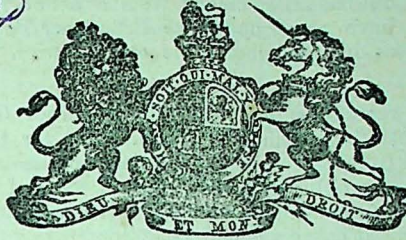


THE



Bombay Government Gazette.

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THURSDAY, 13TH MARCH 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 Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th March, 1879, and was referred to a Select Committee:—

No. 4 of 1879.

A Bill to amend the Presidency Banks Act, 1876.

WHEREAS it is expedient to amend the Presidency Banks Act, 1876, in manner hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called "The Presidency Banks Act, 1879;" and it shall come into force on the first day of May, 1879.

Short title.
Commencement.

2. To the first clause of section 28 of the Presidency Banks Act, 1876, the following proviso shall be added, that is to say:

"Provided that no person shall be chosen to be President or Vice-President twice in succession."

3. In the same Act, section 34, before the words "no Khazanchi," the words "without the previous sanction of the Board" shall be inserted.

Amendment of section 34 of same Act.

4. In the same Act, section 36, clause (a), sub-clause (4), after the words "municipal body," the words "or any body

Amendments of section 36.

of Commissioners for making improvements in any port or of trustees of any port" shall be inserted.

In the same section, the words "in the case of the Bank of Madras" shall be omitted in both the places in which they occur.

In the same section, after clause (m), the following clause shall be inserted, that is to say, "(m m) the borrowing of money in India for the purposes of the Bank's business and the giving of security for money so borrowed by pledging assets or otherwise."

5. In section 37 of the same Act, for clause (d), the following shall be substituted, that is to say,

"(d) Nor shall they (except upon the security mentioned in section 36, paragraph a, Nos. 1 to 5 inclusive)

discount bills for any individual or partnership-firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or

lend or advance in any way to any individual or partnership-firm an amount exceeding in the whole at any one time such sum as may be so prescribed."

6. In section 63 of the same Act, clause (a), for the words "lent by discount of bills or otherwise to," the words "lent to or for which bills may be discounted for" shall be substituted.

Amendment of section 63.

STATEMENT OF OBJECTS AND REASONS.

1. The necessity for this Bill has arisen chiefly from a doubt which has been expressed as to whether the Presidency-banks have power under the Presidency Banks Act, 1876, to borrow money for the purposes of their business by pledging assets or otherwise. The need of such a power is obvious.

As observed in a memorial recently submitted to the Governor General in Council by the banks, "it is an ordinary incident of banking-business to obtain funds for temporary purposes by pledging assets. If banks are prohibited from raising money by pledge of assets when occasion arises, they may, on a sudden requisition for cash, be obliged to make forced sales of property at a disadvantage; and this applies with great force to the Presidency-banks of India whose action in forcing Government or other securities on the market might cause a public panic."

The power required will be conferred by a new clause which the Bill (in the last clause of section 4) proposes to add to section 36 of the Act; but it is limited to borrowing in India, because, so long as the Government balances are in the custody of the Presidency-banks, it is not considered expedient that the banks should engage in foreign exchanges or have the power of creating a foreign agency in England, which would be the necessary results of conceding a power to borrow out of India.

2. The other sections of the Bill provide for certain minor amendments of the Act which it has been thought desirable to take this opportunity of making.

Section 2 provides that no person shall be, in two successive years, chosen as President or Vice-President of a Presidency-bank.

3. Section 3, which admits of a khazánchi, cashier or shroff at the principal office of a bank engaging in business with the previous sanction of the Board, has been introduced at the instance of the Bank of Bengal, who represent that the absolute prohibition contained in the present law makes it difficult to secure the services of a suitable person, and that the necessity for any such absolute prohibition has ceased to exist, now that the khazánchi has no longer any concern with the discount business in Native Bills, and is, in fact, a mere cashier.

4. Lastly, clauses have been added to clear up an ambiguity which, in the opinion of Counsel, attaches to section 37, clause (d), and section 63, clause (a), of the Act; to include in the securities on which loans may be made, and in which the banks may invest, debentures and other securities issued by the Port Trusts under Acts of the Indian legislatures, and to concede to the Banks of Bengal and Bombay the power already possessed by the Bank of Madras of drawing and dealing in negotiable instruments, and issuing bank-post-bills and letters of credit, payable in Ceylon.

Calcutta, the 4th March 1879.

(Signed) J. STRACHEY.

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

[Published with the "Bombay Government Gazette" on the 13th March 1879.]

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following further Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th of February, 1879 :—

WE, the undersigned Members of the Select Committee to which the Bill to define and amend

- From Secretary to Chief Commissioner, Mysore, No. 3193—4 J, dated 26th July, 1878.
- " Acting Under Secretary to Government of Bombay, No. 4405, dated 30th July, 1878.
- " Assistant Secretary to Chief Commissioner, Central Provinces, No. 3012—147, dated 31st July, 1878.
- " Officiating Chief Commissioner, Ajmer and Merwara, No. 500, dated 5th August, 1878, and enclosure.
- " Under Secretary to Government of Bengal, No. 1745, dated 13th August, 1878.
- " Acting Under Secretary to Government, Bombay, No. 4792, dated 17th August, 1878, and enclosures.
- " Secretary to Chief Commissioner, Mysore, No. 3765—6, dated 15th August, 1878, and enclosure.
- " Secretary to Government, North-Western Provinces and Oudh, No. 626 A, dated 24th August, 1878, and enclosures.
- " Junior Secretary to Chief Commissioner, British Burma, No. 1440—51, dated 28th September, 1878, and enclosures.
- " Under Secretary to Government, Bombay, No. 6570, dated 15th November, 1878, and enclosure.
- Note by Sir Richard Garth, Chief Justice, High Court, Calcutta, dated 21st November, 1878.
- Remarks on the above note by A. Phillips, Esq., dated 30th November, 1878.
- From Secretary to Government, Panjáb, No. 4404, dated 23rd December, 1878, and enclosures.
- " Government of Bengal, No. 260—24 M, dated 1st February, 1879, and enclosures.
- " Government of Bombay, No. 838, dated 6th February, 1879, and enclosures.

the law relating to Promissory Notes, Bills of Exchange and Cheques was referred, have considered the Bill and the papers noted in the margin, and have the honour to present this further Report.

2. We have carefully considered the arguments urged on the one side by the learned Chief Justice of Bengal and the Bank of Bengal for the immediate application of the measure in its entirety to hundís, and, on the other side, by the Government of

the Panjáb for the total exclusion of hundís from any part of the measure. We have come to the conclusion that the Bill should in this respect be left substantially as it stands. Admitting with the Chief Justice that one main principle of Indian codification is to reconcile and assimilate, as far as possible, the Native and European law on each subject, we would point out that this principle must be applied so as to produce as little friction as possible, and we feel assured that any sudden abolition of the numerous local usages (there is no general custom) as to hundís, uncertain and undefined as they often are, would cause much and justifiable dissatisfaction among Native bankers and merchants in certain parts of the country. But we believe that the effect of the Bill, if passed with a saving of the local usages in question, will be, not as the Chief Justice fears, to stereotype and perpetuate these usages, but to induce the Native mercantile community gradually to discard them for the corresponding rules contained in the Bill. The desirable uniformity of mercantile usage will thus be brought about without any risk of causing hardship to Native bankers and merchants. How long this change will take it is of course impossible to prophesy. But the Bank of Bengal has supplied evidence that the Native usages as to negotiable paper have of recent years been greatly changing, and that the tendency is to assimilate them more and more to the European custom.

3. We do not share the apprehension of the Bank of Bengal that the recognition of Native usages would result in large withdrawal of European capital from operations in Native bills. For in this respect the Bill simply states the law as it stands. Such usages are now and have always been recognized by our Courts in all parts of India: * but the Bank itself admits that, for upwards of seventy years, its business in hundís has invariably been conducted according to the same laws and usages as apply to European bills, and that with one exception (the alleged duty of the holder of a dishonoured hundí to exhaust the acceptor before having recourse to the drawer or endorser) Natives have made no difficulty about conforming to the Bank's requirements. It is, we understand, the practice of the Bank and, probably, of other large European purchasers of hundís to notify that they will not be bound by any local usage which contravenes the English law as to bills of exchange. Though the Bill should pass in its present form, this practice will remain legal and unaffected. It operates of course to bind only the seller to waive a defence which he might otherwise have made. But the other parties to the hundí are practically precluded from setting up any such usage by the knowledge that if they did so their credit would be destroyed by refusal of the Bank to buy hundís on which their names appear.

* See, for example, 1 Suth. W. R. 75 : 2 *ibid.* 214 : 6 *ibid.* 301 : 2 Hyde 259 : 3 Beng. A. C. 193 : 7 Beng. 275, 289, 431, 687. 9 Beng. Appendix L : 2 Sevestre 621, n. : N. W. P. 1868, p. 268 : Ferry 296 : 6 Bomb. O. C. J. 24 : 7 Bomb. O. C. J. 137, 140 : 12 Bomb. 113.

4. To exclude totally (as the Panjáb Government propose) hundis from any part of the Bill would be to render the proposed legislation to a great extent inoperative, and would probably result in withdrawal of the Bill. Considering the fact that the carrying on of the internal trade of India is becoming more and more dependent on English capital, and that the use in the Mufassal of bills in the English form is therefore largely increasing, we think that such withdrawal would be highly inexpedient. We are supported in this opinion by the fact that the Local Governments of Bengal, Bombay, the North-Western Provinces and Ajmer have all reported in favour of the Bill; that the Chambers of Commerce at Calcutta, Madras, and Bombay, the Bank of Bombay, and the Calcutta Trades Association, have done the same; and that the Directors of the Bank of Bengal bear testimony as to the ability with which it was framed by Mr. Phillips.

5. Turning now to the details of the Bill, we have, in the first place, expressly saved the provisions of the Indian Paper Currency Act, 1871, section 21, which prohibits the issue of private bills or notes payable to bearer on demand.

6. We have struck out from section 16 the words "the whole or any part of," as they might have been taken to imply that there may be a special indorsement expressly directing payment of part of the amount mentioned in the instrument.

7. Section 21 was taken from the Law Commissioners' draft, and deals with a promissory note signed by two persons, and shewing that one of them subscribes only to an alternative liability. We think it very doubtful whether such an informal instrument is a promissory note at all, and for this and other reasons we have omitted the section.

8. We have also omitted section 33, as the matter appears to us to be sufficiently provided for by the Indian Contract Act; for the same reason we have omitted the first half of section 43.

9. We have omitted, as unlikely to be practically useful, sections 55 and 56, which provide for the delivery without indorsement, but with intent to transfer title, of bills payable to the order of a specified person or to a specified person or order.

10. We have omitted section 59, as the matter is sufficiently covered by the preceding section.

11. We do not think that the Bill should deal with collateral agreements, and have therefore struck out section 66.

12. We have amended the section (73, now 67) as to the drawee's term for deliberation. It now provides that the holder may allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept the Bill.

13. We think that, in order to charge the drawer of a cheque, the holder should only be bound to present it at the bank on which it is drawn before the relation between the drawer and the banker has been altered to the prejudice of the drawer. We have altered section 82 accordingly.

14. We have omitted from section 97 the explanation relating to material alterations.

15. We have made some changes in wording and arrangement.

16. The Bill No. III. and the second report of the Select Committee have been published in English in all the local Gazettes except those for Assam and Rajputana. Publication of the Bill and report in the vernacular has been reported only by the Governments of Madras, Bengal and the North-Western Provinces and Oudh and the Chief Commissioner of the Central Provinces.

17. With the exception of our Hon'ble Colleague Mr. Morgan, we think that the Bill might now be passed as amended. Mr. Morgan would omit the clause saving local usages as to hundis. In other respects he approves of the Bill. We recommend that its further consideration be stayed until the new Law Commission has reported thereon. Meanwhile, we think the Bill, as now amended, should be published with this report in the *Gazette of India*.

WHITLEY STOKES.

G. C. PAUL.

G. H. P. EVANS.

F. R. COCKERELL.

CALCUTTA,
The 19th February, 1879. }

Although I think that this Bill is, on the whole, a very good one, I cannot approve of the recognition which it accords to local usages relating to hundis. From a careful consideration of the papers which have been received with reference to the Bill, and from my own experience as regards the existing practice regarding hundis, I do not believe that there are any usages which call for special recognition at the hands of the Legislature, and I think that the proposed recognition may put an arm into the hands of those who are dishonestly disposed, which they do not at present possess.

E. C. MORGAN.

No. IV.
THE NEGOTIABLE INSTRUMENTS
BILL, 1879.

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SCHEDULE.

No. IV.

A Bill to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

WHEREAS it is expedient to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called "the Negotiable Instruments Act, 1879 :"
 Short title.
 It extends to the whole of British India; but nothing herein contained affects any local usage relating to any instrument in an oriental language or affects the Indian Paper Currency Act, 1871, section twenty-one:
 Local extent.
 Saving of usages relating to hundis, &c.
 Commencement.

And it shall come into force on the first day of January, 1880.

2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof.
 Repeal of enactments.

Interpretation clause.

3. In this Act—

- "Banker" includes also persons or a corporation or company acting as Bankers, and
 "Banker."
 "Notary Public" includes also any officer appointed by the Governor General in Council to perform the functions of a Notary Public under this Act.
 "Notary Public."

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

4. A promissory note is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.
 Promissory Note.

Illustrations.

