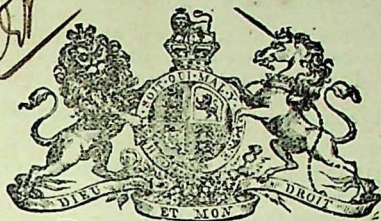


THE



# Bombay Government Gazette.

Published by Authority.

THURSDAY, 14<sup>TH</sup> AUGUST 1879.

 Separate paging is given to this Part, in order that it may be filed as a separate compilation.

## PART VI. BILLS OF THE GOVERNMENT OF INDIA. LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the Code of Civil Procedure, the Registration Act, 1877, and the Limitation Act, 1877, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 17th July 1879:—

SINCE the last report on this Bill was presented, we have received and considered the communications noted in the annexed list. They have suggested certain amendments, both of the Bill and the Code, which we now proceed to specify.

We have altered the definition of "decree" and section 588 of the Code, so as to make this definition comprise all orders rejecting plaints, directing accounts to be taken, or determining any questions mentioned or referred to in section 244 but not specified in section 588. The result will be to give two appeals from all orders as to questions relating to execution of decrees, except orders under sections 261, 294, 312, paragraph 1, and 313. We think that appeals from orders under sections 261, 294, 312, paragraph 1, and 313 should, like appeals from orders in insolvency matters, lie directly to the High Court; and we have altered section 589 accordingly.

We have modified section 3 so as to save expressly all proceedings after decree that may have been commenced and were still pending on the 1st October 1877. This embodies the conclusion arrived at by Mr. Justice Jackson in 2 Calc. Rep. 391, and by the majority of the Judges of the Bombay High Court in I. L. R. 2 Bom. 143. We have declared that all orders heretofore passed, purporting to transfer cases to Collectors under section 320 shall be deemed to have been passed in accordance with law.

We have repealed and re-enacted Act XVIII. of 1878 (*to amend the Code of Civil Procedure, section 4*).

We have inserted some words in section 5 to make it clear that Courts on which Small Cause jurisdiction has been conferred are to exercise that jurisdiction according to the procedure provided for Small Cause Courts.

We have amended the section (13) as to *res judicata* so as to make it clear that the Courts may not try any suit in which the matter directly and substantially in issue, having been directly and substantially in issue in a former suit, was heard and finally decided therein; but that a decision on a matter collaterally in question or incidentally cognizable is not binding on any Court other than that which pronounced it. We have struck out the explanation which we proposed to add to this section, since it would not, apparently, have suited any part of British India but the Lower Provinces. There the local legislature will be able, if it thinks fit, to declare that a Court trying a suit under a rent-law shall not be deemed by any Court trying a suit under any other law, as regards the title to the immovable property in respect of which the suit is brought, a Court of competent jurisdiction within the meaning of this section.



We have added to section 43 a paragraph declaring that, for the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

Where a summons has been issued to a defendant and returned unserved, and the plaintiff fails for a year to apply for a fresh summons and to satisfy the Court that he has used his best endeavours to find the defendant, we have empowered (section 99A) the Court to dismiss the suit as against such defendant.

We have made it clear that the expression "mesne profits" as used in section 211 includes interest on such profits.

We have declared (section 215A) that in suits for an account between principals and agents, and in all suits not otherwise provided for where an account is necessary, the Court shall pass a preliminary order directing such accounts to be taken as it thinks fit.

We have amended section 223, clause (c), so as to enable a Munsif passing a decree directing a sale of immoveable property situate within the district, but outside the local limits of his jurisdiction, to send the decree for execution to another Court.

Section 232 of the Code provides that when any decree against several persons has been transferred to one of them, it shall not be executed against the others. But if A obtains a decree for land against B and C, and B purchases the decree from A, there is ordinarily no reason why B should not execute the decree against C, if C happens to be in possession of the land. We have therefore limited this provision to decrees for money.

We think that no agreement to give time for the satisfaction of a judgment-debt should be valid unless the Court which passed the decree sanctions the agreement and deems the consideration reasonable. We also think that agreements for the satisfaction of judgment-debts should not without the like sanction provide for any payment in excess of the sum due, or to accrue due, under the decree. We have introduced a section (257A) to give effect to these views. We have also amended section 258 so as to make it comprise payments under such agreements.

