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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 7th December 1875, and was referred to a Select Committee with instructions to make their report thereon in three months :—

Bill No. 13 of 1875.

THE SPECIFIC RELIEF BILL, 1876.

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OF PERPETUAL INJUNCTIONS.

A Bill to define and amend the Law relating to certain kinds of specific Relief.

Preamble.

WHEREAS it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called "The Specific Relief Act, 1876:"

Local extent.

It extends to the whole of British India, except the Scheduled Districts as defined in Act No. XIV. of 1874;

Commencement.

And it shall come into force three months after the passing thereof.

Repeal of enactments.

2. The enactments specified in the schedule hereto annexed are repealed to the extent mentioned in its third column.

Interpretation-clause.

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

'discretion.'

'discretion' means a sound and reasonable discretion, exercised according to the rules for the time being in force in the Courts of Civil Judicature:

'obligation.'

'obligation' includes every duty, the breach of which is punishable by law:

'agreement' includes also an award and an obligation constructively created by operation of law:

'agreement.'

'trust' includes every species of express, implied, or constructive fiduciary ownership:

'trust.'

'trustee' includes every person holding, expressly, by implication, or constructively, a fiduciary character:

'trustee.'

Illustrations.

(*a*). Z bequeaths land to A, 'not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life.' A is a trustee within the meaning of this Act for B to the extent of the annuity.

(*b*). A is the legal, medical, or spiritual adviser of B. A gains some pecuniary advantage by availing himself of his situation as such adviser. A is a trustee within the meaning of this Act of such advantage.

(*c*). A, being B's banker, discloses for his own purposes the state of B's account. A is a trustee within the meaning of this Act of the benefit gained by him by means of such disclosure.

(*d*). A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee within the meaning of this Act of the renewed lease.

(*e*). A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee within the meaning of this Act of the profit so made.

(*f*). A buys certain land with notice that B has already contracted to buy it. A is a trustee within the meaning of this Act of the land so bought.

(*g*). A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee within the meaning of this Act to the extent of that interest.

'settlement' means any instrument (other than a will or codicil) whereby the destination or devolution of moveable or immoveable property is settled or agreed to be settled.

'settlement.'

English law how far inapplicable.

4. Except so far as they are embodied in this Act, the provisions of the law of England shall not be applicable to the kinds of relief hereinafter mentioned.

Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(*a*) to give any right to relief in respect of any agreement which, according to the general law applicable to contracts, is not a valid contract: or

(*b*) to deprive any person of any right to relief other than specific performance which, according to the same law, he may have under any contract.

Specific relief how given.

5. Specific relief is given—

(*a*) by taking possession of certain property and delivering it to a claimant;

(*b*) by ordering a party to do the very act which he is under an obligation to do;

(*c*) by prohibiting a party from doing that which he is under an obligation not to do; or

(*d*) by declaring and determining the rights of parties otherwise than by an award of compensation.

Preventive relief.

6. Relief granted under clause (*c*) of section five is called preventive relief.

Purposes for which relief cannot be given.

7. Specific or preventive relief cannot be granted for the mere purpose of enforcing a penal law.

PART II.

OF SPECIFIC RELIEF.

CHAPTER I.

OF RECOVERING POSSESSION OF PROPERTY.

(a).—Possession of Immoveable Property.

Recovery of specific immoveable property.

8. A person entitled to specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure.

Suit by person dispossessed of immoveable property.

9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit instituted within six months from the date of the dispossession, recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

Nothing in this section applies to immoveable property claimed to belong to the Crown.

(b).—Possession of Moveable Property.

Recovery of specific moveable property.

10. A person entitled to the immediate possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure.

EXPLANATION 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which another is entitled.

EXPLANATION 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Illustrations.

(*a*). A bequeaths land to B for his life, with remainder to C. A dies. B. enters on the land, but C, without B's consent, obtains possession of the title deeds. B may recover them from C.

(*b*). A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(*c*). A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(*d*). A deposits books and papers for safe custody with B. B loses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Indian Contract Act, 1872.

(*e*). A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

11. Any person having the possession or control of a particular article of moveable property, of which he is not the owner may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:—

(*a*) when the thing claimed is held by the defendant as the agent or trustee of the claimant;

(*b*) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;

(*c*) when it would be extremely difficult to ascertain the actual damage caused by its loss.

Illustrations.

(*a*). A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

(*b*). A, a colliery-owner, keeps for the purpose of his business fifty coal-wagons. A sells B 50,000 tons of coal and lets to him the wagons to convey the coal. B, without A's authority, pledges the wagons to C, who threatens to sell them immediately. C may be compelled to deliver the wagons to A, for they are necessary for conducting his business, and their loss would cause him an injury for which money would not be an adequate compensation.

(*c*.) A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market-value. B may be compelled to deliver them to A.

CHAPTER II.

Of the Specific Performance of Agreements.

(a). Agreements which may be specifically enforced.

Cases in which specific performance enforceable.

12. Except as otherwise provided in this chapter, the specific performance of any agreement may in the discretion of the Court be enforced—

(*a*) when it has been expressly agreed in writing between the parties to the agreement that specific performance thereof may be required by either party, or that compensation in money shall not be considered adequate relief for its non-performance:

(*b*) when the act agreed to be done is in the performance, wholly or partly, of a trust:

(*c*) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done: or

(*d*) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief:

(*e*) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

Explanation.—Unless and until the contrary is shown, it is to be presumed that the breach of an agreement to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of an agreement to transfer moveable property can be thus relieved.

Illustrations.

(*a*). A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.

(*b*). A sells 500 tons of iron stacked on his wharf to B, in consideration of a bill accepted by C, and undertakes in writing to deliver the iron to bearer, he (A) 'having been paid for the same.' B mortgages the iron to D. The bill is dishonoured. A refuses to deliver the iron. A holds the iron as a trustee for D, and D may compel him specifially to perform his agreement.

(*c*). A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. The articles are of too special a character to bear an ascertainable market-value. A may compel B specifically to perform this agreement, for it would be extremely difficult to ascertain the actual damage caused by its non-performance.

(*d*). A transfers without endorsement, but for valuable consideration, a note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

(*e*). A, B and C agree to enter into partnership for a definite term under the style of A & Co. A refuses to carry out the agreement. B and C may compel A to join them in executing a proper partnership-deed, for the interest of B and C in the performance of the agreement cannot be adequately compensated for by money.

(*f*). A agrees with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

(*g*). In consideration of being released from certain obligations imposed on it by its Act of incorporation, a railway company agree with Z to make and maintain an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct and maintain a siding and a wharf as specified in the agreement. Z is entitled to have this agreement specifically enforced, for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

(*h*). A agrees to sell, and B agrees to buy, a certain number of railway-shares of a particular description. A refuses to complete the purchase. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

(*i*). A agrees with B to paint a picture for B, who agrees to pay therefor rupees 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the rupees 1,000.

(*j*). A advances rupees 10,000 to B, and B agrees to execute a mortgage of certain houses 'with an immediate power of sale' to secure the repayment of the advance. A requires B either to pay off the advance at once or to execute the mortgage. B refuses. A is entitled to have the agreement specifically performed.

Mutual rights of parties.

13. When either of the parties to an agreement is entitled to a specific performance thereof according to the provisions of section twelve, the other party is also entitled to it, though not within those provisions.

Illustration.

A agrees to sell, and B agrees to buy, a patent for 10,000 rupees. B declines to complete the purchase. Here, though pecuniary compensation for its non-performance might afford A adequate relief, A may enforce the agreement specifically, for, if he had declined to complete it, B would have been entitled to a specific performance thereof.

Specific performance of part of an agreement where the part unperformed is small.

14. Where a party to an agreement is unable to perform the whole of the agreement, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the agreement as can be performed, and award compensation in money for the deficiency.

Illustrations.

