to conceal stolen property or to leave their place of residence without leave; and
- (i) generally, the carrying out of the purposes of this Act in regard to police surveillance.

(2) The Local Government, with the like sanction, may cancel or vary any rule made under this section.

(3) No rule, nor any cancellation or variation of a rule, made under this section, shall take effect until it has been published in the official Gazette.

[Cf. Act XXVII of 1871, s. 19.]

13. Should any person under police surveillance commit a breach of any rule made under section 12, he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

[Cf. Act XXVII of 1871, s. 20.]

14. (1) If any person under police surveillance is found in any part of British India beyond the limits of the locality in which he is registered without such pass as may be required by the rules made under section 12, or in a place or at a time not permitted by the conditions of his pass, he may

be arrested, without warrant, by any police-officer or village-watchman, and taken before a Magistrate, who, on proof of the facts, shall order him to be removed to the district in which he ought to have resided, there to be dealt with according to the said rules.

(2) The procedure for the time being prescribed by law for the removal of prisoners shall apply to all persons removed under this section:

Provided that an order from the Governor General in Council, the Local Government or the Inspector General of Prisons shall not be necessary for the removal of any such person.

15. After clause (d) of section 45 of the Code of Criminal Procedure, 1882, the following shall be inserted, namely:—

“(e) the breach of any of the rules under section 12 of the Habitual Offenders Act, 1893, by any person under police surveillance who resides in such village;

(f) the absence of any such person at night without leave, or his association with individuals of bad repute, or his ceasing to labour or to obtain a livelihood by honest means;

(g) the departure of any such person from such village without leave;

(h) the arrival at such village without leave of any person whom he knows or* reasonably believes to be under police surveillance;

(i) the arrival at the village or residence therein of any person who has no ostensible means of livelihood or cannot give a satisfactory account of himself.”

16. For section 348 of the Code of Criminal Procedure, 1882, the following shall be substituted, namely:—

“348. Whenever any person who has been declared to be an habitual offender under section 5 of the Habitual Offenders Act, 1893, or has been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is accused of any offence punishable under either of those Chapters with imprisonment for a term of three years or upwards, and the Magistrate before whom he is so accused, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty and that, by reason of his having been declared or convicted as aforesaid, he ought to receive a severer punishment than such Magistrate is empowered to inflict, he may record his opinion and submit the proceedings and forward the accused to the Court of Session.

“The Court of Session may, if it shall think fit, examine the parties and recall and examine any witness who has already given evidence in the case, and call for and take any further evidence, and shall pass such judgment, sentence or order in the case as it may think fit and as may be according to law.”

X of 1882.

17. In the proviso to section 349 of the Code of Criminal Procedure, 1882, for the words and figures "sections 32 and 33," the words and figures "sections 32, 33 and 34," shall be substituted.

X of 1882.

18. For the third paragraph of section 439 of the Code of Criminal Procedure, 1882, the following High Court's powers of revision shall be substituted, namely:—

"In dealing with a sentence under this section, the Court may inflict for the offence which, in its opinion, the accused has committed, any punishment which it might have inflicted if the offence had been triable and tried before itself in the first instance."

Power to require payment of compensation for injury caused by certain classes of offences against property.

19. (1) Whenever it appears to the Local Government—

- (a) that offences against section 427, section 428, section 429, section 435 or section 436 of the Indian Penal Code are commonly committed or that conspiracies to commit such offences or any of them are frequently hatched in any tract of country, and that the inhabitants thereof, or a large class or large classes of them, are combined to withhold information in their possession which might lead to the detection of the offenders or conspirators, or
- (b) that offences against section 395 or section 400 of the same Code or thefts of cattle are commonly committed in any tract of country by a member or members of a clan, and that the members of the clan are combined to withhold information in their possession which might lead to the detection of the offender or offenders,

the Local Government, with the previous sanction of the Governor General in Council, may, by notification, declare the provisions of this section to apply to that tract.

(2) Every such notification shall be published in the official Gazette and in such other manner as the Local Government may direct.

(3) The limits of the tract to which any such notification relates shall be defined in the notification.

(4) The Local Government may cancel any such notification or restrict or, with the previous sanction of the Governor General in Council, extend the limits of the tract to which it relates.

(5) When any offence referred to in sub-section (1) has been committed in a tract to which this section applies, and the District Magistrate is satisfied, after the expiration of a period of three months from the date of the commission of the offence, that, in consequence of such combination as aforesaid, the offender cannot be traced, he may—

- (a) make an award fixing the amount of compensation payable to the sufferers for the injury caused by the offence,
- (b) make an order determining the village or villages by the inhabitants of which, or the persons or class or classes of persons by whom, the amount so awarded shall be paid, and
- (c) make an order assessing the proportion in which the same shall be paid by each such inhabitant or person according to his judgment of their respective means:

Provided that no portion of the compensation so awarded shall be payable by any person or class of persons whom the Magistrate shall, in such order, declare to be innocent of complicity with the offence.

(6) An award or order made under sub-section (5) shall not take effect until it has been confirmed by the Commissioner of the Division, or, where there is no such Commissioner, by the Local Government.