We have declared (section 271), in accordance with the law of England, that no officer taking moveable property in execution shall break open any outer door of a dwelling-house. We have also ruled that such persons shall not for that purpose enter any dwelling-house after sunset and before sunrise.

We have provided in section 289 that in the case of revenue-paying land a copy of the proclamation of sale shall be fixed up in the Collector's office.

We think that attachment of salary should be made by an order requiring the disbursing officer to withhold every month such portion as the Court may direct, *until the further order of the Court*. The Court will then continue to distribute the salary, under section 295, *pro rata* among the executing decree-holders, and not withdraw the attachment until the whole of their decrees are fully paid off.

We have provided in section 295 for cases in which immoveable property is sold for the discharge of an incumbrance thereon.

If We think that the certificate given to the purchaser at an execution-sale of immoveable property should state the property sold, and we have amended section 316 accordingly. This will enable the Courts to make a difference between the certificate granted in ordinary cases where only the right, title and interest of the judgment-debtor at the date of attachment passes, and the certificate granted in mortgage cases where the purchaser takes his interest at the date of the creation of the security. We have also altered section 316 so as to make it clear that the title to property sold vests from the date of the certificate only, when the decree under which the sale took place was still subsisting at that date. This will preclude the doubt which has, we understand, arisen in Bombay, where a certificate was granted to an auction-purchaser in ignorance of the fact that the decree under which the sale took place had been previously reversed on appeal.

We have redrawn sections 321 to 325 (both inclusive), and as the changes here made are of considerable importance, we deem it right to state our reasons at length. In order to prevent judicial sales at inadequate prices of judgment-debtors' lands, and to carry out the intention of the law to arrest unnecessary sales, the Code of 1877, in addition to the powers given to the Court by Act VIII. of 1859, provides that Local Governments may direct that the execution of decrees ordering the sale of immoveable property, or of decrees in execution of which a sale of such property had been ordered, shall be transferred to the Collector.

Whenever the execution of a decree has been so transferred, the Collector is empowered not only to sell in such lots as he thinks fit but to fix reserved prices on each lot, to adjourn the sale (if such adjournment is necessary to obtain a proper price), and to buy in and re-sell.

These powers, it will be observed, the Collector may exercise in the case of all decrees for the sale of land of which execution has been transferred to him.

As to a particular class of decrees, for money, in execution of which a sale of immoveable property has been ordered, as distinguished from decrees specifically ordering a sale of immoveable property, larger powers are conferred on the Collector. He is empowered to give time to the judgment-debtor to raise the amount of the decree, or if it appears to him that the judgment-debts of the judgment-



debtor can be satisfied without the sale of the whole of the property of which a sale has been ordered, he may call on all persons holding decrees against the judgment-debtor to notify the same to the Collector, and proceed to raise the amount necessary to discharge such debts by leasing in perpetuity or for a term on payment of a premium equivalent to such amount the *whole or any part of the judgment-debtor's immoveable property*,

by mortgaging the whole or any part of such property,  
by selling any part of such property,  
by letting on farm, or himself managing the whole or any part of such property for a term not exceeding twenty years from the date of the original order for sale,

or partly by one of such modes, and partly by another or others of them.

Doubts have arisen as to the meaning of these provisions. It has been contended that the words "if he has reason to believe that the judgment-debts can be discharged without a sale of the whole of such property," referring, as they do, to the property ordered for sale, indicate, notwithstanding the use of the words "the whole of the judgment-debtor's immoveable property" in a subsequent paragraph, that the action of the Collector is to be confined to the property of which a sale has been ordered. It has also been questioned whether the judgment-debts for which the Collector is authorized to provide are only debts due on decrees for money, or include also mortgage-debts for the satisfaction of which decrees have specifically ordered sales of land.

We think the intention was to confine the action of the Collector to mere decrees for money but to give him authority to deal with the whole of the judgment-debtor's immoveable property, of course without derogation to any mortgage or other incumbrances affecting it.

In the first place, had it been the intention to empower the Collector to deal with mortgage-debts, the introductory words of section 322 would not have indicated so distinctly that the powers conferred by the section were to take effect only when the execution of a mere money-decree had been transferred. No reason can be suggested why the same powers should not be given to the Collector on the transference to him for execution of a decree ordering a sale of immoveable property in pursuance of a contract specifically affecting the same, if it had been intended that he should interfere otherwise than in the conduct of the sales with the execution of such decrees.