(*a*). A agrees to sell B a piece of land consisting of 100 bíghás. It turns out that 98 bíghás of the land belong to A, and the two remaining bíghás to a stranger, who refuses to part with them. The two bíghás are not necessary for the use or enjoyment of the 98 bíghás, and the loss of them may be made good in money. A may be directed at the suit of B to convey to B the 98 bíghás and to make compensation to him for not conveying the two remaining bíghás; or B may be directed, at the suit of A, to pay to A on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

(*b*). In a contract for the sale and purchase of a house and lands for two lákhs of rupees it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit, and include it in the decree for specific performance, or may confine its decree to the house.

Specific performance of part of an agreement where the part unperformed is large.

15. Where a party to an agreement is unable to perform the whole of the agreement and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, the party in default is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of the agreement as he can perform, provided that the party seeking specific performance relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the other party.

Illustrations.

(*a*). A agrees to sell to B a piece of land consisting of 100 bíghás. It turns out that 50 bíghás of the land belong to A, and the other 50 bíghás to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the 50 bíghás which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bíghás to him on payment of the purchase-money.

(*b*). A agrees to sell to B an estate with a house and garden for 1,00,000 rupees. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree, directing A to convey the house to him on payment of the purchase-money.

Bar in other cases of specific performance of part of agreement.

16. Except in cases coming under one or other of the two last preceding sections, it is not competent for the Court to direct the specific performance of a part of an agreement.

Purchaser's rights against vendor with imperfect title.

17. Where a person agrees to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this chapter) has the following rights:—

(*a*) if the vendor or lessor has subsequently acquired any interest in the property, the purchaser or lessee may compel him to make good the agreement out of such interest;

(*b*) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence;

(*c*) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and obtain a conveyance from the mortgagee;

(*d*) where the vendor or lessor sues for specific performance of the agreement, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to the costs of the suit, and to a lien for such deposit, interest and costs on the property agreed to be sold or let.

Power to award compensation in certain cases.

18. Any person suing for the specific performance of an agreement, may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a valid agreement between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the agreement should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

EXPLANATION.—The circumstance that the agreement has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

Illustrations.

(*a*). A, a purchaser, sues B, his vendor, for specific performance of an agreement for the sale of a patent. Before the hearing of the suit, the patent expires. The Court may award A compensation for the non-performance of the agreement.

(*b*). A agrees with B to sell him a house for Rs. 1,000 the price to be paid and the possession given on the 1st January 1876. A fails to perform his part of the agreement, and B brings his suit for specific performance, which is decided in his favour on the 1st January 1877. The decree may, besides ordering specific performance, award to B compensation for any loss or damage which he has sustained by A's refusal.

(*c*). A sues for the specific performance of a resolution passed by the directors of a public company, under which he was entitled to have a certain number of shares allotted to him. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

(*d*). A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the agreement or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it without excuse to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

Liquidation of damages not a bar to specific performance.

19. An agreement, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in the agreement as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Illustration.

A agrees to grant B an underlease of property held by A under C, and covenants that if C refuses to grant a license necessary for that purpose, A will pay B Rs. 10,000. A refuses to apply for the license and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the agreement specifically enforced.

(*b*). *Agreements which cannot be specifically enforced.*

Agreements not specifically enforcible.

20. The following agreements cannot be specifically enforced:—

(*a*) an agreement for the breach of which compensation could not be recovered;

(*b*) an agreement for the non-performance of which compensation in money is an adequate relief, and which does not come within section twelve, clause (*a*);

(*c*) an agreement which runs into such minute or numerous details, or which from its nature is such, that the Court cannot enforce specific performance of all its material terms;

(*d*) an agreement which is in its nature revocable;

(*e*) an agreement entered into by trustees either in excess of their powers or in breach of their trust;

(*f*) an agreement entered into by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;

(*g*) an agreement the performance of which involves the performance of a continuous duty extending over a longer period than five years from its date;

(*h*) an agreement to submit a controversy to arbitration.

Illustrations.

To (*a*).—A agrees in consideration of Rs. 500 to obtain an office under the Crown for B. This agreement cannot be specifically enforced.

A, a banker holding bills as a security for advances to B, takes a guarantee from B's brother, C, that the loss to the bank should not exceed Rs. 20,000. This transaction took place after B had commenced proceedings for the liquidation of his affairs and unknown to his other creditors with a view to prevent A from opposing a composition. The guarantee cannot be specifically enforced, as the transaction would have the effect of giving A an undue advantage over B's other creditors.

A, a military pensioner of Government, in consideration of Rs. 500, agrees to assign to B all future payments in respect of his pension. This agreement cannot be specifically enforced.

A husband and wife, professing the Christian religion, enter into an agreement providing for their future separation. This agreement cannot be specifically enforced.

A agrees to grant B a lease of a certain house. The length of the term to be granted is not stated, nor the date at which it is to commence. This agreement cannot be specifically enforced.

A agrees with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated." This agreement cannot be specifically enforced.

Z, a resident in Calcutta, agrees, as trustee for B, a resident in Australia, to sell to C an annuity to which B is entitled for his life. The day before the date of the agreement B had died. Z cannot enforce this agreement.

A, the lessee of a house much out of repair, agrees to sell the lease to B. Before the sale, A receives from his landlord a notice of re-entry in default of the premises being repaired. A does not communicate this notice to B, who enters and is ejected in consequence of the non-repair. A cannot enforce the agreement against B.

A, the owner of a patent, agrees to sell it to B. B institutes a suit to compel specific performance of this agreement. Before the suit is heard, the patent expires. Specific performance of the agreement cannot be compelled.

On A's marriage with B, A's father, C, agrees with B's father, D, to settle certain lands on A and his children by B. D sues C to enforce specific performance of this agreement. C proves that the agreement was conditional on D settling a lákh of rupees on A and his children by B, and that D had not settled such lákh accordingly. The suit must be dismissed.

A, an author, agrees with B, a publisher, to complete a literary work, and dies before doing so. The agreement requiring A's personal skill and taste is discharged by his death, and B cannot enforce its performance as against A's representative.

A, a shoemaker, agrees with B to receive B's son as an apprentice for a term of years and teach him shoemaking. A dies before the expiration of the term. B cannot enforce performance of the agreement.

A and B enter into an agreement to become partners for a term and afterwards agree to rescind it.

A agrees to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made, A instructs his valuer not to proceed.

A agrees to buy certain houses in Calcutta, and before the completion of the agreement becomes insolvent. A's assignee, in exercise of his option under the Indian Insolvent Act, abandons the agreement.

In none of these cases can the agreement be specifically enforced.

To (*b*).—A agrees to sell, and B agrees to buy, a lákh of rupees in the four per cent loan of the Government of India.

A agrees to sell, and B agrees to buy, 40 chests of indigo at Rs. 1,000 per chest.

In consideration of certain property having been transferred by A to B, B agrees to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount.

These agreements cannot be specifically enforced, for, in the first and the second both A and B, and in the third A, would be reimbursed by compensation in money.

To (*c*).—A agrees to render personal service to B.

A agrees to employ B on personal service.

By a charter party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London.

These agreements cannot be specifically performed.

A lets land to B, and B agrees to cultivate it in a particular manner for three years next after the date of the lease. A is not entitled to have this agreement specifically performed.

A and B agree that in consideration of annual advances to be made by A, B will for three years next after the date of the agreement grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery. A is not entitled to have this agreement specifically performed.

A agrees with B that in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B.

A agrees with B to execute certain works which the Court cannot superintend.

A agrees to supply B with all the goods of a certain class which B may require.

These agreements cannot be specifically enforced.

To (*d*).—A and B agree to become partners in a certain business, the agreement not specifying the duration of the proposed partnership. This agreement cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.

To (*e*).—A is a trustee of land with power to lease it for seven years. He enters into an agreement with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This agreement cannot be specifically enforced.

The directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust-property worth a lákh of rupees, agree to sell it to C for Rs. 30,000. The agreement is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines agree that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

To (*f*).—A railway company contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

To (*g*).—A agrees to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

(*c*). *Of the Discretion of the Court.*

Discretion as to decreeing specific performance.

21. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief, merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance :—

I. Where, though it is clear that an agreement has been made and broken, the Court cannot find, with reasonable certainty, what are the terms of the agreement of which specific performance is sought.

Illustration.

(*a*). A, the owner of a refreshment-room, agrees with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his agreement. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

II. Where the circumstances under which the agreement is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(*b*). A tenant for life of certain property assigns his interest therein to B. C agrees to buy, and B agrees to sell, that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is completed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance. If B knew the fact and C did not, specific performance should be refused to B.

(*c*.) A agrees to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the agreement should be refused to A.

(*d*). A agrees to sell, and B agrees to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A industriously conceals it from him. Specific performance should be refused to B.

(*e*). A's property is put up to auction in one lot. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance should be refused to B.

(*f*). A contracts with B who at the time is intoxicated. Specific performance should be refused to A.

III. Where the performance of the agreement would involve some hardship on the defendant which he did not foresee, whereas no such hardship would fall on the plaintiff if the agreement was not performed.

Illustrations.

(*g*). A is entitled to some land under his father's will on condition that, if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, agrees, before the expiration of the twenty-five years, to sell the land to C. Here, the enforcement of the agreement would operate so harshly on A, that the Court will not compel its specific performance in favour of C.

(*h*). A and B, trustees, join their beneficiary, C, in an agreement to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase money is not nearly enough to discharge those incumbrances, though, at the date of the agreement, the vendors believed it to be sufficient. Specific performance of the agreement should be refused to D.

(*i*). A, the owner of an estate, agrees to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property not known to either to be part of it. Specific performance of the agreement should be refused to B unless he waives his claim to the unknown property.

(*j*). A agrees with B to sell him certain land, and to make a road to it from a certain railway station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the agreement relating to the road should be refused to B, though he may be entitled to specific performance of the rest with compensation for loss of the road.

(*k*). A, a lessee of mines, agrees with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance should be refused to B.

(*l*). A agrees to buy certain land from B. The agreement is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(*m*). A agrees with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them, A may be ruined unless he is allowed to buy them elsewhere. Specific performance of the agreement should be refused to B.

IV. The circumstance that the plaintiff has done substantial acts or suffered losses in consequence of an agreement susceptible of specific performance is one which the Court may reasonably consider in exercising its discretion to grant specific performance of such agreement.

Illustration.

A sells land to a railway company who agree to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the agreement to execute the works should be awarded in favour of A.

(d.) For whom Agreements may be specifically enforced.

Who may obtain specific performance.

22. Except as otherwise provided by this chapter, the specific performance of an agreement may be obtained by—

(*a*) any party thereto :

(*b*) the representative in interest, or the principal, of any party thereto : provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the agreement, or where the agreement provides that his interest shall not be assigned, his representative in interest or principal shall not be entitled to specific performance of the agreement ;

(*c*) where the agreement is a settlement on marriage, any person beneficially entitled thereunder:

(*d*) where the agreement has been entered into by a tenant for life in due exercise of a power, the remainderman:

(*e*) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant:

(*f*) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach:

(*g*) when a public company has entered into an agreement and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation:

(*h*) when the promoters of a public company have, before its incorporation, entered into an agreement for the purposes of the company, and such agreement is warranted by the terms of the incorporation, the company.

(*e*). *For whom Agreements cannot be specifically enforced.*

Agreement to sell property by one who has no title or who is a voluntary settlor.

23. An agreement for the sale or letting of property cannot be specifically enforced in favour of a vendor or lessor—

(*a*) who, knowing himself not to have any title to the property, has agreed to sell or let the same;

(*b*) who, though he entered into the agreement believing that he had a good title to the property, cannot at the time fixed by the parties or by the Court for the completion of the sale or letting give the purchaser or lessee a title free from reasonable doubt;

(*c*) who, previous to entering into the agreement, has made a voluntary settlement of the subject-matter thereof.

Illustrations.

(*a*). A agrees to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this agreement, even though C is willing to confirm it.

(*b*). A bequeaths his land to trustees, declaring that they should not sell it without the consent in writing of his sons and daughters. A dies. Then one of his daughters dies. The trustees then enter into an agreement with B to sell him the land. B refuses to carry out the agreement. The trustees cannot specifically enforce this agreement, as the title which they can give B is not free from reasonable doubt.

(*c*). A makes a voluntary settlement of certain property on his brothers and their issue, and afterwards enters into an agreement to sell the property to a stranger. A cannot enforce specific performance of this agreement so as to override the settlement and thus prejudice the interests of the persons claiming under it.

Personal bars to the relief.

24. Specific performance of an agreement cannot be enforced in favour of a party—

(*a*) who could not recover compensation for its breach;

(*b*) who has become incapable of performing, or violates, any essential term of the agreement that on his part remains to be performed; or

(*c*) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract.

(*d*) who, previously to entering into the agreement, had notice that a voluntary settlement of the subject-matter thereof had been made and was then in force.

Illustrations.

(*a*). A agrees to sell B a house and to become tenant thereof for a term of 14 years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the agreement. Neither can B, although he might recover compensation from A's assignee for breach of the agreement.

(*b*). A agrees to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A without B's consent fells the trees. A cannot enforce specific performance of the agreement.

(*c*). A, holding land under an agreement with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce the agreement.

(*d*). A agrees to let, and B agrees to take, an unfinished house, B agreeing to finish the house and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner: he cannot enforce the agreement, though A and B may sue each other for compensation for breach of the agreement.

(*e*). A agrees to let, and B agrees to take, a house for a specified term at a specified rent. B refuses to perform the agreement. A thereupon sues for and obtains compensation for the breach of contract. A cannot obtain specific performance of the agreement.

(*f*). *For whom Agreements cannot be specifically enforced except with a variation.*

Non-enforcement except with variation.

25. Where a plaintiff seeks specific performance of an agreement in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought except with the variation so set up, in the following cases (namely):—

(*a*) where by fraud or mistake of fact the agreement of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it;

(*b*) where by fraud, mistake of fact, or surprise the defendant entered into the agreement under a reasonable misapprehension as to its effect, as between himself and the plaintiff;

(*c*) where the defendant, knowing the terms of the agreement and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff or upon some stipulation on the plaintiff's part, which goes to vary the agreement, but which he refuses to fulfil;

(*d*) where the parties have varied the agreement subsequently to its execution.

Illustrations.

(*a*). A, B and C sign a writing, by which each agrees to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B and C separately liable each to the extent of Rs. 1,000, they prove that the word 'each' was inserted by mistake; that the intention was that they should give a joint bond for Rs.

1,000. A can obtain the performance sought only with the variation thus set up.

(*b*). A sues B to compel specific performance of an agreement in writing to buy a dwelling-house. B proves that he assumed that the agreement included an adjoining yard and the agreement was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the agreement, except with the variation set up by B.

(*c*). A agrees in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the agreement, B proposed orally that he should be at liberty to substitute for the strip mentioned in the agreement another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written agreement. A cannot obtain specific performance of the written agreement except with the variation set up by B.

(*d*). A agrees in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing, so with B's consent A pulls it down and erects a new house in its place: B agreeing orally to pay rent at Rs. 120 per mensem. B then sues to compel specific performance of the agreement in writing. He cannot enforce it except with the variations made by the subsequent oral agreement.

(*g*). *Against whom Agreements may be specifically enforced.*

Relief against parties and persons claiming under them by subsequent title.

26. Except as otherwise provided by this chapter, specific performance of an agreement may be enforced against—

(*a*) either party thereto;

(*b*) any other person claiming under him by a title arising subsequently to the agreement, except a transferee for value, who has paid his money in good faith and without notice of the original agreement;

(*c*) any person claiming under a title which, though prior to the agreement, and known to the plaintiff, might have been displaced by the defendant;

(*d*) when a public company has entered into an agreement, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(*e*) when the promoters of a public company have, before its incorporation, entered into an agreement, the company: provided that the company has ratified and adopted the agreement and the agreement is warranted by the terms of the incorporation.