A signs instruments in the following terms:—

- (a). "I promise to pay B or order Rs. 500."
 (b) "I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand, for value received."
 (c) "Mr. B, I O U Rs. 1,000."
 (d) "I promise to pay B Rs. 500 and all other sums which shall be due to him."
 (e) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."
 (f) "I promise to pay B Rs. 500 seven days after my marriage with C."
 (g) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."
 (h) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (a), and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

5. A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.
 Bill of exchange.

6. A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.
 Cheque.

7. The maker of a bill of exchange or cheque is called the "drawer;"
 "Drawer."
 "Drawee." the person thereby directed to pay is called the "drawee."

When the bill gives the name of any person in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor."

When acceptance is refused and the bill is protested for non-acceptance, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

The person named in the instrument, to whom
 "Payee." or to whose order the
 money is by the instru-
 ment directed to be paid, is called the "payee."

8. The "holder" of a promissory note, bill
 of exchange or cheque
 "Holder." means any person enti-
 tled in his own name to the possession thereof and
 to receive or recover the amount due thereon
 from the parties thereto.

Where the note, bill or cheque is lost or de-
 stroyed, its holder is the person so entitled at the
 time of such loss or destruction.

9. "Holder in due course" means any person
 who became the posses-
 "Holder in due course." sor of a promissory note,
 bill of exchange or cheque if payable to bearer,
 or the payee or indorsee thereof, if payable to, or
 to the order of, a payee, for consideration before
 the amount mentioned in it became payable, and
 without having sufficient cause to believe that
 any defect existed in the title of the person from
 whom he derived his title.

10. "Payment in due course" means pay-
 ment in accordance with
 "Payment in due course." the apparent tenor of the
 instrument in good faith and without negligence
 to any person in possession thereof under cir-
 cumstances which do not afford a reasonable
 ground for believing that he is not entitled to
 receive payment of the amount therein mentioned.

11. A promissory note, bill of exchange or
 cheque drawn or made in
 Inland instrument. British India, and made
 payable in, or drawn upon any person resident
 in, British India shall be deemed to be an inland
 instrument.

12. Any such instrument not so drawn, made
 or made payable shall be
 Foreign instrument. deemed to be a foreign
 instrument.

13. A "negotiable instrument" means a pro-
 missory note, bill of ex-
 Negotiable instrument. change or cheque ex-
 pressed to be payable to a specified person or his
 order, or to the order of a specified person, or
 to the bearer thereof, or to a specified person, or
 the bearer thereof.

14. When a promissory note, bill of exchange
 or cheque is transferred
 Negotiation. to any person, so as to
 constitute that person the holder thereof, the in-
 strument is said to be negotiated.

15. When the maker or holder of a negoti-
 able instrument signs the
 Indorsement. same, otherwise than as
 such maker, for the purpose of negotiation, on
 the back or face thereof or on a slip of paper an-
 nexed thereto, or so signs for the same purpose
 a stamped paper intended to be completed as a
 negotiable instrument, he is said to indorse the
 same, and is called the "indorser."

16. If the indorser signs his name only, the
 indorsement is said to be
 Indorsement "in blank" and "in full." and if he
 adds a direction to pay

the amount mentioned in the instrument to, or to
 the order of, a specified person, the indorsement
 is said to be "in full;"
 "Indorsee." and the person so speci-
 fied is called the "indorsee" of the instrument.

17. Where an instrument may be construed
 either as a promissory
 Ambiguous instruments. note or bill of exchange,
 the holder may at his election treat it as either,
 and the instrument shall be thenceforward treated
 accordingly.

18. If the amount undertaken or ordered to
 be paid is stated differ-
 Where amount is stated differently in figures and words, the amount stated in words shall be the
 amount undertaken or ordered to be paid.

19. A promissory note or bill of exchange, in
 which no time for pay-
 Instruments payable on demand. ment is specified, and a
 cheque are payable on
 demand.

20. Where a stamped paper, which is intend-
 ed to be completed as a
 Blank stamped instru- negotiable instrument, is
 ments. signed and delivered by
 a competent person as maker, drawer, acceptor
 or indorser, the holder thereof may complete the
 same by filling up any blanks therein, and the
 person so signing shall be liable upon such instru-
 ment, in the capacity in which he signed the same,
 for any amount which may be specified therein
 not exceeding the amount covered by the stamp
 thereon: provided that as between the person de-
 livering and the person receiving the instrument
 nothing in excess of the amount intended by them
 to be paid shall be recovered.

Illustration.

A stamped paper intended to be completed as a
 negotiable instrument is made payable to " or
 order:" the holder of such instrument may fill up the
 blank with his own name, or that of any other person.

21. In a promissory note or bill of exchange
 the expressions "at sight,"
 "At sight." and "on presentment,"
 "On presentment." and "after sight,"
 "After sight." mean on demand. The
 expression "after sight"
 means, in a promissory note, after presentment
 for sight, and in a bill of exchange, after accept-
 ance or protest for non-acceptance.

22. The maturity of a promissory note or bill
 of exchange is the date
 "Maturity." at which it falls due.

Every promissory note or bill of exchange
 which is not expressed to
 Days of grace. be payable on demand,
 at sight, or on presentment, is at maturity on the
 third day after the day on which it is expressed
 to be payable.

23. In calculating the date at which a promi-
 ssory note or bill of ex-
 Calculating maturity of bill or note payable so many months after date or sight. change, made payable a
 stated number of months
 after date or after sight,
 or after a certain event, is at maturity, the period
 stated shall be held to terminate on the day of
 the month which corresponds with the day on
 which the instrument is dated, or presented for

acceptance or sight or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations.

(a) A negotiable instrument dated 29th January 1878 is made payable at one month after date. The instrument is at maturity on the third day after the 28th February 1878.

(b) A negotiable instrument dated 30th August 1878 is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

(c) A promissory note or bill of exchange, dated 31st August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

24. In calculating the date at which a promissory note or bill of exchange, made payable a certain number of days after date or after sight or after a certain event, is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Explanation.—The expression “public holiday” includes Sundays: New-Year’s day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good-Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

26. Until the contrary is proved, the following presumptions shall be made:—

(a) that every negotiable instrument was made of consideration; or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration:

(b) that every negotiable instrument bearing a date was made or drawn on such date:

(c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity:

(d) that every transfer of a negotiable instrument was made before its maturity:

(e) that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon:

(f) that a lost promissory note, bill of exchange or cheque was duly stamped:

(g) that the holder of a negotiable instrument is a holder in due course: provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

27. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

28. Every person capable of binding himself or of being bound, as mentioned in section 27, may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

29. An agent who signs his name to a promissory note, bill of exchange or cheque, without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

30. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque, is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

31. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

32. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder for any loss or damage caused thereby, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

33. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque, must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

34. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange, are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him, and caused by such default.

The provisions of this section are subject to those of sections 27, 29, 48, 49, 50, 62, 68, 72, 73 and 86.

35. No person except the drawee of a bill of exchange, or all or some of several joint drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

36. In the absence of a contract to the contrary, whoever endorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

The provisions of this section are subject to those of sections 27, 29, 48, 49, 50, 59, 60, 62, 65, 66, 68, 72, 76, 86, 87, 88, 90, 91 and 101, clause (a).

37. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

38. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor

are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer, or acceptor, as the case may be.

39. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

40. When the holder of an accepted bill of exchange enters into any contract with the acceptor or which under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

41. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank :—

First indorsement "B."

Second indorsement, "Peter Williams."

Third indorsement, "Wright and Co."

Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright and Co. A is not entitled to recover anything from John Rozario.

42. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

43. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

44. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

Estoppel against denying signature or capacity of prior party.

45. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptor bound, although indorsement forged.

46. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Acceptance of bill drawn in fictitious name.

47. If at any time there has been consideration between any parties to a negotiable instrument for the making, drawing, acceptance, indorsement, negotiation or transfer thereof, the party receiving such consideration is, in the absence of a contract to the contrary, liable upon the instrument to all subsequent parties thereto, and every subsequent holder is, as against him, a holder for consideration.

The provisions of this section are subject to those of sections 27, 49, 50, 59, 65, 66, 68, 72, 73, 76, 86, 87, 88, 89, 90, and 91.

Illustrations.

(a) A indorses a bill of exchange to B, at the request of C, for C's account with B. B is a holder of the bill for consideration, and if he indorses it as a present to D, D is a holder for consideration as against A.

(b) A, the holder of a negotiable instrument, indorses it in full to B, in the belief that B has done something which he has not done. B, for consideration proceeding from C, indorses the instrument in blank to C, and C indorses it to D. D strikes out C's indorsement. D is a holder of the instrument for consideration as against B.

48. When there was no consideration for the making, drawing, acceptance or indorsement of a negotiable instrument, or when the consideration has wholly failed, the maker, drawer, acceptor or indorser is not liable thereon to the party in whose favour the instrument was so made, drawn, accepted or indorsed, or to any party claiming through him, unless consideration was given by the claimant or by some party through whom he derives title. But the maker, drawer, acceptor or indorser is liable to compensate any subsequent party who, being liable on such instrument, pays the amount due thereon.

49. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of

Partial absence or failure of money-consideration.

money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque, stands in immediate relation with the payee, and the indorser with the indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

50. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

CHAPTER IV.

OF NEGOTIATION.

51. Subject to the provisions of section 62, Negotiation by delivery. a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

(a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b) A, the holder of a negotiable instrument payable to bearer which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

52. Subject to the provisions of section 62, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order is negotiable by the holder by indorsement and delivery thereof.

Negotiation by indorsement.

53. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature

Conversion of indorsement in blank into indorsement in full.

a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

54. The indorsement of a negotiable instrument followed by delivery
Effect of indorsement. transfers to the indorsee

the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

- (a) "Pay the contents to C only."
- (b) "Pay C for my use."
- (c) "Pay C or order for the account of B."
- (d) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

- (e) "Pay C."
- (f) "Pay C value in account with the Oriental Bank."
- (g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

55. Every sole maker, drawer, payee or in-

Who may negotiate. dorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument, may, if the negotiability of such instrument has not been restricted or excluded, as mentioned in section 54, indorse and negotiate the same.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

56. The indorser of a negotiable instrument

Indorser who excludes his own liability or makes it conditional.

may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon, depend upon the happening of a specified event although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

- (a) The indorser of a negotiable instrument signs his name, adding the words—
"Without recourse."

Upon this indorsement he incurs no liability.

- (b.) A is the payee and holder of a negotiable instrument. Excluding personal liability by an endorsement "without recourse," he transfers the

instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

57. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.
Holder deriving title from holder in due course.

58. Subject to the provisions of sections 121 and 122, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.
Instrument indorsed in blank.

59. If a negotiable instrument after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.
Conversion of indorsement in blank into indorsement in full.

60. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount of the instrument.
Indorsement for part of sum due.

61. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.
Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

62. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is or some person through whom he claims, was a holder thereof in due course.
Instrument obtained by unlawful means or for unlawful consideration.

63. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:
Instrument acquired after dishonour or when overdue.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.
Accommodation note or bill.

Illustration.

The acceptor of a bill of exchange, when he accepted it deposited with the drawer certain goods as a collateral security for the payment of the bill, with

power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

64. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee, or acceptor at or after maturity, but not after such payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

65. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place, and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

66. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight, by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

67. The holder may allow the drawee of a bill of exchange presented to him for acceptance twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

68. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

69. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

70. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

71. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

72. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

73. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

74. A promissory note or bill of exchange, not made payable as mentioned in sections 72 and 73, must be presented for payment at one of the places specified (if any), or at the place of business (if any), or at the usual residence of the maker, drawee or acceptor thereof, as the case may be.

75. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

76. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

77. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

78. Subject to the provisions of section 33, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

79. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or where the drawee, maker or acceptor has died, to his legal representative, or where he has been declared an insolvent, to his assignee.

80. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:—

(a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or if the instrument being payable at his place of business, he closes such place on a business day during the usual business-hours, or

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours; or

if the instrument not being payable at any specified place, he cannot after due search be found;

(b) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(c) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

81. When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

CHAPTER VI.

OF PAYMENT AND INTEREST.

82. Subject to the provisions of section 86, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

83. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount and from the date of the instrument, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

84. When no rate of interest is specified in the instrument, interest on the amount thereof shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party

charged, until tender or realization of the amount due thereon or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

85. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

86. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

(a) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder,

(b) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

87. If the holder of a bill of exchange allows the drawee more than twenty-four hours to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

88. When the holder of a cheque fails to present it for payment, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

89. Where a cheque payable to order, purports to be indorsed by or on behalf of the payee the drawee is discharged by payment in due course.

90. If the holder of a bill of exchange acquiesces in a conditional acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for

payment, or which, where the drawers are not partners is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him.

91. Save as provided in sections 20, 53, 90 and 120, any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

and any such alteration if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 53, 90 and 120.

92. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

93. Where a promissory note, bill of exchange or cheque has been materially altered, but does not appear to have been so altered,

Payment of instrument on which alteration is not apparent.

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

94. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill.

Where the drawee is incompetent to contract the bill may be treated as dishonoured.

95. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill, or drawee of the cheque makes default in payment upon being duly required to pay the same.

96. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable

By and to whom notice should be given.

thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

97. Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business, or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is sent by post and miscarries, such miscarriage does not render the notice invalid.

98. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, transmit it to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 96.

99. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

100. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary. 101. No notice of dishonour is necessary—

(a) when it is dispensed with by the party entitled thereto;

(b) in order to charge the drawer, when he has countermanded payment;

(c) when the party charged could not suffer damage for want of notice;

(d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(e) to charge the drawers, when the acceptor is also a drawer;

(f) in the case of a promissory note which is not negotiable;

(g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

102. When a promissory note or bill of exchange has been dis-

Noting. honoured by non-acceptance or non-payment,

the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

103. When a promissory note or bill of exchange has been dishonoured by non-acceptance

Protest.

or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest, and in a suit upon the instrument, on proof of the protest, the Court shall presume the fact of dishonour, unless and until such fact is disproved.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Contents of protest.