On the other hand, there are, as it appears to us, very strong reasons for refusing to the Collector power to interfere with rights created by special contract. Where money is lent on the express condition that its re-payment shall be secured on a particular date failing which the lender may have recourse to a particular fund, it is manifestly inequitable to interfere with the contract, especially when this interference is occasioned by acts to which the lender is not a party—the incurring by the borrower of a simple money-debt which he fails to discharge.

Of course, the greater number of mortgage-loans are made by professional money-lenders, and to them it may matter little if they get their money back at any time with the interest stipulated; but there are also in all parts of India lenders of money on mortgage who are not by profession money-lenders, and to these persons it may be of much importance to recover their investments at the date agreed on; and even in the case of professional money-lenders, seeing that the Courts as a rule award no more than six per cent. interest after decree, whatever be the interest stipulated in the contract, hardship will be worked if the realization of their securities be postponed as it might be (if section 332 applied to such debts) for a period of twenty years.

In the second place, that it was the intention of the legislature to permit the Collector, in order to prevent the unnecessary sale of land of which a sale had been ordered, to deal with the whole of the judgment-debtor's immoveable property is, we think, apparent not only from the express terms of the second paragraph of section 322, but from this consideration, that if the Court has done its duty it will have ordered the sale only of such property as will be sufficient to satisfy the single decree, and that by a sale. Such property would clearly not suffice to meet all the judgment-debts of the judgment-debtor, and the provisions for raising the amount otherwise than by sale would be ineffectual.

Having determined to amend the language of the Code so as to remove the ambiguities above noticed, the question arises what is the best method to secure the ends at which the law aims—the realization of judgment-debts and the preservation to the debtor of so much of his immoveable property as can be saved from sale without injustice to his creditors;

Four courses have been suggested for our adoption :—

(1) to confine the action of the Collector to such decrees for money on execution of which a sale of land has been ordered and to the land only of which a sale has been ordered.

(2) to confine it to the last-mentioned decrees, but to extend it to the whole immoveable property of the judgment-debtor;

(3) to extend it to all decrees, whether money-decrees or decrees specially ordering sales of land for the satisfaction of incumbrances, and to the whole of the immoveable property of the judgment-debtor;

(4) to extend it to all claims, and not only to decreed claims, against the judgment-debtor, and to the whole of his property whether moveable or immoveable.



In support of the first course, it is argued that it is inexpedient in the interests of the judgment-debtor to invite persons having decrees or other claims against him, but who are at present content to show him forbearance or to look to funds other than his immoveable property, to bring forward their claims at once and to insist on their satisfaction from the immoveable property; and that it is unreasonable to expose a judgment-debtor to the liability of being deprived of the present enjoyment of the whole of his immoveable property because a portion of it—and it may be an inconsiderable portion—has been attached and ordered to be sold.

The end of these provisions being to avert a sale, it is contended by the opponents of the first course that this will rarely be achieved if the action of the Collector is confined to the property of which a sale has been ordered; for, if the Court has fairly done its duty, it will have ordered the sale of so much only as will by sale suffice to satisfy the decree; and unless owing to special circumstances the selling value of the property is, as compared with the annual profits, abnormally low, it would be idle to expect that the amount required could be raised at once or in a reasonable time by mortgage, lease or management.

The second course, the extension of the powers of the Collector to the whole of the immoveable property of the judgment-debtor, obviously increases greatly the probability that a sale of any portion of it may be avoided, and the objection that the judgment-debtor would be deprived unreasonably of the present enjoyment of his property would in practice be found unimportant; for, if the judgment-debtor has any considerable surplus of immoveable property, beyond that which has been attached, he can forestall the necessity for the intervention of the Collector by raising on mortgage the sum required to discharge the decrees in execution of which the sale has been ordered; and if the surplus is not considerable, yet sufficient to afford a margin of security, there is a greater probability that the sum will be raised by the Collector than by the judgment-debtor, and on easier terms than the judgment-debtor could procure.

It is also evident that by giving the Collector power to deal with the whole immoveable property of the debtor, if compelled to have recourse to a sale, he will be able to elect what property shall be sold, and it may be to avoid the sale of property which, in the interest of the judgment-debtor, or for political reasons, it may be expedient to save from sale, by disposing of other property to the sale of which no such objections attach or attach in a less degree.