Illustrations.

(*a*). A agrees to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the agreement specifically.

(*b*). A agrees to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original agreement. B may enforce specific performance of the agreement as against C.

(*c*). A agrees to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no enquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce the agreement against C.

(*d*). A agrees in consideration of Rs. 1,000 to bequeath certain of his lands to B. Immediately after the agreement A dies intestate, and C takes out administration to his estate. B may enforce the agreement against C.

(*e*). A agrees to sell certain land to B. Before the completion of the agreement, A becomes a lunatic and C is appointed his committee. B may specifically enforce the agreement against C.

(*f*). A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, agrees to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the agreement against B.

(*g*). A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A agrees to sell his moiety to C and dies. C may enforce specific performance of the agreement against B.

(*h*). *Against whom Agreements cannot be specifically enforced.*

What parties cannot be compelled to perform.

27. Specific performance of an agreement cannot be enforced against a party thereto in any of the following cases:—

(*a*) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the agreement, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;

(*b*) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention, or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

(*c*) if his assent was given under the influence of mistake of fact, misapprehension or surprise: Provided that, when the agreement provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the agreement may be specifically enforced in other respects if proper to be so enforced.

Illustrations.

(*a*). A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

(*b*). A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighás of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(*i*). *The Effect of dismissing a Suit for Specific Performance.*

Bar of suit for breach after dismissal.

28. The dismissal of a suit for specific performance of an agreement shall bar the plaintiff's right to sue for the breach of such agreement.

CHAPTER III.

Of the Rectification of Instruments.

29. When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express the intention of the parties, the Court, on finding it clearly proved—

When instrument may be rectified.

(a) that there has been fraud or mistake in framing the instrument, and

(b) that the intention of the parties in executing the instrument was an alleged by the plaintiff,

may in its discretion rectify the instrument, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

Illustrations.

(a). A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included.

Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud.

The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(b). By a marriage-settlement, A, the father of B, the intended wife, covenanted with C, the intended husband, to pay to C, his executors, administrators and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement, and decree that the assignee has no right to any part of the annuity.

30. For the purpose of rectifying a contract in writing, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

Presumption as to intent of parties.

31. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

Principles of rectification.

32. A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

Specific enforcement of rectified contract.

Illustration.

A agrees in writing to pay his attorney, B, a fixed sum in lieu of costs.

The agreement contains mistakes as to the name and rights of the client, which, if construed strictly, would have excluded B from all rights under the agreement. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV.

Of the Rescission of Contracts.

33. Any person interested in a contract in writing may sue to have it rescinded, and such rescission may be adjudged by the Court, in any of the following cases, namely:—

When rescission may be adjudged.

(a) where the contract is voidable or terminable by the plaintiff;

(b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;

(c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

Explanation.—In the case mentioned in clause (c) of this section, when the purchaser or lessor is in possession of the subject-matter, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him, together with the costs occasioned by the non-completion of the purchase or lease.

Illustration.

To (b).—A, an attorney, induces B, his client, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

34. Rescission of a contract in writing cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Rescission for mistake.

35. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be enforced, it may be rescinded and delivered up to be cancelled.

Alternative prayer for rescission in suit for specific performance.

36. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

Court may require party rescinding to do equity.

CHAPTER V.

Of the Cancellation of Instruments.

37. Any person having reasonable apprehension that a written instrument, if left outstanding, may cause serious injury to a person against whom it is void or voidable, may sue to have it so adjudged, and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

When cancellation may be ordered.

Illustrations.

(a). A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(b). A conveys land to B, who bequeaths it to C, and dies. Thereupon D gets possession of the land, and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(*c*). A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument dated the 1st January 1875. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October 1874. B may obtain the cancellation of this lease.

(*d*). A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 10,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

What instruments may be partially cancelled.

38. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

Illustration.

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand as regards A, B, D, and E.

Power to require party for whom instrument is cancelled to make compensation.

39. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER VI.

OF DECLARATORY DECREES.

Discretion of Court as to declarations of status or right.

40. Any person entitled to any legal character, or to any future right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may, in its discretion, make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.

EXPLANATION.—A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Bar to such declaration.

Provided that no Court shall make any such declaration in any of the following cases :—

(*a*) where the right as to which the declaration is sought is contingent, or may never arise;

(*b*) where the plaintiff is in possession of the right which he seeks to have declared;

(*c*) where the right respecting which the declaration is sought could be enforced by ordinary suit.

EXPLANATION.—The presumptive right of a Hindú to property, if he survive the widow of a sonless Hindú, is not within clause (*a*) of the above proviso.

Illustrations.

(*a*). A bequeaths his property to B, C and D, "to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children." No such children are in existence. In a suit against A's executor, the Court may declare whether B, C and D took the property absolutely, or only for their lives, but it may not declare the interests of the children before their rights are vested.

(*b*). A covenants that if he should at any time be entitled to property exceeding one lákh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court cannot make the declaration.

(*c*.) The widow of a sonless Hindú alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her, may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity, and was therefore void beyond the widow's life-time.

(*d*). A Hindú widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(*e*). A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. This alone is not enough to entitle A to a declaration of his right to hold the property.

(*f*). A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's life-time, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

Effect of declaration.

41. A declaration made under this chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence, such parties would be trustees.

Illustration.

A, a Hindú, in a suit to which B, his alleged wife, and her mother are defendants, seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

CHAPTER VII.

OF THE ENFORCEMENT OF PUBLIC DUTIES.

Power to order public servants and others to do certain specific acts.

42. Any of the High Courts of Judicature at Fort William, Madras and Bombay may, on application, make an order requiring any specific act to be done by any person holding a public office of a permanent nature, or by any corporation or inferior Court of Judicature : provided—

(*a*) that such act is clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character;

(*b*) that, in the opinion of the High Court, such act is consonant to right and justice;

(*c*) that the applicant has no other specific and adequate legal remedy; and

(*d*) that the remedy given by the order applied for will be complete.

Exemptions from such power.

Nothing in this section shall be deemed to authorize any High Court—

(*e*) to make any order binding on the Secretary of State for India in Council, on the Governor-General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Lieutenant-Governor of Bengal; or

(*f*) to make any order on any other servant of the Crown, as such, merely to enforce the satisfaction of a claim upon the Crown.

Application how made.

43. Every application under section forty-two must be founded on an affidavit of the party injured, stating his right in the matter in question, his demand of justice and the denial thereof; and

Procedure thereon.

the High Court may, in its discretion, either make the order applied for absolute in the first instance, or refuse it and grant a rule to show cause why the order applied for should not be made.

Order in alternative.

If, in the latter case, the party complained of shows no sufficient cause, the High Court may first make an order in the alternative, either to do the act required, or to signify some reason to the contrary and make an answer thereto by such day as the High Court fixes in this behalf.

Peremptory order.

44. If the person to whom such order is directed makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do the act absolutely.

Execution of, and appeal from, orders.

45. Every order under this chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

Costs.

46. The costs of all applications and orders under this chapter shall be in the discretion of the High Court.

Bar to issue of *mandamus*.

47. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

Power to frame rules.

48. Each of the said High Courts shall, as soon as conveniently may be, frame rules to regulate the procedure under this chapter; and until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this chapter.

PART III.

OF PREVENTIVE RELIEF.

CHAPTER VIII.

OF INJUNCTIONS GENERALLY.

Preventive relief how granted.

49. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

Temporary injunctions.

50. Temporary injunctions are such as are to continue until a specified time. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.

Perpetual injunctions.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER IX.

OF PERPETUAL INJUNCTIONS.

Perpetual injunctions when granted.

51. Subject to the other provisions contained in, or referred to by, this chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether express or implied.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in chapter II of this Act.