(7) When an assessment has been confirmed under sub-section (6) the amount assessed shall be recoverable, under the warrant of the District Magistrate, in the manner provided by sections 386 and 387 of the Code of Criminal Procedure, 1882, for the recovery of fines.

X of 1882.

STATEMENT OF OBJECTS AND REASONS.

THE principal object of this Bill is to provide for the more effectual surveillance of habitual offenders, and thereby to enable the police to control and check their movements. In this respect it is founded on the model of section 8 of the Prevention of Crimes Act, 1871 (34 & 35 Vict., c. 112), which is believed to have been attended with excellent results.

2. Taken in detail, its provisions may be classified under four heads:—

- (1) the improvement of the law relating to security for good behaviour (sections 2 to 4);
- (2) the surveillance of convicted persons judicially declared to be habitual offenders (sections 5 to 15);
- (3) the modification of the procedure for the trial and adequate punishment of habitual offenders (sections 16 to 18);
- (4) the repression of certain offences against property by the assessment of compensation in the localities where they occur (section 19).

3. Section 2.—Magistrates are authorised to require security for good behaviour from persons who (i) habitually protect or harbour thieves or aid in the concealment or disposal of stolen property, or (ii) habitually commit mischief, or (iii) are of a character so desperate and dangerous as to render their being at large without security hazardous to the community.

4. *Sections 3 and 4.*—Magistrates are empowered to order police surveillance for any term up to three years in lieu of requiring security for good behaviour.

5. *Sections 5 to 15.*—Sections 6 to 15 contain provisions for the surveillance of persons who have been declared under section 5 to be “habitual offenders.” Two convictions under Chapter XII or Chapter XVII of the Indian Penal Code are essential; and it is further necessary before such a declaration can be made that the Court or Magistrate shall be satisfied on the evidence that the accused habitually commits crime or depends on crime as a means of livelihood.

The maximum period of police surveillance is, as in the English Act, seven years from the date of the expiration of the substantive sentence; and such orders have been made subject to appeal and revision as if they formed part of the substantive sentence to which they are attached.

Magistrates are empowered to accept security for good behaviour in lieu of police surveillance, and to cancel orders for surveillance when this can safely be done.

6. *Section 16.*—The only modification which has been made in the procedure for the trial of habitual offenders is the amendment of section 348 of the Code of Criminal Procedure, 1882, on the lines of section 349. Section 348 provides that, when a person who has been convicted of an offence punishable under Chapter XII or Chapter XVII of the Penal Code is again accused of any such offence, he shall ordinarily, if the Magistrate before whom he is accused considers him to be an habitual offender, be committed to the Court of Session. Section 16 of the Bill authorizes the Magistrate in such cases to take cognizance of the offence himself and to enter a conviction and refer the case to the Court of Session for sentence, the Court of Session being at liberty to make or direct such further enquiry as it may think fit.

7. *Section 19.*—This section contains provisions for the repression of offences against property in cases in which they can be traced to a particular locality but the offenders cannot be identified owing to a combination of the inhabitants to withhold information which would lead to their detection. In such cases the Magistrate has been empowered to assess compensation on the residents of the locality generally, excluding any persons or classes of persons whom he finds to be clearly innocent of complicity with the offence.

(Signed) PHIL. P. HUTCHINS.

J. M. MACPHERSON,

Offg. Secretary to the Government of India.

The 12th January 1893.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 12th January 1893:—

Bill No. 4 of 1893.

A Bill to extend the provisions of the Bankers' Books Evidence Act, 1891, to the Books of Post Offices carrying on Savings Bank or Money Order Business.

XVIII of
1891.

WHEREAS it is expedient to extend the provisions of the Bankers' Books Evidence Act, 1891, to the books of post offices carrying on savings

bank or money order business; It is hereby enacted as follows:—

Short title and commencement. 1. (1) This Act may be called the Bankers' Books Evidence Act, 1893; and

(2) It shall come into force at once.

2. After clause (b) of sub-section (2) of section 2 of the said Bankers' Books Evidence Act, XVIII section 2, sub-section (2), 1891, the following clause of 1891. shall be added, namely:—

"(c) any post office carrying on savings bank or money order business in respect of such business."

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to extend the provisions of the Bankers' Books Evidence Act (XVIII of 1891) to the books of post offices carrying on savings bank or money order business. The Select Committee on the Bill which afterwards became Act XVIII of 1891 considered that these books were public documents within the meaning of section 74 of the Indian Evidence Act, 1872, and covered therefore by section 65 of that Act, and accordingly did not recommend their inclusion in the Bill before them. It has, however, been brought to the notice of Government by the Director General of the Post Office that, without questioning the correctness of the view of the law taken by the Select Committee, there are practical advantages in bringing these books expressly under the Act of 1891 rather than relying on the Evidence Act, and, in order to secure these advantages, the present Bill has, at his request, been prepared.

The 11th January 1893.

(Signed) ALEX. EDW. MILLER.

J. M. MACPHERSON,
Offg. Secretary to the Government of India.