But it is objected that, in confining the action of the Collector to the single decree transferred to him for execution, injustice will be done to other holders of decrees for money. These persons are entitled, in case of sale of any portion of the immoveable property of these judgment-debtors in execution of a decree, to bring in their decrees and share in the distribution of the sale proceeds, and they are also entitled to proceed against the immoveable property of the judgment-debtor other than that which has been already attached. If the Collector's action is confined to the original decree transferred and to the property attached in that decree, there may be as many schemes of management arranged and worked by the Collector as there are decrees of which execution is taken out; this would obviously not only impose a great deal of work on the Collector, but increase the difficulty of making such arrangements as would save the property or any part of it from sale; and if the Collector be empowered to deal with the whole immoveable property of the debtor for the satisfaction of the decree originally transferred, the rights of the other decree-holders are annulled or seriously impaired: Act X. of 1877, in order to avoid this injustice, requires the Collector to give notice, so that all decree-holders desirous of executing their decrees may come in and obtain satisfaction from the proceeds of the scheme he may arrange.

It seems to us that sections 321 to 325 as now re-drawn follow most closely the provisions of the existing Code, and are best calculated to effect the object contemplated with the least hardship on the judgment-debtor and the least injustice to any persons having claims on him.

If a judgment-debtor is involved in debt to such an extent that it is only a question of time when his whole property must pass out of his hands for the satisfaction of his debts, it is a mere waste of the time of the Collector to endeavour to arrange a scheme which must eventually fail in its object. We have, therefore, empowered the Collector to examine the judgment-debtor as to his circumstances: if he finds that the judgment-debtor is insolvent, and that if there are not decrees against him, there are claims which will absorb the whole of his estate, the Collector will simply execute the decree or decrees transferred to him for execution. If, on the other hand, he finds that the property, after deducting the claims of incumbrancers is more than sufficient to answer all other claims on the judgment-debtor, he will proceed to arrange a scheme for the liquidation of all money-decrees of which execution may be taken out. To enable him to deal with the estate most advantageously, we have conferred on the Collector power to discharge incumbrances either out of the profits or by the mortgage, letting or sale of portions of the estate. The Collector will in effect, so long as the estate continues in his hands, exercise all the powers of a prudent owner. Having discharged incumbrances, if he thinks fit, and made provision for claims for maintenance, the Collector will proceed to discharge money-decrees out of surplus profits or sale of portions of the estate.

It may be objected that this scheme injuriously affects creditors who have not obtained decrees against the debtor; but they have the opportunity of obtaining decrees pending the interval before the Collector proceeds to settle a scheme; and if, instead of managing the property, the Collector had simply effected a sale, they could not without having obtained decrees have claimed to share in the proceeds of the sale. Our scheme does not prevent them from obtaining decrees which they may



execute against the moveable property of the judgment-debtor and against any immoveable property remaining to the judgment-debtor after the conclusion of the period of management.

Power has been given to the Collector to delegate to the District Court the issue of notices and the subsequent inquiry; and the decisions of the Court in any dispute arising in the inquiry will be deemed as between the parties thereto a decree.

It would, in our judgment, impose far too much labour on Collectors to require them to deal with the moveable as well as immoveable property of the judgment-debtor and with all claims against him. If this were necessary, it were better that the estate should be dealt with by the Court in the exercise of its insolvent jurisdiction; and, in order to give effect to the desire of the Legislature to avoid, where possible, the sale of immoveable property for the satisfaction of debts, we have, in the Districts in which execution of the decrees ordering sales of land have been transferred to the Collector, required the Court in the case of all insolvents who are holders of lands paying revenue to Government or held or let for agricultural purposes, before proceeding to dispose of such lands, to forward to the Collector of the District a report setting out the amount of unsatisfied claims against the judgment-debtor and the immoveable property possessed by him; and thereupon the Collector will proceed to raise the sum required by exercising the powers conferred on him by sections 322 to 325 as now re-drawn, and will hold the sums so raised at the disposal of the Insolvent Court.

We have prohibited (section 336) the breaking open of outer doors of dwelling-houses for the purpose of making arrests, and we have made provision regarding the entry into *zanáns*. The discrepancy between the provisions of section 271 and section 336, which has more than once been remarked, will thus disappear.

We think that a judgment-debtor should be discharged from jail, without the order of the Court, on the amount mentioned in the warrant of committal being paid to the jailor; and we have altered section 341 accordingly.