When such obligation arises from an actual or threatened invasion by the defendant of the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely)—

(*a*) where the parties have expressly agreed in writing that, in case of such invasion, a perpetual injunction may be granted:

(*b*) where there exists no standard for ascertaining the actual damage caused by the invasion:

(*c*) where the invasion is such that pecuniary compensation would not afford adequate relief:

(*d*) where it is probable that pecuniary compensation cannot be got for the invasion:

(*e*) where the injunction is necessary to prevent a multiplicity of judicial proceedings:

(*f*) where the obligation arises from a trust.

Illustrations

(*a*.) A lets certain land to B, and B agrees not to dig sand or gravel thereout. A may obtain an injunction to restrain B from digging in violation of his agreement.

(*b*.) A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may obtain an injunction to restrain them from doing so.

(*c*.) A lets certain arable lands to B for purposes of husbandry, but without any express agreement as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. A may obtain an injunction to restrain B from sowing the lands in contravention of his implied agreement to use them in a husbandlike manner.

(*d.*) A, B, and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution of the partnership, obtain an injunction to restrain A from doing the act.

(*e.*) A, a Hindú widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir expectant may obtain an injunction to restrain her.

(*f.*) A, B, and C are members of an undivided Hindú family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house and to sell some of the family-utensils. B and C may obtain an injunction to restrain him.

(*g.*) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the official assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may obtain an injunction to restrain further acts of trespass.

(*h.*) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may obtain an injunction to restrain them.

(*i.*) A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may obtain an injunction to restrain B.

(*j.*) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine. B may obtain an injunction to restrain him from so doing.

(*k.*) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may obtain an injunction restraining A from making the noise.

(*l.*) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may obtain an injunction to restrain the pollution.

(*m.*) A builds a house with eaves projecting over B's land. B may obtain an injunction to prevent A from so doing.

(*n.*) A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

(*o.*) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(*p.*) A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(*q.*) In order to sell his goods, A uses marks, labels or descriptions so closely resembling those used by B as to be likely to deceive buyers into thinking that they are actually buying B's goods. B may obtain an injunction to restrain the user, provided his own use of the marks, labels or descriptions be an honest one.

(*r.*) A sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

(*s.*) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, obtain an injunction to prevent the breach.

(*t.*) The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may obtain an injunction to restrain them.

(*u.*) The directors of a fire and life-insurance company are about to engage in marine insurances. Any of the shareholders may obtain an injunction to restrain them.

(*v.*) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(*w.*) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may obtain an injunction to restrain A from so doing.

(*x.*) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may obtain an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(*y.*) A makes a voluntary settlement of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may obtain an injunction to restrain the sale.

(*z.*) In the course of A's employment as a vakíl, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may obtain an injunction to restrain A from so doing.

(*aa.*) A mortgages lands to B with the usual power of sale. C and D then recover judgments against A., B exercises the power and threatens to part with the surplus-monies. As regards these, he is a trustee for A and those claiming under A. C and D may therefore obtain an injunction to restrain B from parting with the surplus.

(*bb.*) A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may obtain an injunction to restrain him from so doing.

(*cc.*) A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and can obtain an injunction to restrain C from publishing them.

(*dd.*) A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival-manufacturer. A can obtain an injunction to restrain B from disclosing the process as being a thing contrary to his duty.

52. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Mandatory injunctions.

Illustrations.

(*a.*) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act, Part IV. B may obtain an injunction not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(*b.*) In the case put as illustration (*bb*) to section 51, the Court may also order all written communications made by B, as patient, to A, as physician, to be destroyed.

(*c.*) In the case put as illustration (*cc*) to section 51, the Court may also order A's letters to be destroyed.

(*d.*) In the cases put as illustrations (*p*), (*q*) and (*r*) to section 51, the Court may also order the copies produced by piracy, and the trademarks, labels and descriptions improperly used, by A to be destroyed.

Injunction when refused.

53. An injunction cannot be granted—

(*a*) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings:

(*b*) to stay proceedings in a Court superior to that from which the injunction is sought:

(*c*) to restrain persons from applying to any legislative body:

(*d*) to interfere with the public duties of any department of the Government of India or the Local Government, or with the sovereign acts of a foreign Government:

(*e*) to stay proceedings in any criminal matter:

(*f*) to prevent the breach of an agreement the performance of which would not be specifically enforced:

(*g*) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance:

(*h*) to prevent a libel or other act, whether punishable by criminal law or not, which is not an invasion of the plaintiff's right to, or his enjoyment of, property, and is not inconsistent with any contract made by the defendant with the plaintiff, or with any special duty which the defendant owes to the plaintiff:

(*i*) to prevent a continuing breach in which the applicant has acquiesced:

(*j*) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust:

(*k*) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court:

(*l*) where the applicant has no personal interest in the matter.

Illustrations.

(*a.*) A being B's neighbour, and having no other relations with him, threatens to publish a statement concerning B which would be punishable under chapter XXI of the Indian Penal Code. The Court cannot grant an injunction to restrain the publication, even though it may be injurious to B's property.

(*b.*) A, being B's medical adviser, threatens to publish B's communications with him, showing that B has led an immoral life: B may obtain an injunction to restrain the publication.

(*c.*) A applies for an injunction to restrain B from working mines under A's land. It appears that B has been working them with A's permission for eight years. The injunction should be refused.

(*d.*) A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(*e.*) A manufactures and sells crucibles, designating them as "patent plumbago crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

Injunctions to perform negative agreement.

54. Notwithstanding section fifty-three, clause (*f*), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement expressed or implied not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement, shall not preclude it from granting an injunction to perform the negative agreement; provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations.

(*a.*) A agrees to sell to B for rupees 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the rupees 1,000, but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(*b.*) A agrees to sell to B the good-will of a business. A then sets up a similar business close by B's shop, and solicits his old customers to deal with him. This is contrary to his implied agreement, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(*c.*) A agrees with B to sing for twelve months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the agreement to sing, but he is entitled to an injunction restraining A from singing at any other place of entertainment.

(*d.*) B agrees with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this agreement. But he is entitled to an injunction restraining B from serving a rival-house as clerk.

(*e.*) A agrees with B that, in consideration of rupees 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

SCHEDULE.

(See section 2.)

Number and year.	Subject.	Extent of repeal.
VIII of 1859	Code of Civil Procedure...	Secs. 15 and 192.
XIV of 159	Limitation Act	Sec. 15.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill, which is intended as a supplement to the Code of Civil Procedure, as revised and published in March 1875, is to define and amend the law relating to specific and preventive relief.

2. Under the head of specific relief, it deals with suits for—

(a) the possession of specific property, moveable or immoveable,
(b) the specific performance of agreements,
(c) the rectification of instruments,
(d) the rescission of contracts,
(e) the cancellation of instruments,
(f) declaratory decrees, and
(g) the enforcement of public duties.

3. Under the head of preventive relief, it treats of perpetual injunctions.

4. The chapter relating to the recovery of possession of specific property embodies the English rules as to detinue, and the useful provision of the Indian Act, XIV of 1859, section 15, as to the right of persons informally dispossessed of land to recover possession by a summary suit. Words have been introduced to show expressly that this provision does not apply to lands claimed to belong to Government. This exemption in effect resulted from section 17 of Act XIV of 1859.

5. The matter of the chapter relating to specific performance is distributed under the following heads :—

(a) Agreements which may be specifically enforced :
(b) Agreements which cannot be specifically enforced :
(c) For whom agreements may be specifically enforced :
(d) Of the discretion of the court :
(e) For whom agreements may not be specifically enforced :
(f) For whom agreements may not be specifically enforced, except with a variation :
(g) Against whom agreements may be specifically enforced :
(h) Against whom agreements may not be specifically enforced :
(i) The effect of dismissing a suit for specific performance.

It attempts to codify the English law on this subject with the following modifications :—

6. Subject to the negative rules afterwards set forth in this chapter, the Bill empowers the Courts to decree specific performance of any agreement when the parties have expressly agreed in writing that specific performance thereof may be required by either of them, or that damages shall not be considered adequate relief. This novel provision, taken from the New York Civil Code, is one of the means by which the Bill proposes to extend a useful jurisdiction, one, it may be remarked, peculiarly adapted to India, where the alternative remedy for a breach of contract, that, namely, of damages, is, owing to the poverty of the bulk of the population and the difficulty of executing money-decrees, often so utterly nugatory.