104. A protest under section 103 must contain—

(a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(b) the name of the person for whom and against whom the instrument has been protested;

(c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;

(d) when the note or bill has been dishonoured, the place and time of dishonour, and when better security has been refused, the place and time of refusal;

(e) the subscription of the notary public making the protest;

(f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

105. When a promissory note or bill of exchange is required by law to be protested, notice of such

Notice of protest.

protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

106. All bills of exchange drawn payable at

Protest for non-payment after dishonour by non-acceptance.

some other place than the place mentioned as the residence of the drawee, and

which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

CHAPTER X.

OF REASONABLE TIME.

107. In determining what is a reasonable time for presentment for acceptance or payment, for

Reasonable time.

giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and in calculating such time, public holidays shall be excluded.

108. Presentment is made within a reasonable

Reasonable time for presentment. time, within the meaning of sections 65, 77 and 78,

if it is made on the business day next after that on which the holder received the instrument referred to, or when there is no more delay than is occasioned by the residence of the parties to the instrument in different places.

Illustration.

A draws on B, resident at Calcutta, a bill of exchange in favour of C payable at sight, and sends it to C at Benares. C, the day after he receives it, indorses it to D, and despatches it to D at Calcutta. D, the day after he receives the bill, presents it for payment. The delay which has taken place in presenting the bill is not unreasonable.

109. If the holder and the party to whom no-

Reasonable time of giving notice of dishonour. tice of dishonour is given carry on business or live

(as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

110. A party receiving notice of dishonour,

Reasonable time for who seeks to enforce his transmitting such notice. right against a prior party, transmits the notice within

a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR.

111. When a bill of exchange has been noted Acceptance for honour. or protested for non-acceptance or for better security, any person may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

112. Where the acceptance does not express

Acceptance not specifying for whose honour it is made. for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

113. An acceptor for honour binds himself to

Liability of acceptor for honour. all parties subsequent to the party for whose honour he accepts to pay the amount of the bill

if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

114. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment and has been dishonoured by him, and noted or protested for such dishonour.

115. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

116. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid with interest thereon and with all expenses properly incurred in making such payment.

CHAPTER XII.

OF COMPENSATION.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532) be determined by the following rules:—

(a) The holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

(b) When the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

(c) An indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;

(d) When the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

(e) The party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the

amount due to him together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

OF CROSSED CHEQUES.

118. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

119. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

120. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

121. Where a cheque is crossed generally, the Payment of cheque banker on whom it is crossed generally, drawn shall not pay it otherwise than to a banker.

Where a cheque is crossed specially, the banker Payment of cheque on whom it is drawn shall crossed specially, not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

122. Where a cheque is crossed specially to Payment of cheque more than one banker, crossed specially more than except when crossed to once, an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

123. Where the banker on whom a crossed Payment in due course of cheque is drawn has paid crossed cheque, the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

124. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially other-

wise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

125. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

But a banker who has in good faith and without negligence received payment from a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

CHAPTER XIV.

OF FOREIGN BILLS.

126. Foreign bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he is liable on each part as if it were a separate bill.

127. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

128. Where a drawee in case of need is named in a foreign bill of exchange, the bill is not dishonoured until dishonoured by such drawee.

129. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

CHAPTER XV.

OF INTERNATIONAL LAW.

130. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Illustrations.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent, and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in British India, and is dishonoured. An action on the

bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

131. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

132. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into, does not invalidate any subsequent acceptance or endorsement made thereon in British India.

133. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

SCHEDULE.

(a) STATUTES.

Year and chapter.	Title.	Extent of repeal.
9 Wm. III. c. 17.	An Act for the better payment of Inland Bills of Exchange.	The whole.
3 & 4 Anne, c. 8.	An Act for giving like remedy upon promissory notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.	The whole.

(b) ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

No. and year.	Title.	Extent of repeal.
VI of 1840	An Act for the amendment of the law concerning the negotiation of Bills of Exchange.	The whole.
V of 1866	An Act to amend in certain respects the Commercial Law of British India.	Sections 11, 12 and 13.
XV of 1874	The Laws Local Extent Act, 1874.	The first schedule so far as relates to Act VI of 1840 and Act V of 1866, sections 11, 12 and 13.

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

The following further Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th of February, 1879 :—

WE, the undersigned Members of the Select Committee to which the Bill to define and amend the

law relating to the Transfer of

Property was referred, have

considered the Bill and the

papers noted in the margin,

and have the honour to present

this further report.

2. The principal objec-

tions taken to this Bill in its

second form are, first, that, as

a whole, it is heterogeneous,

and, secondly, that certain

parts of it are neither neces-

sary nor expedient. It is said,

for instance, that though the

bulk of the Bill deals with

transfer of property *inter vivos*

by act of parties, it also treats,

in sections 82, 83, of condi-

tions in Wills, and, in section

129, of Succession to a de-

ceased person. It is said,

again, that the chapters dealing respectively with the rights and liabilities of owners of limited interests

and with property held by several persons, belong rather to the subject of the enjoyment, than to that

of the transfer, of property. It is urged that settlements (in the conveyancer's sense of the word) are

hardly ever made in India, that what are technically called Powers are almost unknown, and that the

chapters respectively dealing with those subjects are certainly not necessary and can hardly be said to

be expedient. We feel the force of these objections. In fact, we have always felt them. But we were

not responsible for the first draft of the Bill, whatever were its excellences or defects. The matters thus

objected to, together with others, such as Registration and Trusts, still more foreign to the proper sub-

ject of the Bill, are all dealt with by the draft prepared by the late Indian Law Commission, which was

sent out in 1870 by the then Secretary of State with instructions to introduce a Bill founded upon

it, revised by Sir A. Hobhouse and sent home by the Government of India in January, 1877, *i. e.*, nearly

six months before the Bill was introduced and referred to a Select Committee. The great deference

due to the Law Commission and to Sir A. Hobhouse has hitherto prevented us from dealing freely with

the Bill. Until the opinions of the Local Governments and the results of local experience had been ob-

tained, for us to have altered it would have been to set our individual views against those of the able

and learned men who were answerable for the Bill as introduced. But now that the opinions and results

above referred to have been obtained, we see that, if the Bill is to go on at all, it must be strictly con-

fined to the subject of transfer of property by act of parties, that is to say, by contract or gift.

3. We have therefore omitted chapters VII to XII, both inclusive.

4. We cannot maintain that they are in accordance with one of the canons laid down in our last

report, namely, that no additions should be made to the existing law "which are not either necessary

or clearly expedient." The chapters dealing respectively with settlements, the rights and liabilities

of owners of limited interests, and property held by several persons, are, moreover, very incomplete ;

and, as Natives are excluded from chapter IX, it would apply to a very limited class of persons.

Chapter XI (of Powers) would also be of little use. We believe that among Natives powers are almost

unknown. So far as we are aware, the only reported cases in which anything like a power was given

by a Native are in 2 Calc. 474, and N.-W. P. (1869) Part II, p. 6, in each of which cases a Hindú be-

queathed land to his wife and expressly empowered her to alienate it, and in 5 Beng. 181, where a Hindú

testator empowered his sister to appoint a trustee of a religious endowment. Moreover, powers may

be created by will, and are, as often as not, exerciseable by will. The subject therefore does not pro-

perly fall within a measure treating of the *transfer* of property, that is, as lawyers generally understand

the expression, the conveyance of property from one living person to another.

5. As the Bill is, so far as it deals with immoveable property and debts, only a partial measure,

we have made the preamble run thus :—"Whereas it is expedient to define and amend certain parts of

the law relating to the transfer of property by act of parties." Compare the preamble to the Indian

Contract Act, IX of 1872.

CHAPTER I.—Preliminary.

6. In section 2 we have expressly saved all transfers by operation of law (*e. g.*, in case of

insolvency, forfeiture, sale in execution of a decree), with which the Bill is not intended to deal.

VI.—16 e

7. In section 3 we have omitted, as unnecessary, the definitions of "grantor," "grantee," and "grant;" and, for the last paragraph, we have said: "Chapters III, IV, V and VI of this Act shall be taken as part of the Indian Contract Act, 1872."

CHAPTER II.—Of Assurances of Immoveable Property.

8. This chapter should, we think, be entitled "Of Transfers of Immoveable Property," as it relates to all transfers of such property, whether or not an assurance is employed. We have omitted section 5 and the schedule to which it relates: they do not fitly form part of a Bill dealing with substantive law. Moreover, English experience shews that statutory forms of conveyances are rarely used, and they are dangerous, as tempting unskilled persons to try and be their own conveyancers.

9. Section 6 applies to transfers of immoveable property made by assurance; but it obviously ought to apply also to oral transfers of such property. We have therefore re-drawn it.

10. In section 7 we have provided for the case of a *Sebait*, which has twice come before the Judicial Committee. (See 14 Beng. 450, and I. L. R. 2. Calc. 341).

11. As rents and profits of land are 'immoveable property,' we have, after this section, inserted section 1 of Act XI of 1855:—

"No person shall be chargeable with any rents or profits of any immoveable property which he has in good faith paid or delivered to any person of whom he in good faith held the same, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits."

This section now applies only to cases to which the English law is applicable; but there seems no reason why so equitable and useful a rule should not be extended to every one in India.

12. Section 8 of Bill No. III applies not only to cases where land has passed *inter vivos* by act of parties, but also to cases in which it has been transferred by operation of law. It therefore seems beyond the scope of the Bill.

13. The Bill is silent as to the doctrine of *lis pendens*, which has in about a dozen reported cases been applied to Native purchasers and mortgagees (see 11 Bom. 24, 29, 30, 139; 8 Beng. 474; 1 O'Kin. 303, 309; 10 W. R. 469; Sev. 808, 951). We have inserted the following:—

"10. During the active prosecution in any Court having authority in British India or established beyond the limits of British India by the Governor General in Council, of a suit in which the right to any immoveable property is directly and specifically in question, the property cannot be transferred by any party to the suit so as to affect the rights of any other party thereto under any decree or order made therein."

14. Section 9 of Bill No. III (as to the effect of payment by one person, of consideration for which a transfer is made to another) properly belongs to the Trusts Bill, and should, we think, be omitted from the present measure.

CHAPTER III.—Sales of Immoveable Property.

15. In accordance with a suggestion of Mr. Justice Cunningham we have prefixed to this chapter a section founded on section 78 of the Contract Act; but we do not think with him that the section should provide for part delivery, an expression which, in the sense in which it is used in the Contract Act, section 92, would be inappropriate as applied to land, nor do we consider that, in stating the time at which delivery takes place, the effect of executing and delivering the assurance should be ignored.

The section referred to is as follows:—

Sale how effected. "Sale of immoveable property is effected by offer and acceptance of certain immoveable property for a price, or of a price for certain immoveable property.

"together with payment of the price and delivery of the property, or with tender, part-payment or earnest; or with an agreement, express or implied, that the payment, or delivery, or both, shall be postponed.

"Where there is a contract for the sale of immoveable property, the ownership of the property passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the property is delivered.

"If the parties agree, expressly or by implication, that the payment, or delivery, or both, shall be postponed, the ownership passes as soon as the proposal for sale is accepted.

"Delivery of immoveable property takes places—

"(a) if the transfer is made by assurance—when the assurance is executed and delivered by the seller, and (if its registration is required by law) registered :

"(b) if the transfer is not made by assurance, in the case of a reversion or other intangible thing—when the parties consent to its delivery, and in the case of other immoveable property—when the buyer becomes capable of exercising physical control over it and determines to exercise such control on his own behalf or on behalf of the person whom he represents."

This will have the effect of settling a moot point of Hindú law, namely, whether change of possession is necessary to complete a sale of land ; whether, in other words, the vendor must, at the time of sale, be in possession of the property sold (I. L. R. 1 Calc. 302 : I. L. R. 1 Bomb. 502 : N.-W. P. 1871, p. 2 : *contra* 7 Bomb. A. C. J. 4 : 10 Bomb. 491). This question is answered in the negative by the Calcutta High Court and Mr. J. D. Mayne, a considerable authority on Hindú law.

16. We have omitted clauses (d) and (i) of section 11 (now 12). The former is, as Mr. Jacob points out, provided for by the Contract Act, section 39; the latter by section 10 of the same Act. On the other hand, we have restored clauses (c) and (f) of Bill No. I modified as follows :—

"Till the ownership of the property passes to the buyer, the seller is entitled to the rents and profits thereof.

"When the ownership of the property has passed to the buyer, he must bear any loss arising from the destruction, injury or deterioration of the property not caused by the seller, and he is entitled to the benefit of any improvement in, or increase in value of, the property and to the rents and profits thereof."

The latter clause corresponds with the provision of the Contract Act, section 86, as to goods.

17. We have recast and abridged section 10 (now 13) as follows :—

Disclosures required from seller and buyer.

"The following omissions are fraudulent :—

"(a) an omission of the seller of immoveable property to disclose to the buyer any defect therein of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover :

"(b) an omission of the buyer of immoveable property to disclose to the seller any fact as to the nature or extent of the seller's interest therein, of which the buyer is, and the seller is not, aware, and which increases the value of such interest."

This will attract section 17, clause (5), of the Contract Act, which declares that "fraud" includes "any such omission as the law specially declares to be fraudulent."