We have extended the chapter (XX.) on Insolvency to persons against whose property orders of attachment have issued in execution of money-decrees: we have empowered any holder of a money-decree to apply that the judgment-debtor be declared an insolvent: we have required the Receiver, before distributing the balance among the scheduled creditors, to discharge, according to their respective priorities, all debts secured by mortgage of the insolvent's property; we have relieved the insolvent's property from liability to attachment and sale when the debts due to the scheduled creditors are satisfied to the extent of one-third and, in case of such satisfaction, we have empowered (in accordance with the law in force in the Presidency-towns—11 & 12 Vic., c. 21, section 59) the Court to declare him absolved from further liability in respect of such debts: we have provided that sentences under section 359 shall be by order in writing; and, lastly, we have exempted from this chapter Courts having jurisdiction in Rangoon, Maulmain, Akyab and Bassein where the property of the judgment-debtor exceeds rupees 2,500 in value, or such property is wholly or partially situate outside British Burma, or the amount of the pecuniary claims against him exceeds rupees 5,000. With such cases the Recorder of Rangoon will deal under Act XVII. of 1875, section 66.

Where a defendant dies and the plaintiff fails to apply within the proper period to have the legal representative of the deceased made a defendant in his stead, we have provided (section 368 of the Code) that the suit shall abate.

We have amended section 375 of the Code so as to provide for cases in which part of the claim has been compromised.

We have altered section 386 so as to enable the Court issuing a commission to direct it either to a Court not being a High Court or the Court of the Recorder of Rangoon, or to an advocate or pleader of a High Court.

It is considered by the Military Department that not only warrants of arrest, but other processes, when executed within the limits of a Cantonment, should be backed by the Commanding Officer. We have amended section 469 accordingly.

We have amended section 478 so as to make it clear that the order for bringing the defendant before the Court therein mentioned is a warrant of arrest within the meaning of section 648.

Where a defendant is imprisoned under section 481 for failure to obey an order to give security or find fresh security, we have provided that he shall not be detained after he has complied with the order.

We think that where public charities are situate in the Mofussil, the powers conferred by section 539 on the Advocate General might often be exercised as effectively and more cheaply by the Collector, and we have altered that section accordingly.

We have provided that in sections 363 and 365 the word "plaintiff" shall be held to include an appellant. At present it is only by analogy that an appellate Court can exercise the power of substituting the name of a deceased appellant's representative on the record for that of the original appellant.

We think that in section 561 it will be enough to require that the notice of the respondent's objections should be filed not less than a week before the date fixed for hearing the appeal. The pre-



sent requirement cannot be complied with when (as often happens) the appellant has no pleader, and is himself absent till a day or two before the hearing of the appeal takes place.

We are of opinion, on further consideration, that the words "some specified" should not be struck out of section 584.

We think that there should be one appeal from all orders returning plaints, and that an order in an interpleader suit adjudicating the title to the thing claimed should be treated as a decree. We have altered section 588 accordingly. We have added the following to the list of appealable orders:—

orders under section 36 or section 66, directing that a party shall appear in person :  
orders under section 111, setting-off, or refusing to set-off one debt against another :  
orders under section 113, where a party fails to present a written statement within the time fixed by the Court :

orders under section 116 or section 245, rejecting, or returning for amendment, written statements or applications for execution of decrees :

orders under sections 143 and 145, directing anything to be impounded :

orders under section 162 for the attachment and sale of moveable property :

orders under section 294 (as amended by the present Bill) for setting aside a sale of immoveable property :

orders under section 366, paragraph two, section 367 or 368, in case of the death of a plaintiff or defendant :

orders under section 371, refusing to set aside the abatement or dismissal of a suit :

orders under sections 454, 455 or 458, directing a next friend or guardian for the suit to pay costs :

orders for the arrest of any person.

We have extended section 622, as to the High Court's revisional jurisdiction, to cases in which the lower Court appears to have acted in the exercise of its jurisdiction illegally, or with material irregularity. The change is a serious one and must be understood as made tentatively. But the High Court of Bombay at present exercises such a jurisdiction under Bombay Regulation II. of 1827, section 5, and both Sir Charles Turner and Mr. Justice Innes are of opinion that the change should be made.

We have been urged to insert in section 641 words empowering the Local Government to exempt certain Natives of rank from personally signing and verifying their plaints. But we think no good ground has been shown for such exemption.

We have extended the paragraph which we propose to add to section 649 to cases where the Court which passed the decree referred to has ceased to have jurisdiction to execute it.