7. In England it has more than once been ruled that the Court of Chancery will not compel the performance of a continuous duty extending over many years. The Bill renders this doctrine more precise by declaring that an agreement, the performance of which necessarily involves the performance of continuous duties over a longer period than five years from its date, shall not be specifically enforced. Whether this is the best limit of time, will be a point for consideration before the Bill is passed.

8. With regard to specific performance of contracts to execute buildings or to cultivate lands, the Bill is intended to express the present law.

9. The rules as to when a contract for the sale of a married woman's estate will be specifically enforced are in England excessively complicated. The Bill makes no distinction in her case, and thus recognizes the principle embodied in the Indian Succession Act, section 4, and Act III of 1874.

10. In England a voluntary settlement of personal chattels is binding on the settlor and cannot be defeated by a subsequent sale. But it is otherwise in the case of freeholds, copyholds and leaseholds, and specific performance of a subsequent agreement to sell land may be enforced against the voluntary settlor and the parties claiming under the settlement, though not by the settlor. The Bill does not recognize this distinction (which is due to an artificial construction of 27 Eliz., c. 4), and treats land, in this respect, as if it were moveable property.

11. The absence in India of any enactments resembling the Statute of Frauds, sections 1, 3, 4 and 17, renders it unnecessary to embody in the Bill the intricate rules of the Court of Chancery as to when a parol agreement relating to land will, and when it will not, be specifically enforced.

12. It seems impossible to elicit a consistent doctrine from the English decisions as to the rights of a purchaser or lessee to specific performance with abatement or compensation when the title of the person agreeing to sell or lease is defective. The Bill lays down that only in *one* case can such relief be granted, namely, where the part of the agreement which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money. This will relieve the Courts from the exercise of a duty which, in many cases, must be more a matter of guesswork than of judicial discretion.

13. The right to enforce a contract specifically may, in England, be lost by delay in resorting to the Court, and a large mass of cases exists relating to this doctrine. The Bill contains no rules on the subject, for in India the provision of the Limitation Act (IX of 1871), schedule II, No. 113, that suits

for specific performance must be brought within three years from the day on which the plaintiff has notice that performance is refused, renders the doctrine of laches inapplicable to this kind of litigation. See 2 Mad. High Court Rep. 114, 270.

14. It seems to be erroneously supposed by some of the Mofussil Judges that, when a contract is proved, the grant of a decree for its specific performance is a matter of course. Care has been taken in this chapter to show distinctly that the grant of such decrees is purely within the sound discretion of the Court.

15. As in this country all remedies on an agreement can be granted by one and the same Court, it is conceived that only one suit should lie on account of its non-performance. It has on this account been provided in section 28 that if a suit for specific performance is dismissed, no other suit shall be brought on the same agreement.

16. Chapter III, as to the rectification of instruments, chapter IV, as to the rescission of contracts, and chapter V, as to the cancellation of instruments, require no special notice. They are taken, with a few verbal changes, from the New York Civil Code, and represent substantially the law on these subjects administered by English Courts of Equity.

17. Chapter VI, as to declaratory decrees, is intended to take the place of Act VIII of 1859, section 15, and differs from the English law on the subject principally in authorising the Court to make declarations of future rights, provided only that such rights are vested. In the absence of such a jurisdiction, it would seem to be necessary to authorise suits to perpetuate testimony, and there are obvious reasons why such suits should not be allowed in India.

18. Chapter VII deals with the subject of *mandamus*, and applies only to the Presidency High Courts. Care has been taken to exempt from orders under this chapter the Secretary of State in Council, the Government of India, and the Local Governments.

19. In Part III are contained some general rules as to when perpetual injunctions will, and when they will not, be granted. The chief modifications of the present law which the Bill proposes to make are as follows :—

20. By the Bill, the Courts are expressly given power to grant injunctions to do substantive acts, when such injunctions are necessary to prevent the breach of an obligation. In England, the same thing is partially effected by the indirect method of making orders, called mandatory injunctions, to refrain from leaving a thing undone.

21. Under the Bill, an injunction to restrain a partner may be obtained without seeking a dissolution of the partnership, even when the partnership is determinable at will. In England the rule on this subject is still unsettled.

22. In England a married executrix will, as a rule, be restrained from getting in the assets if her husband be out of the jurisdiction, or a lunatic. The reason is that the husband, and he alone, is liable for a devastavit committed by his wife. The Indian Succession Act, sections 4 and 275, appears to relieve husbands of this liability, and the Bill accordingly contains no provision on the subject.

23. It is hardly necessary to observe that, in a country where law and equity are administered by the same Courts, the subject of staying legal proceedings need not be dealt with at much length. The provisions of the Bill relating to this matter are contained in section 56, clause (*c*), illustration (*m*), and in section 57, clauses (*a*) and (*b*), which relate to injunctions necessary to prevent a multiplicity of suits.

24. It may, in conclusion, be remarked that most of the many illustrations contained in the Bill are taken from the English Equity Reports.

SIMLA,
The 25th October 1875.

(Signed) A. HOBHOUSE.

WHITLEY STOKES,
Secretary to the Government 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 14th December 1875, and was referred to a Select Committee with instructions to make their report thereon in two months:—

Bill No. 14 of 1875.

THE PRESIDENCY BANKS BILL, 1876.

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MISCELLANEOUS.

A Bill for constituting and regulating the Banks of Bengal, Madras, and Bombay.

Preamble.

WHEREAS the Bank of Bengal is now constituted and regulated by Act No. IV. of 1862, as amended by Acts No. VI. of 1862 and No. XIX. of 1870, and its capital consists of twenty-two millions of rupees, in shares of one thousand rupees each;

And whereas the Bank of Madras is now constituted and regulated by Madras Act No. VI. of 1866, as amended by Madras Act No. I. of 1871, and its capital consists of five millions six hundred and twenty-five thousand rupees, in shares of one thousand rupees each;

And whereas a Bank named the Bank of Bombay was constituted and regulated by Bombay Act No. X. of 1863, as amended by Bombay Acts No. XV. of 1866 and No. I. of 1867; but such Bank has been wound up and the said Bombay Acts are now obsolete and should be expressly repealed;

And whereas on the tenth day of December 1867, a joint-stock Banking Company was registered and incorporated at Bombay, by virtue of the Indian Companies' Act, 1866, under the name of "The New Bank of Bombay, Limited," with a Memorandum of Association and Articles of Association then also registered, and prescribing the constitution and regulations for the management of such Bank;

And whereas the Government of India now holds two thousand two hundred shares in the said Bank of Bengal, and five hundred and sixty-two and a half shares in the said Bank of Madras; and, under the provisions of the said Acts, No. IV. of 1862 and Madras Act No. VI. of 1866, is bound to appoint, and has power to remove, certain of the directors of the said Banks of Bengal and Madras respectively, and has also power to give a proxy to any person whom the Governor General in Council may appoint, to attend and vote at any meeting of the proprietors of each of the same Banks;

And whereas the Government of India has determined to sell its said shares and to surrender its said powers; and it is expedient to relieve the said Government from the said duty of appointing directors and to repeal the said enactments and to consolidate such of them as relate to the said Banks of Bengal and Madras respectively with the changes rendered necessary or desirable by such sale, surrender and relief;

And whereas it is expedient to reduce the said capital of the Bank of Bengal by two millions of rupees (being the nominal value of two thousand of the two thousand two hundred shares in the same Bank so held by the Government of India) and to reduce the said capital of the Bank of Madras by five hundred and sixty-two thousand five hundred rupees (being the nominal value of the shares in the same Bank so held by the Government of India), and to divide the capital so reduced of each of the said Banks into shares of five hundred rupees each;

And whereas it is expedient that the said New Bank of Bombay, Limited, should be re-constituted and regulated, in manner in this Act provided, under the name of the Bank of Bombay:

It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

Short title.