18. As the Bill is now strictly limited to transfers by act of parties, we have omitted section 13, as to the procedure where the buyer becomes insolvent before completion. For the same reason we have also omitted section 73, as to the procedure where, during the continuance of a lease, the lessee becomes insolvent.

19. Section 17 (now 18), as to joint purchases. We have added, as Mr. Field suggests : "In the absence of evidence as to the shares so advanced, such persons shall be presumed to be equally interested in the property."

CHAPTER IV.—Of Exchanges.

20. As this chapter deals with moveable as well as immoveable property, we have placed it after the chapter on leases, and we have omitted the first paragraph of section 22, as the matter seems sufficiently provided for by Act IX of 1872, sections 64, 65, and Act I of 1867, sections 25, 37.

CHAPTER V.—Of Mortgages of Immoveable Property.

21. Section 27.—We fear that the abolition of equitable mortgages here proposed by the Law Commissioners would inconvenience the mercantile community. We have thought it better to say that a mortgage by deposit of title-deeds shall be deemed to create a charge on the property comprised therein and to insert the necessary clause in section 68 (now 63).

22. We have provided, in accordance with a suggestion of Mr. Field, that in the case of an usufructuary mortgage, the mortgagor may recover possession of the property, (1) where the mortgagee is authorized to pay himself from the rents and profits of the property the principal and interest of the

mortgage-money—when such principal and interest are so paid; (2) where the mortgagee is authorized to pay himself from such rents and profits the interest of the mortgage-money—when the term (if any) of the mortgage expires and the mortgagor pays or tenders to the mortgagee, or deposits in such Court as last aforesaid, the principal of the mortgage-money.”

23. Section 29 (now 24).—We have here declared the duty of a mortgagor to take all legal means to protect his rights in the mortgaged property (Macph. 112).

24. Section 31 (now 27).—This provided only for voluntary waste. We have now provided that the mortgagor is not liable for permissive waste.

25. Section 42 (now 39), clause (c).—We have added, in order to meet the case of *patni* tenures and saleable under-tenures, “and any arrears of rent in default of payment of which the property may be summarily sold.”

We have provided that a mortgagee in possession ought to do such repairs as he can pay for out of the rents received after his interest is paid (see 9 W. R. 488).

We have omitted clause (e). The right which it gives is, as Mr. Field says, part of the mortgagee's right to take possession, which, as a general rule, finds no place in the Bill.

Where sufficient tender is made, the mortgagee in possession is thenceforth accountable for all his receipts from the mortgaged property (9 N.-W. P. 1 : Macph. 159—160). We have provided for this.

26. Section 60 (now 57).—When a mortgagor obtains a decree in a redemption-suit and fails to pay the amount due, we think the mortgagee should be entitled either to a foreclosure or a sale. We have altered this section accordingly.

27. Section 61 (now 58).—We have omitted the second paragraph and the schedule to which it refers. It is hardly the function of a Bill codifying substantive law to give forms of decrees. They should, if necessary, be added to schedule IV of the Code of Civil Procedure.

CHAPTER VI.—Of Leases.

28. Section 70 (now 66).—We have substituted a section analogous to that above proposed as a substitute for section 10.

29. Section 71 (now 65).—We have struck out clauses (c) and (g). The former is superfluous; the latter is provided for by the Contract Act, sections 64 and 73.

Clause (i) now (j).—With reference to Couch, C. J.'s, decision in *Koegler v. Yule*, 5 Beng. 401, 416, we think this clause should run thus: “The lessee may use the property leased and its products (if any) as a reasonable owner would use them, but he must not use the property for a purpose other than that for which it was leased, or fell timber, open mines or quarries, or commit any other act which is destructive or permanently injurious thereto.” We have added “The prohibition in this clause does not apply to mines which were open when the lease was granted.”—See 8 Chan. Div. 526.

Clause (g) now (o).—We have inserted words in the proviso to show that the lessor's transferee is not entitled to arrears of rent due before the transfer.

Clause (r) now (p).—We have made (in accordance with a suggestion of the Government of the North-Western Provinces) the second paragraph to run thus: “Nothing in this clause shall be deemed to authorize a tenant having a right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, and the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.”

30. Section 76 (now 70).—We have completed the list of events on which a lease determines.

31. We have redrawn the clause as to waiver of forfeiture and notice. It is now numbered 71, 72.

32. We have inserted a section (74) as to the effect of surrender and forfeiture of a lease, on sub-lessees.

33. We have made some other comparatively unimportant omissions, additions and alterations in wording and arrangement. We have added on the margins references to the reported decisions of the Indian Courts and the Judicial Committee, which justify the rules contained in the Bill. It will be seen that but few of these rules are devoid of this valuable support. The assertion that the Bill would introduce a mass of new law into India must therefore be due to ignorance of the extent to which English law (under the name of justice, equity and good conscience) is actually administered to the Natives by the Anglo-Indian Courts. The object of the Bill, like that of all our Codes, is to strip our own law of all that is local and historical, and to mould the residue into a shape in which it would be suitable for an Indian population and could be easily administered by non-professional Judges. But the Bill will introduce hardly any new substantive law, and it will not (except in the case of the procedure relating to mortgages) displace any existing enactment. The rules, for instance, as to the relation of landlord and tenant contained in the local Acts, X. of 1859, XVIII of 1873, XIX of 1868, XXVIII of 1868, Bengal Act VIII of 1869, and Madras Act VIII of 1865, will all remain untouched.

34. To the body of local usages and contractual incidents which in India, as in other countries, exists as to the transfer of land the tenderest care is shown by the Bill. Not only is local usage expressly saved in sections 62, 65 and 68, but the effect of section 1, clause (a), will be to maintain intact the statutory force which the legislature has given to local usage in those two *pays de coutumes* the Panjáb and Oudh; and throughout India all the many incidents of a mortgage or a lease, which are not inconsistent with the provisions of the Bill, will remain wholly unaffected.

35. The Bill and preliminary report of the Select Committee have been published in English in the Presidency-towns, the Panjáb, the Central Provinces and British Burma. From the North-Western Provinces no report of publication has been received. Publication of the Bill and Report in the vernacular has been reported only by the Government of Bengal. We recommend that the Bill as now altered be published in the *Gazette of India* and sent to the various Local Governments for opinion. And we think that no further steps should be taken upon the Bill until it has been reported on by the new Indian Law Commission.

WHITLEY STOKES.
F. R. COCKERELL.

CALCUTTA;
The 19th February 1879. }

I concur in all the omissions and amendments made by the Committee and in their final recommendation; but I believe the Bill to be capable of further simplification, and regret to notice the almost entire absence of illustrations.

T. H. THORNTON.

I have not had time to consider either the provisions of the Bill or the changes now made thoroughly; but I agree that the chapters on Powers, Settlements, &c., should be omitted, and think these omissions necessitate republication with a view to elicit fresh criticism to be laid before the new Commission.

I would modify the new section 11 by requiring a written instrument in all cases where the value of the property sold is Rs. 100 or upwards. This will involve registration and get rid of the inconvenience and anomaly which would arise from oral sales of valuable land with deferred possession and no registration. Subject to the above remarks, I approve of the additions now made to the Bill.

G. H. P. EVANS.

I concur in all the omissions, and agree that there should be a further publication.

G. C. PAUL.

I am opposed to the republication of this Bill at the present time. I believe that there is a great deal still left in the Bill which it will be desirable to omit, as relating to matters on which legislation is not called for; and I think that there should be no further publication until the Law Commission have reported on the measure.

A. J. ARBUTHNOT.

I am inclined to think that there can be no harm in republishing the Bill in its present form (though I must say that I believe it admits of further improvement), inasmuch as the republication will elicit public criticisms which may be of some use to the Law Commission.

JOTINDRA MOHAN TAGORE.

No. III.
THE TRANSFER OF PROPERTY
BILL, 1879.

C O N T E N T S .

PREAMBLE.

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7. Title which transferor of immoveable property can give.
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9. Transfer of share of undivided property.
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12. Rights and liabilities of buyer and seller.
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47. Marshalling securities.
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52. Decree for sale.
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55. Who may sue for redemption.
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70. Determination of lease.
71. Waiver of forfeiture.
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76. "Exchange" defined.

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81. Notice to be in writing signed.
82. Debtor to give effect to transfer.
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84. Mortgaged debt.
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OF APPORTIONMENT.

86. Apportionment of periodical payments on determination of interest of person entitled.
- SCHEDULE—Repeal of Enactments.

No. III.

A Bill to amend the law relating to the Transfer of Property by act of Parties.

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Bill s. 1:
Bill II, s. 1.

1. This Act may be called "The Transfer of Property Act, 1879."

Short title.

Extent. It extends to the whole of British India;

Commencement. And it shall come into force on the first day of January 1880.

Bill, s. 2:
Bill II, s. 1.

2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof. But nothing herein contained shall be deemed to affect—

Act IX of 1872, s. 1. (a) the provisions of any enactment not Saving of certain hereby expressly repealed: Acts, incidents, rights, liabilities, &c.

(b) any incidents of any contract which are not inconsistent with the provisions of this Act:

(c) any right or liability acquired or incurred before this Act comes into force, or any remedy in respect of any such right or liability:

(d) the right to anything affixed to the soil by the lessee under any lease granted before this Act comes into force:

4 Beng. A.C. 219.

(e) any right of pre-emption acquired after this Act comes into force:

I. L. R., 2 Bom. 541. (f) any transfer by operation of law.

3. In this Act, unless there be something repugnant in the subject or context—
Interpretation-clause.

"assurance" means any non-testamentary instrument which purports or operates to create, transfer, or otherwise dispose of, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immoveable property: Bill s. 3:
Bill II, s. 1:
Report, s. 2:

"registered" means registered in British India under the law for the time being in force regulating the registration of documents: Act III of 1877, s. 17, cl. (b).

"attached to the earth" means—
(a) imbedded in the earth, as in the case of walls:

(b) permanently resting upon it, as in the case of buildings; or See ss. 18, 44, clause (s), 61.

(c) attached to what is so imbedded or so rests, as by means of nails, bolts, screws, cement, solder or other permanent fastening.

4. Chapters III, IV, V and VI of this Act shall be construed as one with the Indian Contract Act, 1872. Chapters III, IV, V and VI to be part of Act IX of 1872.

CHAPTER II.

OF TRANSFERS OF IMMOVEABLE PROPERTY.

5. Every person competent to contract may make a transfer of immoveable property: but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such property. Bill, s. 4:
Report, s. 4

6. Unless a different intention is expressed or necessarily implied, a transfer of immoveable property vests in the transferee all the interest which the transferor is then capable of passing therein and in the legal incidents thereof. Bill, s. 10:
Report, s. 10.
v. last clause, Report s. 6:
2 W. R. 125 (buildings):
14 W. R. 379.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

N.-W.P. 1870, p. 251:
24 W. R. 330
(trees 'everything
grown on it,
Morley, N. S. 259.

Such incidents include (where the property is land) the easements annexed thereto, the mines and minerals thereunder and the standing trees, and all other products of the soil,

and (where the property is machinery attached to the earth (the moveable parts thereof,

and (where the property is a house) the easements annexed thereto and its locks, keys, bars, doors, windows, pankhas, half-doors, mats and blinds.

9 Moo. I. A. 303.

7. The transferor of immoveable property cannot give to another a title thereto better than his own, and where he has only a restricted power of alienating the property, he cannot give to another a title thereto valid as against third parties, except upon an alienation within the restriction:

Provided that where the transferor is (a) Protection to innocent transferees for value. party of a minor, an undivided family, or an endowed temple, (b) a sonless Hindu widow in possession of her deceased husband's property, or (c) a trustee, benāmidār or other ostensible owner, the transferee's title shall not be impeached if the transfer has been made for a consideration and the transferee has acted in good faith and used due care and diligence to ascertain that the transferor had power to make the transfer.

Act XI of 1855, s. 1.

8. No person shall be chargeable with any rents or profits of any immoveable property which he has in good faith paid or delivered to any person of whom he in good faith held the same, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

9. Where undivided immoveable property is held in possession by co-owners and one of them transfers his share or any interest therein, the transferee takes the share or interest subject to the right of the other co-owners to enforce a partition of the property; and when such partition is effected, the right of the transferee as such, in the absence of a contract to the contrary by the co-owners, extends only to the share allotted to himself or to his transferor.

10. During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor General in Council, of a suit in which the right to any immoveable property is directly and specifically in question, the property cannot be transferred by any party to the suit so as to affect the rights of any other party thereto under any decree or order therein.

8 Beng. 478:

7 Mad. 111:

11 Bom. 24, 64, 139:

N.-W.P. 1867, p. 301:

10 W. R. 469:

7 W. R. 225: 15 W.

R. 372: 23 W. R.

382:

2 Tayl. & Bell, 113:

1 O'Kin. 303, 309:

5 W. R. P. C. 63:

8 Bom. A. C. J. 61.

Consider *Berry v.*

Gibbons, L. R. 8

Ch. 747.

11. Sale of immoveable property is effected by offer and acceptance of certain immoveable property for a price, or of a price for certain immoveable property,

together with payment of the price and delivery of the property, or with tender, part-payment or earnest; or with an agreement, express or implied, that the payment, or delivery, or both, shall be postponed.

Where there is a contract for the sale of immoveable property, the ownership of the property passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the property is delivered.

If the parties agree, expressly or by implication, that the payment, or delivery, or both, shall be postponed, the ownership passes as soon as the proposal for sale is accepted.