We have, lastly, repealed the second paragraph of section 221, as it assumes the existence in the Mofussil of a lien unknown to the law.

In the second schedule to the Limitation Act we have made the following further amendments:—

We have altered No. 161 so as to suit the new wording of section 258 of the Code, and have extended the period from fifteen to twenty days.

We have extended No. 171 to cases where appellants have died.

For applications to set aside an execution-sale on the ground that the decree-holder purchased without the Court's permission, we have provided a period of thirty days from the date of sale.

For applications by the defendant under section 366 of the Code, we have provided a period of sixty days from the date of the plaintiff's death.

We desire, in conclusion, to acknowledge the great assistance which Sir Charles Turner has given us in revising this important Bill, especially the sections relating to the execution of decrees by Collectors.

We recommend that the Bill as now amended be passed.

We do not think that it need be republished. But we recommend that this Report be printed in the *Gazette of India* with the Bill when passed.

WHITLEY STOKES.

A. J. ARBUTHNOT.

F. R. COCKERELL.

T. C. HOPE.

B. W. COLVIN.

SIMLA :  
The 12th July 1879. }



*List of Papers.*

- From Registrar, High Court, Calcutta, No. 456, dated 18th March 1879, and enclosure [Papers No. 46].  
 Demi-official letter from C. D. Field, Esq., District and Sessions Judge, Burdwan, dated 20th March 1879 [Paper No. 47].  
 Note by Hon'ble J. Sewell White, Judge, High Court, Calcutta [Paper No. 48].  
 Demi-official letter from W. M. Coghlan, Esq., District Judge, Thána, dated 2nd April 1879, and enclosure [Papers No. 49].  
 From Bábu Jogesh Chandra Rai, Vakíl, High Court, Calcutta, dated 5th April 1879 [Paper No. 50].  
 „ Bábu Opendro Náth Mitter, Pleader, High Court, Calcutta, dated 9th April 1879 [Paper No. 51].  
 „ Major G. C. Grant, Judicial Commissioner, Sindh, dated 8th April 1879 [Paper No. 52].  
 „ G. Scott, Esq., Patua, dated 12th April 1879 [Paper No. 53].  
 Minute by Hon'ble H. T. Prinsep, Judge, High Court, Calcutta, dated 22nd April 1879 [Paper No. 54].  
 From Mr. Ullal Raghavendra Rau, Mangalore, dated 18th April 1879 [Paper No. 55].  
 „ J. G. W. Sykes, Esq., Barrister-at-Law, High Court, North-Western Provinces, dated 2nd May 1879 [Paper No. 56].  
 „ C. Robertson, Esq., Secretary to Government, North-Western Provinces and Oudh, No. 323, dated 30th April 1879, and enclosures [Papers No. 57].  
 „ Bábu Aubinash Chunder Banarjí, Judge, Small Cause Court, dated 21st April 1879 [Paper No. 58].  
 „ Major G. H. Tavor, Secretary for Birár to Resident, Hyderabad, No. 5, dated 2nd May 1879 [Paper No. 59].  
 „ W. J. Cunningham, Esq., Officiating Secretary to Chief Commissioner, Mysore, No. 1042—2G-J., dated 1st May 1879 [Paper No. 60].  
 „ Ditto ditto ditto No. 1205—4G-J., dated 9th May 1879 [Paper No. 61].  
 Telegram from Major C. W. Street, Secretary to Chief Commissioner, British Burma, dated 19th May 1879 [Paper No. 62].  
 From Lepel Griffin, Esq., Secretary to Government, Panjáb, No. 48C., dated 20th May 1879, and enclosure [Papers No. 63].  
 „ J. Crawford, Esq., Registrar, High Court, Calcutta, No. 842, dated 12th May 1879, and enclosure [Papers No. 64].  
 „ C. G. W. Macpherson, Esq., Acting Under Secretary to Government of Bombay, No. 2882, dated 17th May 1879, and enclosures [Papers No. 65].  
 „ C. Robertson, Esq., Secretary to Government, North-Western Provinces and Oudh, No. 392, dated 15th May 1879, and enclosures [Papers No. 66].  
 „ C. G. Master, Esq., Acting Chief Secretary to Government, Madras, No. 1145, dated 15th May 1879, and enclosures [Papers No. 67].  
 „ Bábu Khetter Mohan Singh, Calcutta, dated 21st May 1879 [Paper No. 68].  
 „ C. G. W. Macpherson, Esq., Acting Under Secretary to Government of Bombay, No. 2968, dated 21st May 1879, and enclosures [Papers No. 69].  
 „ A. H. L. Fraser, Esq., Assistant Secretary to Chief Commissioner, Central Provinces, No. 2271—108, dated 21st May 1879, and enclosures [Papers No. 70].  
 „ Hon'ble W. Ainslie, Judge, High Court, Calcutta, dated 21st May 1879 [Paper No. 71].  
 „ C. Robertson, Esq., Secretary to Government, North-Western Provinces and Oudh, No. 424, dated 22nd May 1879, and enclosures [Papers No. 72].  
 Office Memorandum from Home Department, No. 631, dated 30th May 1879, and enclosures [Papers No. 73].  
 From H. A. Cockerell, Esq., Secretary to Government of Bengal, No. 2405, dated 21st May 1879, and enclosures [Papers No. 74].  
 „ P. Tirumal Rau, District Munsif, Bellary, dated 20th May 1879 [Paper No. 75].  
 Note by Hon'ble Sir C. A. Turner, dated 2nd June 1879 [Paper No. 76].  
 Memorial of Mr. P. Krishnasvámi Ayyar, Madras, dated 20th May 1879 [Paper No. 77].  
 From Mr. S. Ayyasvámi Ayyar, dated 4th May 1879, and enclosure [Papers No. 78].  
 „ J. Nugent, Esq., Acting Secretary to Government of Bombay, No. 58M, dated 30th May 1879 [Paper No. 79].  
 „ R. H. Pilcher, Esq., Junior Secretary to Chief Commissioner, British Burma, No. 666—310, dated 29th May 1879, and enclosures [Papers No. 80].  
 Note by Hon'ble Sir C. A. Turner, dated 19th May 1879 [Paper No. 81].  
 Ditto by ditto dated 8th July 1879 [Paper No. 85].  
 Office Memorandum from Home, Revenue and Agricultural Department, No. 765, dated 8th July 1879, and enclosures [Papers No. 86].  
 From Secretary to Government, Panjáb, No. 396C, dated 9th July 1879, and enclosures [Papers No. 87].