1. This Act may be called "The Presidency Banks Act, 1876;"

Commencement.

And it shall come into force on the *first* day of *March* 1876.

Repeal of enactments.

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 of such schedule. But all bye-laws and regulations made under any such enactment, and then in force, shall, so far as they are consistent with this Act, be deemed to have been made hereunder.

References in Act X. of 1866.

The references made in the Indian Companies' Act, 1866, to the Bank of Bengal, the Bank of Madras and the Bank of Bombay, shall be deemed to be made respectively to the Bank of Bengal, the Bank of Madras and the Bank of Bombay as constituted by this Act.

Interpretation clause.

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

"The Bank" means the Bank of Bengal, the Bank of Madras, or the Bank of Bombay (as the case may be), as constituted and regulated by this Act:

"Capital" means the capital from time to time of the Bank:

"Shares" means the shares from time to time of the capital, and includes also half shares:

"Capital Stock" means that part of the capital into which wholly paid-up shares have been converted or consolidated, and in the case of the Bank of Bengal and the Bank of Madras includes the present consolidated stock of such Banks respectively:

"Registered" means registered in the books of the Bank:

"Shareholders" means the duly registered holders from time to time of the shares of the Bank:

"Proprietors" means the duly registered holders from time to time of the capital stock of the Bank:

"Directors" means the Directors from time to time of the Bank, or, as the case may be, the Directors assembled at a Board:

"Board" means a meeting of the Directors duly called and constituted, or, as the case may be, the Directors assembled at a Board:

"Auditors" and "Secretary and Treasurer" mean those respective officers from time to time of the Bank, and "Secretary and Treasurer" includes a Deputy Secretary:

"General Meeting" means the meeting of proprietors or shareholders or both, held annually under section forty-nine; it includes any adjourned holding thereof:

"Special Meeting" means a meeting of proprietors or shareholders or both held for the transaction of some particular business specified in the notice convening the meeting; it includes any adjourned holding thereof:

"Special Resolution" means a resolution passed at a special meeting:

"Office" means the office or principal office for the time being of the Bank:

"Goods" includes also bullion, wares and merchandize:

"Presidency of Fort St. George" means the territories now under the government of the Governor of Fort St. George in Council:

"Presidency of Bombay" means the territories now under the government of the Governor of Bombay in Council; and

"Presidency of Fort William" means all the territories in British India other than the Presidency of Fort St. George and the Presidency of Bombay.

CHAPTER II.

Constitution.

Proprietors and shareholders of present Banks to form bodies corporate.

4. The several persons who, when this Act comes into force, are respectively the proprietors and shareholders of the said Bank of Bengal, Bank of Madras and New Bank of Bombay, Limited (hereinafter called the present Banks), or who shall, at any time thereafter, by virtue of this or any other Act regulating the Bank, become proprietors or shareholders, shall continue and constitute and be bodies corporate with perpetual succession, under the name,

in the case of the proprietors and shareholders of the said Bank of Bengal—of "The Bank of Bengal,"

in the case of the proprietors and shareholders of the said Bank of Madras—of "The Bank of Madras,"

and in the case of the shareholders and proprietors of the said Bank of Bombay, Limited—of "The Bank of Bombay,"

and shall respectively possess and enjoy all the rights, powers and immunities incident by law to a corporation aggregate; subject, nevertheless, to the provisions of this or any other Act for the time being in force regulating the Bank.

Proprietors and shareholders of present Banks to be proprietors and shareholders of new Banks.

The several persons who are then proprietors and shareholders of each of the present Banks of Bengal and Madras, or the executors or administrators of such proprietors and shareholders respectively, shall be entitled to be registered as proprietors and holders of a like quantity of stock and a proportionate number of shares, as is or are then registered in their names respectively, or in the names of the persons whom they represent respectively in the books of each of the said present Banks of Bengal and Madras, two shares in the Bank of Bengal as constituted by this Act being deemed equivalent to one share in the present Bank of Bengal and two shares in the Bank of Madras as constituted by this Act being deemed equivalent to one share in the present Bank of Madras,

and the several persons who are then shareholders of the said New Bank of Bombay, Limited, or the executors or administrators of such shareholders respectively, shall be registered as holders of a like number of shares of the Bank of Bombay as constituted by this Act as are then registered in their names respectively, or in the names of the persons whom they represent respectively, in the books of the said New Bank of Bombay, Limited; and all such shares upon which the sum of five hundred rupees has then been paid, shall be deemed to have been fully paid up.

Property of present Banks to vest respectively in new Banks.

5. All the property, moveable and immoveable, and all the securities, claims and demands, and the benefits of all agreements, of or to which the present Banks are or shall be respectively possessed or entitled, or which shall, or but for this Act might be, on the said first day of *March* 1876, or might at any time thereafter have been, due to, or claimed or asserted by, the said Banks respectively shall, by virtue of this Act, become vested in and devolve upon, and may be claimed, made and recovered by,

in the case of the said Bank of Bengal,—the Bank of Bengal as constituted by this Act,

in the case of the said Bank of Madras,—the Bank of Madras as constituted by this Act,

and in the case of the said New Bank of Bombay, Limited,—the Bank of Bombay as constituted by this Act;

Claims against present Banks.

and the Bank shall, from and after the said first day of *March* 1876, be liable and subject to all debts, demands, claims and liabilities which shall then be claimable from, or which, but for this Act, might be then, or might at any time thereafter, have been due or claimable from, or made, claimed, or asserted against the said Bank of Bengal, Bank of Madras or New Bank of Bombay, Limited, as the case may be,

and no suit or legal proceeding then pending by or against the said Bank of Bengal, Bank of Madras or New Bank of Bombay, Limited, shall cease, or abate, or become defective, in consequence of this Act, but may be continued and prosecuted by or against the Bank.

New Bank of Bombay, Limited, wound up.

6. The transfer of the assets and liabilities of the said New Bank of Bombay, Limited, to the Bank of Bombay by virtue of this Act, shall operate as a winding up and liquidation of the said New Bank of Bombay, Limited.

No shareholder or creditor of the said New Bank of Bombay, Limited, shall take any proceedings for winding up the same under the Indian Companies' Act, 1866, or any Act for the time being in force relating to the winding up of Companies;

and no person shall make, assert or take any claims, demands or proceedings against the same Bank, or the directors or officers thereof, except so far as may be necessary for enforcing the provisions of this or any other Act for the time being in force regulating the Bank of Bombay.

Banks to sue and be sued in corporate name,

7. The Bank shall sue and be sued by its said corporate name;

and use corporate seals;

and shall use such corporate seal as the directors from time to time appoint;

and may hold and transfer property.

and may as such body corporate, acquire and hold, either absolutely or conditionally, for a term or in perpetuity, any property whatsoever, moveable or immoveable, and transfer, assign and convey the same.

Seal how used.

8. The seal of the Bank shall not be affixed to any instrument except in the presence of at least two directors and of the Secretary and Treasurer, who shall sign their names to the instrument in

token of their presence, and such signing shall be independent of the signing of any person who may sign the instrument as a witness.

Unless so signed as aforesaid, such instrument shall be of no validity.

CHAPTER III.

Business.

Business which Banks may transact.