Delivery of immoveable property takes place—

(a) if the transfer is made by assurance—when the assurance is executed and delivered by the seller, and (if its registration is required by law) registered:

(b) if the transfer is not made by assurance, in the case of a reversion or other intangible thing—when the parties consent to the delivery, and in the case of other immoveable property—when the buyer becomes capable of exercising physical control over it and determines to exercise such control on his own behalf, or on behalf of the person whom he represents.

12. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively have the rights, and are subject to the liabilities, mentioned in the ten rules next following, or such of them as are applicable to the property sold:

(a). The seller must produce to the buyer, for examination, all documents of title relating to the property which are in his possession or power, and must inform the buyer of all facts not apparent thereon of which the seller is aware and which affect the seller's power to fulfil his contract, and must answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto.

(b). Till the ownership of the property passes to the buyer, the seller is entitled to the rents and profits thereof.

(c). When the ownership of the property has passed to the buyer, he must bear any loss arising from the destruction, injury or decrease in value of the property not caused

Delivery not necessary in case of Hindūs, 14 Beng. 307: 1 Bom. 5, 19. Effect of part-payment, N.-W.P. 1866, p. 161: 15 W. R. 44: in Muhammadan law: Effect of earnest, W. R. 1864. 281: 1 Bom. 403. Cf. Act IX of 1872, s. 78, as to goods: postponement of payment, 7 W. R. 317. Effect of delivery before payment, 10 W. R. 194.

14 Beng. 307, 312: N.-W.P. 1866, p. 87. Consider 12 W. R. P. C. 6: as to delivery of assurance, W. R. 1864, p. 222: 5 W. R. 248: Morley N. S. 358.

Right to redeem, N.-W.P. 1868, p. 376.

Bill, s. 11: Bill II, s. 11: Report, s. 14.

Darsi Ghelā v. Jivaraaj Mukundās, 2 Bom. 432 (no right to have good title shewn). Abstract of title, 1 Bom. 78.

Bill, 11 (c).

Cf. Act IX of 1872, s. 86. Bill, 11 (f).

by the seller, and he is entitled to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof.

3 Bom. A. C. J. 102 :
2 Hay 577.

(d). When the buyer has been let into possession of the property before payment of the whole of the purchase-money, the seller has a charge upon the property for the amount of the purchase-money, or any part thereof, remaining unpaid, and for interest on such amount or part; but as soon as the assurance, if any, is registered, such charge shall cease except as against the buyer.

(e). Unless the buyer has improperly declined to accept delivery of the property, he has, against the seller, a charge on the property, to the extent of the seller's interest therein, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery, and for interest on the amount of such payment; and, when the buyer properly declines to accept the delivery, also for the earnest (if any) and for his costs (if any) of a suit by himself or the seller to compel specific performance of the contract or to obtain a decree for its rescission.

3 Beng. O. C. J. 79.

(f). When the buyer has been let into beneficial possession of the property before payment of the price, and the price is not paid owing to defects in the seller's title, the buyer is not liable to pay for such possession.

(g). The seller must discharge all incumbrances on the property existing at the date of the contract. The buyer may retain, out of the unpaid purchase-money, the amount of such incumbrances, and shall pay the amount so retained to the parties entitled thereto.

(h). On payment or tender of the amount due in respect of the price, the seller is bound to execute a proper assurance of the property when the buyer tenders it to him for execution at a proper time and place.

(i). On delivery of the property, the buyer is entitled to all documents of title relating thereto which are in the seller's possession or power:

Provided that (1) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and (2) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (1) the seller, and in case (2) the buyer, of the lot of greatest value is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, or by any person claiming under him, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof as he may require; and, in the meantime, the seller or the buyer, as the case may be, of the lot of greatest value, must keep the said documents safe, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(j). Unless the sale is made by a person in a fiduciary character, the seller shall be deemed to contract with the buyer,

Bill, s. 41 (1) altered.
N.-W. P. 1867, p. 199 :
See 7 W. R. 196 : 6
W. R. 152 : 25 W.
R. 46.

first, that notwithstanding anything done by the seller or any person through whom he claims, the seller has power to transfer the property to the buyer, free from incumbrances;

secondly, that the seller and all persons claiming any interest in the same through or for him, or any person through whom he claims, will on demand execute and deliver to the buyer at his expense any further assurance of the same that may reasonably be required;

and, where the property is leasehold, *thirdly*, that the lease is valid and subsisting and that the rent reserved thereby, the conditions contained therein and the contracts binding on the lessee have been paid, performed and observed down to the delivery.

further assurance, 5
W. R. P. C. 111.

When the sale is made by a person in a fiduciary character, the seller shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

Disclosures required from seller and buyer. 13. The following omissions are fraudulent:—

Bill II, s. 10

(a) an omission of the seller of immoveable property to disclose to the buyer any defect therein of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover:

7 W. R., 258.
Cf. Act IX of 1872,
ss. 17, clause (5),
19.

(b) an omission of the buyer of immoveable property to disclose to the seller any fact as to the nature or extent of the seller's interest therein, of which the buyer is, and the seller is not, aware, and which increases the value of such interest.

14. A contract for, or relating to, the sale of immoveable property, shall not of itself have the effect of creating any interest in, or charge on, such property; but the only right of any person under the contract shall be to apply for specific performance, or for compensation, or for both, according to the rules laid down in the Indian Contract Act, 1872, and the Specific Relief Act, 1877.

Bill, s. 12
Bill II, s. 12 :
Report, s. 15 :
7 W. R. 33.

15. As between the seller and buyer of leasehold property, the liability of buyer of leasehold property, shall not of itself have the effect of creating any interest in, or charge on, such property; but the only right of any person under the contract shall be to apply for specific performance, or for compensation, or for both, according to the rules laid down in the Indian Contract Act, 1872, and the Specific Relief Act, 1877.

Bill II, s. 14

16. As between the seller and buyer of a right to redeem mortgaged property, the liability of buyer of right to redeem mortgaged property, shall not of itself have the effect of creating any interest in, or charge on, such property; but the only right of any person under the contract shall be to apply for specific performance, or for compensation, or for both, according to the rules laid down in the Indian Contract Act, 1872, and the Specific Relief Act, 1877.

Bill II, s. 15

of a contract to the contrary, bound (a) to pay to the mortgagee the principal sum which, on delivery of the right, is due on the mortgage, and all interest from time to time due for the same, when payment thereof, respectively, is lawfully demanded, and (b) to indemnify the seller against the payment thereof, and against all claims for non-payment thereof, respectively.

Bill II, s. 16

17. If at the date of the contract the property is insured against loss or damage by fire, the buyer, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the seller actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

18. When two or more persons purchase any immovable property, with separate funds belonging to them respectively, they shall, in the absence of a contract to the contrary, be interested in such property in proportion to the shares of the purchase-money which they respectively advanced.

In the absence of evidence as to the shares so advanced, such persons shall be presumed to be equally interested in the property.

Bill II, s. 18:
7 W. R. 483.

19. When two properties are subject to a common charge, and one of the properties is sold, the buyer is as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other property, so far as such property will extend.

Bill II, s. 19:
2 Hay 549:
1 W. R. 14:
XXXI of 1854, s. 17:
XXVIII of 1860, s. 31.

20. When any property is sold, the proceeds of which are subject to any trust, the buyer in good faith of the property is not bound to see to the application of the purchase-money to the purposes of the trust, nor is he answerable for the misapplication of such money.

CHAPTER IV.

OF MORTGAGES OF IMMOVABLE PROPERTY AND CHARGES.

Bill II, s. 25:
Bill, s. 14:
Act XXVIII of 1866, s. 19:
Mortgagor need not have present ownership. N.-W. P. 1872, p. 11.
Macph. 4. Fulton 36.
Purchaser of right of redemption, 11 Bom. 41.

21. When, for the purpose of securing money advanced or to be advanced by way of loan or an existing engagement, one person transfers to another a right over specific immovable property, the transfer is called a mortgage of immovable property, the transferor is called a mortgagor, the transferee a mortgagee, the money of which payment is secured is called the mortgage-money, and the assurance by which the transfer is effected is called a mortgage-deed.

For the purposes of this chapter, any person entitled as heir, legatee, assignee, lessee or otherwise than as a mortgagor to

the interest of the transferor in the property subject to the mortgage, or any part of such interest, is a mortgagor; and any person entitled as heir, legatee, assignee or otherwise to the interest of the transferee under the mortgage, or any part thereof, is a mortgagee.

Where the mortgagor transfers the property to the mortgagee with a proviso that, upon payment of the mortgage-money at a certain date, the property shall be retransferred, the transaction is called a mortgage in the English form.

Where the mortgagor delivers possession of the property to the mortgagee, and authorizes him to retain such possession and to pay himself from the rents and profits of the property the interest, or the mortgage-money and interest, or to take such rents and profits in lieu of interest, or of the mortgage-money and interest, the transaction is called an usufructuary mortgage.

Where the mortgagor binds himself personally to repay the mortgage-money, and pledges the property as collateral security for the repayment, but does not contract that, on default of payment of the mortgage-money and interest at a certain date, the property shall pass to the mortgagee, the transaction is called a simple mortgage.

Where the mortgagor not so binding himself, contracts that, on default of payment of the mortgage-money and interest at a certain date, the property shall pass to the mortgagee, the transaction is called a mortgage by conditional sale.

22. A mortgage can be effected only by an assurance signed by the mortgagor and attested by at least two witnesses.

Rights and Liabilities of Mortgagor.

23. A mortgagor has the following rights as against the mortgagee:—

(a) at any time after the mortgage-money has become payable, or has been paid, the mortgagor has a right on payment or tender, at a proper time and place, of the mortgage-money and interest remaining due on the mortgage, to require the mortgagee to re-transfer the mortgaged property to him, or to execute an acknowledgment in writing that any right in derogation of his ownership or other interest transferred to the mortgagee has been extinguished:

Provided that the mortgagee has not obtained an order absolute foreclosing such right, or that such right has not been after the date of the mortgage released or other-

5 Beng. 393.
5 W. R. 230.

Macph. 8, 12, 59:
R. B. Ghose, 218,
219:
2 Moo. I. A. 487.

Macph. 10, 12.

Macph. 11, 12.

Bill II, s. 26:
See Macph. 53:
R. B. Ghose 64.

Bill II, s. 28:
Bill, s. 15:
5 Beng. 450: 6
Beng. 562: 2 Mad.
420: 7 Mad. 395:
In Cen. Provs. 13
Beng. 205.

N.-W. P. 1868, p. 204: Bomb. 237,
no redemption before expiration of period named. Redemption after fixed time has expired, 9 Bomb. 69.
see 7 Ben. 136

(P.C.).
English practice followed, with necessary modifications, in case of defendant Pársi, 5 Bom. A. C. J. 109.

6 Bom. A. C. J. 265:
N.-W. P. 1869, p. 128.

wise extinguished, or that the property has not been duly sold in pursuance of a decree or under a power given by the mortgage-deed.

The right conferred by this clause is called a right to redeem and a suit to enforce it is called a suit for redemption :

Beng. Reg. I of 1798,
s. 2
Macph. 171.

(b) at any time after the mortgage-money has become payable and before such suit is barred, the mortgagor may deposit in any Court in which he might have instituted a suit for redemption of the mortgaged property, to the account of the mortgagee, the mortgage-money and interest remaining due on the mortgage :

(c) in the case of an usufructuary mortgage, he may recover possession of the property (1) where the mortgagee is authorized to pay himself from the rents and profits of the property the mortgage-money and interest thereof,—when such money and interest are so paid, (2) where the mortgagee is authorized to pay himself from such rents and profits the interest of the mortgage-money,—when the term (if any) of the mortgage expires and the mortgagor pays or tenders to the mortgagee the mortgage-money, or deposits it in such Court as last aforesaid.

N.-W. P. 1867, p. 88 :
20 W. R. 387 :
22 W. R. 262 :
24 W. R. 24 :
N.-W. P. 1870, p. 4 :
N.-W. P. 1872, p. 92 :
N.-W. P. 1873, p. 148 :
R. B. Ghose 198 : 15
Beng. 303.

Nothing in this section shall be deemed to authorize a person interested in part only of the mortgaged property to institute a suit for the redemption of his own part only, on payment of a proportionate part of the amount remaining due on the mortgage, except where there is but one mortgagee and the mortgagor's interest in part of the property becomes vested in such mortgagee, in which case the person so interested may institute such suit.

Bill II, s. 29.
N.-W. P. 1867, p. 199.

24. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee,

first, that the mortgagor has power to grant the mortgaged property to the mortgagee, free from incumbrances ;

S. D. A. 1857, p. 1195 : 1853, p. 575.

secondly, that the mortgagor will take all legal means to protect his rights in the property :

thirdly, that the mortgagor and every person claiming any interest in the property will on demand (at the cost, until foreclosure or sale, of the mortgagor and afterwards of the person requiring the same) execute every such assurance of the same that may reasonably be required ;

Effect of forfeiture of lease, N.-W. P. 1869, p. 128,

and, where the property is leasehold, fourthly, that the lease is valid and subsisting, that the rent reserved thereby, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the execution of the mortgage-deed ; and that the mortgagor will, so long as the security exists, pay the rent reserved by the lease, perform the conditions contained therein and observe the contracts binding on the

lessee and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts.

25. If after the date of the mortgage any accession is made to the mortgaged property, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, and subject to the law relating to alluvion for the time being in force, be entitled to such accession. 10 Bomb. 369 : 11 Bomb. 32.

Accession to mortgaged property.

Illustration.

A mortgages to B a field the trees on which are the property of Government. B enters into possession of the field and as occupant thereof buys the trees. A redeems the field. He is entitled to the trees. 10 Bomb. 369, 371, and see N.-W. P. 1866, p. 231.