D. FITZPATRICK,

*Secy. to the Govt. of India, Legislative Department.*



15.8.79  
 [Published with the "Bombay Government Gazette" on the 14th August 1879.]

## PART VI.

### BILLS OF THE GOVERNMENT OF INDIA.

#### LEGISLATIVE 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 July 1879, and was referred to a Select Committee:—

#### Bill No. 14 of 1879.

*A Bill to amend the Foreign Jurisdiction and Extradition Act, 1872.*

WHEREAS it is expedient to empower Magistrates to arrest persons found in British India and suspected of having committed offences out of British India for which they are liable to be delivered up under the Foreign Jurisdiction and Extradition Act, 1872; It is hereby enacted as follows:—

1. This Act may be called "The Foreign Jurisdiction and Extradition Act, 1879"; and it shall come into force at once.

2. After section fourteen of the Foreign Jurisdiction and Extradition Act, 1872, the following sections shall be inserted (that is to say):—

"14A. Whenever any person accused or suspected of having committed an offence out of British India is within the local limits of the jurisdiction of a Magistrate in British India, and it appears to such Magistrate that the Political Agent for any State could, under the provisions of section eleven, issue a warrant for the arrest of such person, or that the persons for the time being administering the executive government of any part of the dominions of Her Majesty or the territory of any Foreign Prince or State could demand his surrender, such Magistrate may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and such evidence as would, in his opinion, justify the issue of such a warrant if the offence had been committed within the local limits of his jurisdiction.

Magistrate may in certain cases issue warrant for arrest of person accused of having committed an offence out of British India.

Magistrate at once to report arrest to Local Government.

- "14B. Any Magistrate issuing a warrant under section 14A shall at once report his proceedings to the Local Government, and the Local Govern-

ment may, if it thinks fit, order the warrant to be cancelled and the accused person, if arrested, to be released.

"Every person arrested on a warrant issued by a Magistrate under section 14A shall be discharged, on the expiry of such reasonable period not exceeding two months as, with reference to the circumstances of the case, the Magistrate may fix, unless within such period the Magistrate receives a warrant under section eleven from the Political Agent of any State for the delivery of such person or an order with reference to him under section fourteen from the Governor General in Council or Local Government, or such person is in accordance with law delivered up to some Foreign Prince or State.

"14C. The provisions of the Code of Criminal Procedure in respect of bail shall apply in the case of any person arrested under section 14A in the same manner as if such person were accused of committing in British India the offence with which he is charged."

#### STATEMENT OF OBJECTS AND REASONS.

The eighth section of the English Extradition Act of 1870 empowers a Magistrate, when any person is charged with having committed an offence abroad, to issue a warrant of arrest in anticipation of a request being made for extradition by the State within whose limits the offence has been committed. Sections 19 and 20 of Act VII of 1854, contained similar provisions; but they were omitted in Act XI of 1872, the present Extradition Act, which consolidated and amended the existing law on the subject. Certain recent cases in which persons have committed offences in the Nizam's territory and taken refuge in British India have shown that some such provisions are still required to prevent failures of justice. The present Bill, which has been prepared to meet this want, practically re-enacts, with certain unimportant modifications, what was the law in India up to the year 1872.

(Signed) WHITLEY STOKES. }

SIMLA;  
 The 23rd June 1879. }

D. FITZPATRICK,  
 Secy. to the Govt. of India,  
 Legislative Department.



[Published with the "Bombay Government Gazette" on the 21st August 1879.]

## PART VI.

### BILLS OF THE GOVERNMENT OF INDIA.

#### LEGISLATIVE 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 July 1879, and was referred to a Select Committee:—

#### Bill No. 14 of 1879.

##### *A Bill to amend the Foreign Jurisdiction and Extradition Act, 1872.*

WHEREAS it is expedient to empower Magistrates to arrest persons found in British India and suspected of having committed offences out of British India for which they are liable to be delivered up under the Foreign Jurisdiction and Extradition Act, 1872; It is hereby enacted as follows:—

1. This Act may be called "The Foreign Jurisdiction and Extradition Act, 1879"; and it shall come into force at once.

2. After section fourteen of the Foreign Jurisdiction and Extradition Act, 1872, the following sections shall be inserted (that is to say):—

"14A. Whenever any person accused or suspected of having committed an offence out of British India is within the local limits of the jurisdiction of a Magistrate in British India, and it appears to such Magistrate that the Political Agent for any State could, under the provisions of section eleven, issue a warrant for the arrest of such person, or that the persons for the time being administering the executive government of any part of the dominions of Her Majesty or the territory of any Foreign Prince or State could demand his surrender, such Magistrate may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and such evidence as would, in his opinion, justify the issue of such a warrant if the offence had been committed within the local limits of his jurisdiction.

"14B. Any Magistrate issuing a warrant under section 14A shall at once report his proceedings to the Local Government, and the Local Govern-

ment may, if it thinks fit, order the warrant to be cancelled and the accused person, if arrested, to be released.

"Every person arrested on a warrant issued by a Magistrate under section 14A shall be discharged, on the expiry of such reasonable period not exceeding two months as, with reference to the circumstances of the case, the Magistrate may fix, unless within such period the Magistrate receives a warrant under section eleven from the Political Agent of any State for the delivery of such person or an order with reference to him under section fourteen from the Governor General in Council or Local Government, or such person is in accordance with law delivered up to some Foreign Prince or State.

"14C. The provisions of the Code of Criminal Procedure in respect of bail shall apply in the case of any person arrested under section 14A in the same manner as if such person were accused of committing in British India the offence with which he is charged."

#### STATEMENT OF OBJECTS AND REASONS.

THE eighth section of the English Extradition Act of 1870 empowers a Magistrate, when any person is charged with having committed an offence abroad, to issue a warrant of arrest in anticipation of a request being made for extradition by the State within whose limits the offence has been committed. Sections 19 and 20 of Act VII of 1854, contained similar provisions; but they were omitted in Act XI of 1872, the present Extradition Act, which consolidated and amended the existing law on the subject. Certain recent cases in which persons have committed offences in the Nizam's territory and taken refuge in British India have shown that some such provisions are still required to prevent failures of justice. The present Bill, which has been prepared to meet this want, practically re-enacts, with certain unimportant modifications, what was the law in India up to the year 1872.

(Signed) WHITLEY STOKES.

SIMLA;  
The 23rd June 1879. }

D. FITZPATRICK,  
Secy. to the Govt. of India,  
Legislative Department.