26. Where the mortgaged property is a lease for a term of years, and the mortgagee, while in possession of the property, obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, have the benefit of the new lease. Bill II, s. 30.

Renewal of mortgaged lease.

27. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate ; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act. Bill II, s. 31.

Waste by mortgagor in possession.

28. A mortgagor proposing to make a second or other subsequent mortgage of the mortgaged property shall, before effecting the mortgage, give notice in writing under his hand of the prior mortgage or mortgages, and a mortgagor effecting a second or other subsequent mortgage of the mortgaged property shall, as soon as may be, give the prior mortgagee or mortgagees like notice of such mortgage. Bill II, s. 32.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

29. If the owner of two or more properties creates separate mortgages on them by separate assurances, each mortgage may be dealt with irrespectively of the other, though the mortgages are created in favour of the same mortgagee. Bill II, s. 33 : Bill. s. 39 : Contra, 6 Bomb. C. J. 90. But R. B. G. 330, 3.

Notice to mesne incumbrancers.

30. A mortgagor failing to give any notice required by this section shall, when the accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure, in addition to any other liability resulting therefrom. Contra, 12 W. 105.

31. If the owner of two or more properties creates separate mortgages on them by separate assurances, each mortgage may be dealt with irrespectively of the other, though the mortgages are created in favour of the same mortgagee.

Right to redeem one of two properties separately mortgaged.

32. If the owner of two or more properties creates separate mortgages on them by separate assurances, each mortgage may be dealt with irrespectively of the other, though the mortgages are created in favour of the same mortgagee.

Bill II, s. 33 : Bill. s. 39 : Contra, 6 Bomb. C. J. 90. But R. B. G. 330, 3.

Illustration.

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone.

Rights and Liabilities of Mortgagee.

Bill II, s. 34 : 30. In the absence of a contract to the contrary, the mortgagee may, at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid, institute against the mortgagor (1) a suit for a declaration that he has lost his right to redeem the property, or (2) a suit for a sale of the property.

2 Mad. 289 : N.-W. P. 1870, p. 311 : Right to sue for foreclosure or sale.

No foreclosure before expiration of period named, 2 Bomb. 242 : Mortgagee's right to sale, 7 Bomb. A. C. J. 146 : 9 Bomb. 12.

A suit for a declaration that a mortgagor has lost his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

Simple mortgagee, N.-W.P. 1869, P. 184 : Usufructuary, N.-W. P. 1875, p. 55.

(a) to authorize a simple mortgagee to institute a suit for foreclosure, or an usufructuary mortgagee to institute a suit for foreclosure or sale, or a conditional mortgagee to institute a suit for sale;

(b) to authorize a mortgagor who has become a trustee of the mortgaged property or legal representative of the mortgagee, to institute a suit for foreclosure;

(c) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

Cases *contra*, Macph. 195—6.

(d) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property: but he may institute any suit which, under this Act, he is authorized to institute, relating to the whole of the mortgaged property, making the other mortgagees, if they cannot or will not join as plaintiffs, defendants.

Bill II, s. 35 : Bill, s. 15, clause (c) Ben. Reg. I of 1798, s. 2. Macph. 171.

31. When the mortgagor deposits money in Court under section twenty-three, and pays the fee leviable for the service next herein-after mentioned, the Court shall forthwith cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on depositing the mortgage-deed in the same Court and on filing a written statement (verified in manner prescribed by law for the verification of plaints) of the amount then due on the mortgage, apply for and receive in payment of such amount the money so deposited.

Bill II, s. 36 : Bill s. 28, usufructuary mortgage, 16 W. R. 251.

32. Where the mortgagor and mortgagee have contracted as to the payment of interest on the mortgage-money, interest shall be payable in accordance with such contract.

Where no such contract has been entered into, the mortgagee is entitled to interest on such money at the rate of six per cent. per annum :

Provided that, when the mortgagor has tendered or deposited in Court, under section twenty-three, the amount for the time being due on the mortgage, interest on the mortgage-money shall cease from the date of the tender or from the earliest time when the mortgagee could take such amount out of Court, as the case may be.

9 N. W. P. 1. Macph. 159, 160.

33. In the absence of a contract to the contrary, no mortgagee shall be entitled as such to take possession of the mortgaged property; but at any time after the expiration of one year from the time when the mortgage-money has become payable according to the terms of the mortgage-deed, or after any interest thereon has been in arrear for six months, he may institute a suit for the appointment of a receiver of the rents and profits of the whole or any part of the mortgaged property.

Bill II, s. 37 : 6 Bomb. 421 : Right to eject third persons wrongfully in possession, 9 Bomb. 275.

Bar of entry by mortgagee.

Right to receiver.

In any suit for foreclosure or sale, the Court may, if it think fit, appoint such a receiver pending the proceedings in the suit, unless the mortgagee is already in possession of the mortgaged property.

34. The mortgagee may sue the mortgagor for the mortgage-money in the following cases only :—

(a) where the mortgagor expressly binds himself to repay the same : 6 W. R. 283.

(b) where the mortgagor remains in possession of the mortgaged property and fails to pay arrears of revenue or rent due in respect thereof, and the property is consequently sold or attached : 6 W. R. 283. Act XXXIII of 1871 s. 46.

(c) where the property is destroyed by diluvion, fire or other superior force : 7 Bomb. 116 : 21 W. R. 226.

(d) where the mortgagee is deprived of his security by the wrongful act or default of the mortgagor : 25 W. R. 7 (partial deprivation).

(e) in the case of an usufructuary mortgage, where the rents and profits of the property are to be taken in lieu of interest only, or where the mortgagor fails to deliver to the mortgagee possession of the property or to secure the possession thereof to him without disturbance by the mortgagor or any other person. 4 Moo. I. A. 464 : Marsh. 209 : 7 S. D. A. 47 : N.-W. P. 1860, p. 280. So in the case of a Kánami mortgage, 2 Mad. 314.

35. A power conferred by the mortgage-deed on the mortgagee or on any person on his behalf, to sell or concur in selling the mortgaged property, or any part thereof, is invalid, except where the mortgagee is the Secretary of State for India in Council, or the mortgaged property is situate within the towns of Calcutta, Madras, Bombay, Karáchi or Rangoon.

Bill II, s. 39 : Bill II, s. 24 : 8 Bomb. A. C. J. 142. 6 W. R. 283 (power to usufructuary mortgagee). Muhammadan law, Macph. 2.

Act No. XXVIII of 1866, section 6, is repealed so far as it is inconsistent with this section.

Bill II, s 40.

36. If, at the date of the mortgage, the mortgaged property is insured against loss or damage by fire, the mortgagee, in case of such loss or damage, may, in the absence of an express contract to the contrary, require any money which the mortgagor actually receives under the policy, or so much thereof as may be necessary, to be laid out in reinstating the property.

Bill II, s. 41 :
11 Bomb. 32.

37. If, after the date of the mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, and subject to the law relating to alluvion for the time being in force, shall, for the purposes of the security, be entitled to such accession.

Illustrations.

(a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b). A mortgages a certain plot of building-land to B and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

38. When the mortgaged property is a lease for a term of years, and the mortgagor, while in possession of the property, obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

Bill II, s. 42 :
Bill, s. 16.

39. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he has the following rights and liabilities :—

(a) he shall manage the property as a person of ordinary prudence would manage it if it were his own ;

(b) he shall use his best endeavours to collect the rents and profits thereof ;

(c) he shall, in the absence of a contract to the contrary, out of the income of the property pay the Government revenue, all other charges of a public nature accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold ;

(d) he shall, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the mortgage-money ;

(e) he may spend such money as is necessary (1) for the due management of the property and the collection of the rents and profits thereof, (2) for its preservation from destruction, forfeiture or sale, (3) for supporting the mortgagor's title to the property, (4) for making his own title thereto good against the mortgagor, and (5) when the mortgaged property is a renewable leasehold, for the renewal of the lease ; and may, in the absence of a contract to the contrary, add such money to the mortgage-money, at the same rate of interest ;

(f) where the property is by its nature insurable at ordinary rates, he may, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property, and add the premiums paid for any such insurance to the mortgage-money at the same rate of interest ; and, in case of such loss or damage, shall apply any money which he may actually receive under the policy, or so much thereof as may be necessary, in reinstating the property ;

(g) he shall keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported ;

(h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation rent in respect thereof, shall, after deducting the expenses mentioned in clauses (c), (d), (e) and (f), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage money and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money. The surplus, if any, shall be paid to the mortgagor ;

(i) when the mortgagor tenders, or deposits in Court, under section twenty-three, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure.

40. Nothing in section thirty-nine, clauses (g) and (h), applies to cases where there is a contract in writing between the mortgagee and the mortgagor that the receipts from the mortgaged property,

Macph. 109, 113, 252
1 Bomb. 199, 203 :
5 Bomb. A. C. J.
109, 116 :
N.-W. P. 1867, p.
187 :
1 W. R. 133 :
11 Moo. I. A. 241.

23 & 24 Vic., c. 145
s. 11.

2 Beng. P. C. 55 :
5 W. R. 53, 271, &c. :
Macph. 119.

5 Bomb. A. C. J. 196.
12 Bomb. 88 :
10 Beng. 386 :
N.-W. P. 1856, p. 132 :
ibid. 1863, p. 153.
when he cultivates,
7 W. R. 244 ; R. F.
G. 262.

2 Moo. I. A. Ca. 1.

Macph. 159, 160.

Bill II, s. 62.

Loss occasioned by
his default.

Receipts in lieu of interest.

2 Bomb. 222 : Act
IX of 1872, s. 151.

N.-W. P. 1875, p.
100.

2 Bomb. 231.

Macph. 113, 119.

9 W. R. 458.

Bill II, s. 43 :
Bill, s. 17 :
Siv. 333.
See 10 Moo. I.
A. 340.

after deducting the said expenses, shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the mortgage-money.

Bill II, s. 44 :
Bill, s. 18, altered :
Macph. 118, 119.
citing 7 N.-W. P.
436 :
9 N.-W. P. 1 :
Act I of 1877, s. 54.

41. A mortgagee in possession of the mortgaged property must not commit any act which is destructive or permanently injurious thereto.

Bill II, s. 45 :
Macph. 113, 234 :
1 W. R. 270 :
16 W. R. 222.

42. When a mortgagor in possession of the mortgaged property fails to pay arrears of revenue or rent due in respect thereof, and the property is consequently sold, the mortgagee has a charge on the surplus, if any, of the proceeds, after payment thereof of the said arrears, for the amount remaining due on the mortgage.

Bill II, s. 49 :
Bill, ss. 35, 36, 37 :
Report, ss. 31, 33.

43. Any second or other subsequent mortgagee may, at any time before a sale of the mortgaged property has taken place under this chapter, tender to the next prior mortgagee the amount due to him on account of his mortgage. Such mortgagee is bound to accept such tender and to give a receipt for the sum due, and on such receipt being registered, the person making the tender shall acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

Priority.

Bill II, s. 46 :
Evidence Act, s. 115 :
N.-W.P. 1868, p. 402 :
4 Mad. 373 :
2 Moo. I. A. 487 :
11 W. R. 286 :
Hindu mortgagee in possession preferred, 8 Bom. A.C.J. 50, 55. *Secus* in Guzerat, 11 Bom. 41.

44. Where, through the fraud or gross neglect of a prior mortgagee, another person has been introduced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

Bill II, s. 47 :
Bill, s. 34 :
Report, s. 29.

45. If a mortgage made to secure the balance of a running account expresses the maximum to be secured thereby, a subsequent mortgage on the same property, shall, if made with notice of the prior mortgage, or if the instrument effecting the prior mortgage is registered, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Illustration.

A mortgages Sultanpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultanpur to C to secure Rs. 10,000; and C gives notice thereof to B and Co. At the date of the second mortgage, the balance due to B & Co. does not exceed Rs. 5,000. B & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs. 10,000, to priority over C.

46. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And except in the case provided for by section forty-five, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Marshalling and Contribution.

47. If the owner of two properties mortgages them both to one person and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgage is entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee, so far as such property will extend, but not so as to prejudice the rights of the first mortgagee or of any other person having an incumbrance on either property.

48. Where several properties, whether of one or several owners, are mortgaged to secure one debt, the several properties shall contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject.

Where of two properties belonging to the same owner, one is mortgaged to secure one debt, and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property shall contribute rateably to the latter debt, after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section forty-seven to the claim of the second mortgagee.

Suits for Redemption, Foreclosure or Sale.

49. Subject to the provisions of the Code of Civil Procedure, section 437, all persons having an interest either in the right of redemption or in the security ought to be joined as parties to any suit under this chapter, and the first or any subsequent mortgagee who institutes a suit for foreclosure or sale ought to make every mortgagee and other incumbrancer whose security is subsequent to his own, a party to the suit.

Foreclosure and Sale.

50. In a suit for foreclosure, if the plaintiff succeed, the Court shall pass a decree, ordering that an account be taken of what will be due to the plaintiff for principal and interest on the

Bill II, s. 48 :
Bill, s. 38 :
Report, s. 34 :
2 Beng. App. 45 :
5 Beng. 463 :
11 W. R. 310.

Bill II, s. 50 :
W. R. 1864, p. 374 :
1 W. R. 333 :
7 W. R. 453 :
12 W. R. 114 :
Macph. 205.

Macph. 136.

Bill II, s. 51 :
12 W. R. 291 :
see 22 W. R. 430

Bill II, sec. 52 : 14 :
Moo. I. A. 101 : 1
W. R. 176 : 21 W.
R. 423 : explained
by Macph. 146.
Seton i. 442, see Act
X of 1877, sec. 32.
5 Bomb. O. C. J. 76,
(legal representative
of deceased
mortgagor) : 8
Beng. 104 (pur-
chaser from mort-
gagor) : Marshall
292, claimants of
right of redemp-
tion, N.-W. P.
1863, p. 144.

Bill II, sec. 53 :
Bill, s. 19.

mortgage and for his costs of the suit, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree,

and ordering that, upon the defendant paying to the plaintiff or into Court the amount so due, on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall transfer the mortgaged property to the defendant free from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims; and shall, if necessary, put the defendant into possession of the mortgaged property; but

that, if such payment is not made on or before such day, the defendant shall be absolutely foreclosed of all right to redeem such property.

Bill II, sec. 54.

51. If payment is so made of such amount and of such subsequent costs as are mentioned in section fifty-nine, the defendant shall (if necessary) be put into possession of the mortgaged property,

If such payment is not so made, the plaintiff may apply to the Court for an order absolute for the foreclosure of the said mortgage, and the Court shall then pass an order absolute that the defendant be foreclosed of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the plaintiff; and thereupon the defendant's right to redeem and the security shall both be extinguished:

Provided that the Court may, upon good cause shown, from time to time postpone the day appointed for such payment.

In the Code of Civil Procedure, schedule IV, No. 129, for the words "Final Decree," the words "Order absolute" shall be substituted.

Bill II, s. 55.

52. In a suit for a sale under this chapter, if the plaintiff succeed, the Court shall, and in any other suit by the mortgagee under this chapter, if the plaintiff succeed, the Court may, at his instance, pass a decree, ordering as provided in the first and second paragraphs of section fifty and also ordering that, in default of the defendant making payment as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is so found due to the

plaintiff, and that the balance, if any, be paid to the defendant or other persons entitled to receive the same.

When the mortgagee sues only for a Bill, s. 21: foreclosure, if the Court considers that he will not be damaged by such sale and if the defendant furnishes such security, if any, as the Court thinks sufficient for the payment of the balance due for the time being by him on the mortgage, the Court may, at the instance of the defendant, pass a like decree.

Any decree under this section may also direct the defendant to pay any balance remaining due to the plaintiff upon the mortgage after the proceeds of sale have been dealt with as above provided.

53. If in any case, under section fifty-two, Bill II, s. 56.

the defendant makes payment as mentioned in section fifty-one, he shall (if necessary) be put in possession of the mortgaged property; but, if such payment is not so made, the plaintiff or the defendant, as the case may be, may apply to the Court for an order absolute for sale of the mortgaged property, and the Court shall then pass an order that such property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in section fifty-two; and thereupon the defendant's right to redeem and the security shall both be extinguished.

54. When the nett proceeds of any such Bill II, sec. 57: sale are insufficient to pay the amount due for the time being on the mortgage, the balance, if payable according to the contract between the parties by the defendant otherwise than out of the property sold, may be recovered either (if the Court thinks fit) in the same suit in the same manner as under a decree for money, or by any other legal process open to the mortgagee.

Redemption.

55. Besides the mortgagor, any of the Bill II, s. 58.

following persons may institute a suit for redemption of the mortgaged property:—

(a) any person (other than the mortgagee) having any interest in or charge upon the property;

(b) any person having any interest in or charge upon the right to redeem the property; 3 W. R. 230: 6 W. R. 230, &c. But see 17 W. R. 272.

(c) any surety for the payment of the mortgage-debt or any part thereof;

(d) the guardian of the property of a minor mortgagor;

(e) the committee or other legal curator of a lunatic or idiot mortgagor;

(f) the judgment-creditor of the mortgagor, when he has obtained execution;

(g) a creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.

56. In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree

ordering that an account be taken of what will be due to the defendant for principal and interest on the mortgage, and for his costs of the suit, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree; and

ordering that upon the plaintiff paying to the defendant or into Court the amount so due on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall (if such property has been transferred to the defendant) re-transfer it to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him or, when the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff into possession of the mortgaged property; but

that if such payment is not made on or before such day, the plaintiff shall be absolutely foreclosed of all right to redeem such property.

57. If payment is made of such amount and of such subsequent costs as are mentioned in section fifty-nine, the plaintiff shall, if necessary, be put into possession of the mortgaged property.

If such payment is not so made, the defendant may apply to the Court for an order absolute either for the foreclosure of the said right to redeem, or for a sale of the mortgaged property.

If he apply for an order for foreclosure, the Court shall pass an order absolute ordering the plaintiff to be foreclosed of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the defendant.

If he apply for an order for sale, the Court shall pass an order that such property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant and that the balance be paid to the plaintiff or other persons entitled to receive the same.

On the passing of any order under this section the plaintiff's right to redeem and the security shall both be extinguished:

Provided that the Court may upon good cause shown, from time to time, postpone the day fixed under section fifty-six for payment of the amount due.

Redemption and Foreclosure.

58. When property is mortgaged for successive debts to successive mortgagees, any mesne mortgagee may institute a suit to redeem the interests of the prior mortgagees and to foreclose the rights of those that are posterior to himself and of the mortgagor.

Costs.

59. In finally adjusting the amount to be paid to a mortgagee in case of a redemption or a sale by the Court under this chapter, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure, redemption or sale up to the time of actual payment.

Sale of Property subject to prior mortgage.

60. If any property the sale of which is directed under this chapter is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, order that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

61. Such proceeds shall be brought into Court and applied as follows:—

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

secondly, if the property has been sold free from any prior mortgage, in payment of whatever is due on account of such mortgage;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, in payment of the principal money due on account of that mortgage; and

fifthly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there be more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

Anomalous Mortgages.

62. In the case of a mortgage not coming within any of the definitions contained in section twenty-one, the rights and liabilities of the parties shall

Bill II, s. 59 :
Bill, s. 25 :
See Code, C. P., sec:
tion 461 :
N.-W.P. 1870, p. 207

Decree in redemption-suit.

Bill II, s. 61 :
Mulook Chund v. Aghooree, 2 Sev. 573 : Sheopal v. Deen Dyal, N.-W. F. 1873, p. 148 : Macph. 139, 140.

Bill II, s. 64 :
Bill, s. 30.

Costs of mortgage subsequent to decree.

Bill II, s. 65 :
Bill s. 32 :
Report, s. 25, altered :
Act X of 1877, s. 295.

Bill II, s. 60.

In case of redemption, possession :

In default, foreclosure or sale.

Application of proceeds.

Bill II, s. 66 :
Bill, s. 33 :
See Act X of 1877 s. 295.

Mortgages not described in section 21.

Bombay Reg. V of 1827, s. 15.

be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage: Provided that, in the absence of an express contract to the contrary, the mortgaged property shall be deemed to be the only security for payment of the mortgage money.

Charges.

Bill II, s. 68:
Bill, s. 41.

63. If by any assurance other than a mort-

Charges.

gage-deed, or by any will, or under the provisions of this or any other Act, or by operation of law, certain immoveable property of one person is made security for the payment of certain money to another, the latter person is said to have a charge on the property; and all the provisions hereinbefore applied to a mortgagor shall, so far as may be, apply to the owner of such property, and all the provisions hereinbefore applied to a mortgagee instituting a suit for the sale of the mortgaged property shall, so far as may be, apply to the person having such charge.

3 Beng. Appendix
140:
N.-W. P. 1869, p.
184:
N.-W. P. 1871, p.
207.

Bill, s. 31:

Bill II, s. 27:

7 Beng. 653: 11 Effect of deposit of
Beng. 405: N.- title-deeds.
W. P. 1869, p. 74:
7 Bom. O. C. J. create a security thereon, shall be deemed to
45: I. L. R. I create a charge on such property in favour of
Bom. 237: 9 Moo. the creditor for the amount of the debt.
I. A. 303: Macph.
53, 54.

The delivery by a debtor to the creditor or his agent, of documents of title relating to property, with intent to create a security thereon, shall be deemed to create a charge on such property in favour of the creditor for the amount of the debt.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

64. Where a person is or becomes abso-

lutely entitled to im-
Extinguishment of moveable property, of
charges.

a charge or other incumbrance on which he is also the owner, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or unless such continuance would be for his benefit.

Bill II, s. 69:
7 Mad. 231:
14 W. R. 491:
3 O'Kin. 184:
5 Beng. 463:
11 Bom. 41.

CHAPTER V.

OF LEASES OF IMMOVEABLE PROPERTY.

Bill II, s. 71.

65. In the absence of a contract or local

usage to the contrary, the lessor and the lessee of immoveable

property, as against one another, respectively possess the rights and are subject to the liabilities mentioned in the sixteen rules next following, or such of them as are applicable to the property leased:—

39 (2) altered: of
IX of 1872, s. 93:
11 W. R. 278: 12 W.
R. 149:
6 Beng. Appendix 44,
39 (3): 15 W. R. 230:
23 W. R. 121.

(a.) The lessor is bound on the lessee's request to put him in possession of the property leased:

(b.) The lessor shall be deemed to contract with the lessee that the latter paying the rent reserved by the lease and performing the contracts binding on the lessee may hold the property leased during the time limited by the lease without interruption by the lessor or his transferees, or any person lawfully claiming through him or them:

6 W. R. 314.

(c.) The lessee is entitled to the enjoyment of all easements annexed to the property leased at the time when the lease was made

until the lease determines or such easements are extinguished, whichever event first happens:

(d.) The lessee is bound to keep, and on See 23 W. R. 34. the termination of the lease to restore, the property leased in as good condition as it was in at the time when he was put in possession, subject only to reasonable wear and tear, and to allow the lessor and his agents, at all reasonable times during the term, to enter into the property leased and inspect the condition thereof, and to give or leave notice of any defect in such condition and to make good all such defects within three months after such notice has been given or left:

(e.) If during the continuance of the lease 8 Beng. 73. any accession is made to the property leased, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease:

(f.) If by fire, tempest or flood, or violence of an army or of a mob, or other superior force, any part of the property leased be wholly destroyed or rendered substantially unfit for the purposes for which it was let, the lease shall be void as to that part, and any rent or fine payable under the lease shall proportionately abate, and a proportionate part of any fine paid by the lessee shall be returned by the lessor:

If the injury be occasioned by the wrongful act or default of either party, such party shall not be entitled to avail himself of the benefit of this provision:

(g.) If the lessor neglects to make, within a reasonable time after notice, repairs which he is bound to make to the property leased, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor:

(h.) If the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property leased, the lessee may make such payment himself, and deduct it from his rent, or otherwise recover it from the lessor:

(i.) Every lessee who becomes aware of any proceeding to recover the property leased or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, is bound to give notice thereof to the lessor with reasonable diligence; and, in default of so doing, he is liable to make compensation to the lessor for any loss or expenses occasioned by such omission:

(j.) The lessee may use the property 5 Beng. 401, 416: leased and its products (if any) as a reason- 8 Beng. Appendix 70: able owner would use them; but he must 10 Beng. Appx. 41. not use the property for a purpose other sed. v. 5 S. D. A. than that for which it was leased, or fell 205. timber, pull down or damage houses, open 15 W. R. 360: mines or quarries, or commit any other act 17 W. R. 416: which is destructive or permanently inju- 23 W. R. 298: rious thereto. W. R. Sp. (1864) 36.

The prohibition in this clause does not apply to mines which were open when the lease was granted:

8 Beng. 242 :
14 & 15 Vic., c. 25, s.
3.

(k.) No lessee shall, without the lessor's consent, erect on the property leased any permanent structure, except for agricultural purposes; and no such lessee who erects thereon any building, engine or machinery for agricultural purposes shall remove the same without first giving to the lessor or his agent one month's previous notice in writing of his intention so to do, and thereupon the lessor or his agent may elect to purchase the thing so proposed to be removed, and the lessee's right to remove the same shall thereby cease, and the same shall belong to the lessor, and the value thereof shall in case of dispute be ascertained and determined by two referees, one to be chosen by each party, or by an umpire to be named by such referees, and shall be paid or allowed in account by the lessor :

*Re Thakoor Chunder
Paramanick, Beng.
F.B. Rulings 595 :
8 Beng. 237 : 14
Beng. 201, 205.*

(l.) Subject to the provisions of clause (k), the lessee has a right to remove, at any time during his possession of the property leased, all things which he has affixed to the soil : but he is liable to make compensation to the lessor for all damage caused to the property by such removal :

(m.) On the determination of the lease, the lessee is bound to put the lessor into possession of the property leased :

of. Act XIX of 1868,
s. 46.
Act XVIII of 1873,
s. 42.

(n.) When a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property leased for the season current when the lease determines, and to free ingress and egress to reap and carry them :

14 W. R. 83 :
24 W. R. 68.

(o.) If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee shall possess all the rights and, if the lessee so elects, be subject to all the liabilities, of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him : Provided that the transferee is not entitled to arrears of rent due before the transfer, and that if the lessee pay rent to the lessor without having reason to believe that such transfer has been made, the lessee shall not be liable to pay such rent over again to the transferee :

Where only a part of the property leased is transferred by the lessor, he may determine what proportion of the rent reserved by the lease is payable in respect of the part so transferred :

(p.) The lessee may transfer, absolutely or by way of mortgage, the whole or any part of his interest in the property leased, and any transferee of such interest or part may again transfer it. The lessee shall not by reason of such transfer, cease to be subject to any of the liabilities attaching to the lease, unless the lessor elects to treat the transferee as the person subject to such liabilities. Subject as aforesaid, each successive transferee, so long as he is entitled

to the property leased, possesses all the rights, and is subject to all the liabilities, of the lessee as such.

Nothing in this section shall be deemed to authorize a tenant having a right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.

8 Beng. 239 :
12 Beng. 82.

Disclosures required from lessor and lessee. 66. The following omissions are fraudulent :—

(a) an omission of the lessor of immoveable property to disclose to the lessee any defect therein of which the former is, and the latter is not, aware, and which the latter could not with ordinary care discover ;

(b) an omission of the lessee of immoveable property to disclose to the lessor any fact as to the nature or extent of the lessor's interest therein, of which the lessee is, and the lessor is not, aware, and which increases the value of such interest.

67. A tenancy begins when the lessee enters, under the lease, into possession of the property leased, and until he so enters, he cannot sue for compensation for an unlawful entry thereon.

68. In the absence of a contract in writing or local usage to the contrary, a lease of immoveable property for purposes of cultivation shall be a lease from year to year terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy ; and a lease of immoveable property for any other purpose shall be a lease from month to month, terminable on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing signed by or on behalf of the party giving it and tendered or delivered to the party who is intended to be bound by it, or affixed on a conspicuous part of the property.

69. Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Where the time so limited is expressed to be determinable before its expiration at the option of the parties or one of them, the lessee, in the

Bill II, s. 72.

Bill II, s. 74 :
Bill, s. 46 :
Report, s. 40.
5 Bom. A. C. J. 179.
6. *ibid.* 31 : 7 *ibid.*
111, and see 1
Beng. F. B. 25 : 13
W. R. 190.
I. L. R. 2 Cal. 146
4 Beng. Appendix
86.
12 Beng. 263, N.-W.
P. 1873, P. 9:
Perry 480.

Bill II, s. 75.
Bill, s. 43.

to be determinable before its expiration at the option of the parties or one of them, the lessee, in the

5 S. D. A. 205 :
5 Mad. 120, 227 :
7 Beng. 152 :
N.-W. P. 1875,
p. 181.
12 W. R. 451 :
16 W. R. 112 :
6 S. D. A. 67.

15 W. R. 449.

absence of an express agreement to the contrary, shall have such option.

Bill II, s. 76.
7 W. R. 283.

Determination of moveable property determines—

3 Moo. I.A. 261.
16 W. R. 147.

(a) by efflux of the time limited thereby:
(b) where such time is limited conditionally on the happening of some event—by the happening of such event:

Lease by Hindú widow, Marshall 166.

(c) where the lessor can only alienate for his own life the property leased—by the death of the lessor:

(d) where the lessor holds the property leased for the term of the life of another person—by the death of such person:

(e) on the expiration of a notice to determine the lease duly given in pursuance of a power therein contained.

3 O'Kin. 159,

But see per Peacock
C. J. 10 W. R. 15.

(f) in case the interests of the lessee and the lessor in the whole of the property leased become vested at the same time in one person in the same right:

Surrender of right to redeem mortgaged lease, N.-W. P., 1869, p. 45. Surrender by one of several joint lessees
9 W. R. 147.

(g) by express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

(h) by implied surrender, that is to say, in case the lessee accepts from the lessor a new lease of the property leased, to take effect during the continuance of the existing lease:

Marshall 250.
16 W. R. 103.
25 W. R. 227.

(i) by forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter, or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself and in either case the lessor or his transferee does some act evidencing his intention to determine the lease:

18 W. R. 465.
But see 22 W. R. 448.
25 W. R. 147.

(j) on the expiration of a notice to quit or of intention to quit the property leased duly given by one party to the other.

Bill. II, s. 77, cl. 1:
W. R. F. B. 10.
Marshall 25:

71. A forfeiture under section seventy, clause (i), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

2 Bom. 73.

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

72. A notice given by the lessor under section seventy, clause (j), is waived, with the express or implied consent of the lessee by acceptance of rent which has become due since the expiration of the notice, or by distress for such rent, or by duly giving to the lessee a second notice to quit, or by any other act on the part of the lessor shewing an intention to treat the lease as subsisting.

Bill, II, s. 77, cl. 2.
N.-W. P. 1867 Ex.
o. c. j. 1.
Timmarai Puranik
v. Babiya Kuppagoda, 2 Bom. 70.

73. Where a lease of immovable property has been determined by forfeiture for non-payment of rent, the lessor sues to eject the lessee, if, at the

hearing of the suit, the lessee pays or tenders 8 W. R. 226, per Peacock, C.J.
to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture, and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

Nothing in this section applies to suits under Act No. X of 1859, or Bengal Act No. VIII of 1869.

74. The surrender, express or implied, of a lease of immovable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee: but unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to, and enforceable by, the lessor.

Effect of surrender and forfeiture on under-leases.

The forfeiture of such a lease annuls all such under-leases.

75. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year or from month to month, according to the purpose for which the property is leased, as specified in section sixty-eight.

Bill II, s. 78:
Bill, s. 47:
Report, s. 41:
3 Bom. A. C. J. 27:
12 Beng. 263:
N.-W. P. 1870, p. 204.
7 W. R. 152:
16 W. R. 185.
22 W. R. 394, 548.
23 W. R. 271.
25 W. R. 234.

Illustrations.

(a.) A lets a house to B. for five years. B under-lets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b.) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

CHAPTER VI.

OF EXCHANGES.

76. When two persons contract to mutually give one thing for another, neither thing or both things being

money only, the contract is called a contract of exchange.

77. The party deprived of the thing he has received in exchange by reason of anything done by the other party or any person through whom the latter claims, may, at his option, sue for compensation or sue for the thing given by him.

78. Save as otherwise provided in this chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

Rights and liabilities of parties.

Bill II, s. 21:
Bill, s. 48:
N. Y. Code, ss. 903, 906:
Mad. 100.

Bill II, s. 22, cl. 2

Bill II, s. 23:
Bill, s. 48, para. 2:

Bill II, s. 24 :
 Bill, s. 48, para. 3 :
 Delivery must be im-
 mediate.
 1 Morl, 105.

79. On an exchange of money, each party thereby warrants the genuineness of the money given by him.

CHAPTER VII.

OF TRANSFERS OF DEBTS.

Bill II, s. 136 :
 Bill, s. 99 :
 Report, s. 99 :
 36 & 37 Vic., c. 66,
 s. 25 (b) :
 1 Mad. 150.
 See 5 W. R. 230.
 But see 10 N.-W. P.
 474, cited Macph.
 122.

80. No transfer of, or charge on, any debt, or any beneficial interest in moveable property, shall have any operation against the debtor or against the person in whom the property is vested, until express notice of the transfer or charge is given to him, unless he is a party to such transfer or charge; and every dealing by such debtor or person, not being a party to, and not having received express notice of, a transfer or charge, with the debt or property, shall be valid as against such transfer or charge.

Illustrations.

(a) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, having no notice of the transfer, pays B. The payment is valid, and C cannot sue A for the debt.

(b) A has jewels deposited with B, a jeweller. A mortgages them to C. A then executes an instrument transferring them to D, who takes it to B and gets the jewels from him before he, B, has received any notice of C's mortgage. B is justified in handing the jewels to D, and C has no remedy against D.

Bill II, s. 137 :
 Report, s. 100.

81. Every such notice must be in writing signed by the person making the transfer or charge, or by his agent duly authorized in this behalf.

Bill II, s. 138.

82. On receiving such notice, the debtor or person in whom the property is vested shall give effect to the transfer or charge, unless where the debtor resides, or the property is situate, in a foreign country and the title of the person in whose favour the transfer or charge is made is not complete according to the law of such country.

Bill II, s. 139.

83. The person to whom a debt or charge is transferred shall take it subject to all the liabilities to which the transferor was subject in respect thereof at the date of the transfer.

Illustration.

A debenture is issued in fraud of a public company to A. A sells and transfers the debenture to B, who has no notice of the fraud. The debenture is invalid in the hands of B.

Bill II, s. 67 para. 2.

84. Where a debt is transferred for the purpose of securing money advanced or to be advanced by way of loan, or an existing or future debt, the original debt, if recovered by either the transferor or transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor.

Bill II, s. 140.

85. Nothing in this chapter applies to debts secured by negotiable instruments.

CHAPTER VIII. OF APPORTIONMENT.

86. All rents, annuities, pensions, dividends and other periodical payments shall upon the determination, by death or otherwise, of the interest of the person entitled to receive such payment be apportioned as if they had been made to accrue due from day to day, but to be payable on the days appointed for the payment thereof.

Nothing in this section shall affect any express provision in any instrument binding on such person.

THE SCHEDULE.

(a). STATUTE.

Year and chapter.	Subject.	Extent of repeal.
4 Wm. & Mary, c. 16.	Clandestine Mortgages.	The whole.

(b). ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
XXIX of 1842.	Lease and release ...	The whole.
XXXI of 1854.	Modes of conveying land.	Section 17.
XI of 1855 ...	Mesne profits and improvements.	Section 1, and in the title and preamble, the words "to mesne profits and" and "to limit the liability for mesne profits and."
XXVII of 1866	Indian Trustee Act.	Section 31.
IV of 1872 ...	Punjab Laws Act ...	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XX of 1875 ...	Central Provinces Laws Act.	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XVIII of 1876.	Oudh Laws Act ...	So far as it relates to Bengal Regulation XVII of 1806.
I of 1877.	Specific Relief ...	In sections 35 and 36, the words "in writing."

(c). REGULATIONS.

Number and year.	Subject.	Extent of repeal.
Bengal Regulation I of 1798.	Conditional sales ...	The whole Regulation.
Bengal Regulation XVII of 1806.	Redemption ...	The whole Regulation.
Bombay Regulation V of 1827.	Mortgagees in possession.	Section 15.

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

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th March 1879, and was referred to a Select Committee :—

No. 4 of 1879.

A Bill to amend the Presidency Banks Act, 1876.

WHEREAS it is expedient to amend the Presidency Banks Act, 1876, in manner hereinafter appearing; It is hereby enacted as follows :—

1. This Act may be called "The Presidency Banks Act, 1879;" and it shall come into force on the first day of May, 1879.

Short title.
Commencement.

2. To the first clause of section 28 of the Presidency Banks Act, 1876, the following proviso shall be added, that is to say :

Amendment of Act XI of 1876, section 28.

"Provided that no person shall be chosen to be President or Vice-President twice in succession."

3. In the same Act, section 34, before the words "no Khazánchi," the words "without the previous sanction of the Board" shall be inserted.

Amendment of section 34 of same Act.

4. In the same Act, section 36, clause (a), sub-clause (4), after the words "municipal body," the words "or any body

Amendments of section 36.

of Commissioners for making improvements in any port or of trustees of any port" shall be inserted.

In the same section, the words "in the case of the Bank of Madras" shall be omitted in both the places in which they occur.

In the same section, after clause (m), the following clause shall be inserted, that is to say, "(m m) the borrowing of money in India for the purposes of the Bank's business and the giving of security for money so borrowed by pledging assets or otherwise."

5. In section 37 of the same Act, for clause (d), the following shall be substituted, that is to say,

"(d) Nor shall they (except upon the security mentioned in section 36, paragraph a, Nos. 1 to 5 inclusive)

discount bills for any individual or partnership-firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or

lend or advance in any way to any individual or partnership-firm an amount exceeding in the whole at any one time such sum as may be so prescribed."

6. In section 63 of the same Act, clause (a), for the words "lent by discount of bills or otherwise to," the words "lent to or for which bills may be discounted for" shall be substituted.

Amendment of section 63.

STATEMENT OF OBJECTS AND REASONS.

1. The necessity for this Bill has arisen chiefly from a doubt which has been expressed as to whether the Presidency-banks have power under the Presidency Banks Act, 1876, to borrow money for the purposes of their business by pledging assets or otherwise. The need of such a power is obvious.

As observed in a memorial recently submitted to the Governor General in Council by the banks, "it is an ordinary incident of banking-business to obtain funds for temporary purposes by pledging assets. If banks are prohibited from raising money by pledge of assets when occasion arises, they may, on a sudden requisition for cash, be obliged to make forced sales of property at a disadvantage; and this applies with great force to the Presidency-banks of India whose action in forcing Government or other securities on the market might cause a public panic."

The power required will be conferred by a new clause which the Bill (in the last clause of section 4) proposes to add to section 36 of the Act; but it is limited to borrowing in India, because, so long as the Government balances are in the custody of the Presidency-banks, it is not considered expedient that the banks should engage in foreign exchanges or have the power of creating a foreign agency in England, which would be the necessary results of conceding a power to borrow out of India.

2. The other sections of the Bill provide for certain minor amendments of the Act which it has been thought desirable to take this opportunity of making.

Section 2 provides that no person shall be, in two successive years, chosen as President or Vice-President of a Presidency-bank.

3. Section 3, which admits of a khazánchi, cashier or shroff at the principal office of a bank engaging in business with the previous sanction of the Board, has been introduced at the instance of the Bank of Bengal, who represent that the absolute prohibition contained in the present law makes it difficult to secure the services of a suitable person, and that the necessity for any such absolute prohibition has ceased to exist, now that the khazánchi has no longer any concern with the discount business in Native Bills, and is, in fact, a mere cashier.

4. Lastly, clauses have been added to clear up an ambiguity which, in the opinion of Counsel, attaches to section 37, clause (d), and section 63, clause (a), of the Act; to include in the securities on which loans may be made, and in which the banks may invest, debentures and other securities issued by the Port Trusts under Acts of the Indian legislatures, and to concede to the Banks of Bengal and Bombay the power already possessed by the Bank of Madras of drawing and dealing in negotiable instruments, and issuing bank-post-bills and letters of credit, payable in Ceylon.

(Signed) J. STRACHEY.

Calcutta, the 4th March 1879.

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