9. The Bank is authorized to carry on and transact the several kinds of business hereinafter specified (that is to say):

(a) the advancing and lending money, and opening cash-credits, upon the security of—

(1) promissory notes, debentures, stock and other securities of the Government of India;

(2) bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India;

(3) stock or debentures of, or shares in, Railway or other Companies, the interest whereon shall have been guaranteed by the Government of India;

(4) debentures or other securities for money issued by, or on behalf of, any municipal body under the authority of any Act of an Indian legislature;

(5) goods which, or the documents of title to which, are deposited with, or assigned to, the Bank as security for such advances, loans or credits; and

(6) bills of exchange and other negotiable securities, which may be discounted in accordance with the provisions of section ten, paragraph (e):

Provided that such advances and loans may be made, if the directors think fit, to the Governor General in Council, without any specific security;

(b) the selling and realization of the proceeds of sale of any such promissory notes, debentures, stock receipts, bonds, annuities, stock, shares, securities, or goods which, or the documents of title to which, have been deposited with, or assigned to, the Bank as security for such advances, loans or credits, or which are held by the Bank, or over which the Bank is entitled to any lien or charge in respect of any such loan or advance or credit or any debt or claim of the Bank, and which have not been redeemed in due time in accordance with the terms and conditions (if any) of such deposit or assignment;

(c) the drawing, discounting, buying and selling of bills of exchange and other negotiable securities payable in India, or (in the case of the Bank of Madras) in Ceylon;

(d) the investing of the funds of the Bank upon any of the securities specified in paragraph (a) of this section, clauses (1), (2), (3) and (4),

and from time to time altering, converting and transposing such investments for or into others of the investments above specified;

(e) the making, issuing and circulating of bank post-bills and letters of credit made payable in India, or (in the case of the Bank of Madras) in Ceylon, to order, or otherwise than to the bearer on demand;

(f) the buying and selling of bullion;

(g) the receiving of deposits and keeping cash-accounts on such terms as may be agreed on;

(h) the selling of all property, whether moveable or immoveable, which may in any way come into the possession of the Bank in satisfaction or part satisfaction of debts and claims or otherwise;

(i) the transacting of pecuniary agency business on commission;

(j) the acting as agent on commission in the transaction of the following kinds of business (namely):—

(1) the buying and the taking charge of any Government or other securities, or shares in any Railway, Bank, Joint Stock, or other public Company;

(2) the receiving of the interest or dividends on any securities or shares;

(3) the purchase of any securities or shares;

(4) the sale or transfer of any securities or shares, or the receipt of any principal money that may be payable thereon;

(5) the investment of the principal and interest and dividends so received, or the proceeds of such sale as last aforesaid, upon any securities or shares, or, according to the instructions of its constituents, the holding or paying such principal, interest, dividends or proceeds, or at the risk of such constituents, to remit the same by public or private bills of exchange, either payable in India or in Great Britain or Ireland, or elsewhere, and the doing of all acts necessary or proper for the purpose of effecting such remittances;

(k) the drawing of bills of exchange, and the granting of letters of credit, payable out of India, for the use of its constituents for the purpose of the remittances mentioned in the last preceding clause of this section;

(l) the buying, for the purpose of meeting such bills or letters of credit, of bills of exchange payable out of India, at any usance not exceeding six months.

(m) It shall also be lawful for the Bank under any arrangement or agreement with the Governor General in Council on behalf of the Secretary of State in Council

(1) to act as banker for, and to pay, receive, collect and remit money, bullion and securities on behalf of, the Government;

(2) to undertake and transact any other business which the Government may from time to time entrust to the Bank;

And the directors shall have power from time to time to arrange and settle with the Governor General in Council the terms of remuneration on which such business shall be undertaken by the Bank, and also as to the examination and audit from time to time of the accounts and affairs of the Bank by or on behalf of the Governor General in Council.

Business which Banks may not transact.

10. The directors shall not transact any kind of banking business other than those above specified, and in particular they shall not make any loan or advance—

(a) for a longer period than three months; or

(b) upon the security of stock or shares of the Bank of which they are directors; or

(c) upon mortgage, or in any other manner upon the security, of any immoveable property, or the documents of title relating thereto.

(d) Nor shall they lend or advance, by discount of bills or otherwise, to any individual or partnership firm (except upon the security mentioned in section nine, paragraph (a), numbers (1) to (5) inclusive), any sums of money exceeding at any one time six hundred thousand rupees in the whole.

(e) Nor shall they discount any negotiable security of any individual or partnership firm, payable in the town or at the place where it is presented for discount, which does not carry on it the several responsibilities of at least two persons or firms unconnected with each other in general partnership.

(f) Nor shall they discount any negotiable security having a longer period to run than three months: provided that, in the case of the Bank of Madras, the directors may discount negotiable securities payable in Ceylon having a period to run not exceeding four months.

Sums payable by or to Government to be payable at Banks.

11. Until the expiration of at least fourteen days after notice has been given by notification of the Governor General in Council published, in the case of the Bank of Bengal, in the *Gazette of India* and the *Calcutta Gazette*, and in the cases of the Bank of Madras and the Bank of Bombay, in the local official Gazette, that the Bank will no longer act as banker for, or pay, receive, collect or remit money, bullion and securities on behalf of, the Government,

all sums payable by or to the Secretary of State for India in Council, or by or to the Governor General in Council, or the Government of Bengal or the Governor of Fort St. George in Council or the Governor of Bombay in Council, on behalf of the Secretary of State for India in Council, at the General Treasury of Fort William in Bengal, or at the General Treasury at Madras, or at the General Treasury at Bombay,

shall be payable—

in the case of the Secretary of State for India in Council, or the Governor General in Council—at the office of the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, as the case may be,

in the case of the Government of Bengal—at the office of the Bank of Bengal;

in the case of the Gevernor of Fort St. George in Council—at the office of the Bank of Madras; and

in the case of the Governor of Bombay in Council—at the office of the Bank of Bombay.

Presentment of promissory notes at Banks.

12. Whenever presentment of any promissory note, bond or other security for payment or any other purpose at any of the said General Treasuries would heretofore have been necessary or sufficient, presentment for such purpose shall be necessary or sufficient (as the case may be) until the expiration of fourteen days after the giving of the notice mentioned in section eleven—

in the case of the General Treasury of Fort William—at the office of the Bank of Bengal;

in the case of the General Treasury at Madras—at the office of the Bank of Madras; and

in the case of the General Treasury at Bombay—at the office of the Bank of Bombay.

Nothing in this section shall render it necessary to present at the office of the Bank of Bengal, the Bank of Madras, or the Bank of Bombay any security which need not have been presented at one of the said General Treasuries.

Place of business.

13. The office of the Bank of Bengal shall be at Calcutta, that of the Bank of Madras shall be at Madras, and that of the Bank of Bombay shall be in the Island of Bombay;

and the business of the Bank shall be carried on at its office, and, subject to the provisions of section fifteen, at such other place or places in India as the Board may deem advisable.

Acquisition of business premises.

14. For the purpose of providing offices and places in and at which to carry on and manage the business of the Bank, the directors may—

(a) hire, take, or acquire by purchase, lease or otherwise, lands, houses or buildings, on such terms, as they may from time to time think advisable;

(b) build on any land hired, taken or acquired as aforesaid, or pull down, alter, remove, or convert any such houses or buildings, and erect and build other houses and buildings in lieu thereof on any such land;

(c) fit up, furnish, repair and insure against loss by fire all or any of such houses or buildings; and let, or give possession of, the whole or any part of the same, whether fitted up or furnished, or otherwise, to such person, and on such terms as they conside radvisable with regard to the interests of the Bank, and the promotion or carrying on of its business;

(d) sell and buy in any such lands, houses or buildings as aforesaid, and re-sell the same, and otherwise deal with all or any part of the same as they may consider most conducive to the interests of the Bank.

Establishment of branches and agencies.

15. It shall be lawful for the directors to maintain as branches or agencies of the Bank, any branches or agencies of the present Banks, which may be in existence on the *first* day of *March* 1876,

and, from time to time, to establish branches or agencies at such places within the Presidency in which the Bank is situate as they deem advantageous to the interest of the Bank, and, with the previous consent of the Governor General in Council and subject to such restrictions as to the business to be transacted as he thinks fit in each case to impose (such consent and restrictions being notified in the *Gazette of India,*) to establish branches or agencies at such places outside the Presidency in which the Bank is situate, as the directors deem advantageous for the interests of the Bank:

Proviso.

Provided that the agency of the Bank of Bengal now established in Bombay shall not advance or lend money, or open cash-credits on securities, or receive deposits and keep cash-accounts, or discount bills of exchange drawn and payable in the Presidency of Bombay,

and shall not act as agent on commission, or transact any business except as agent of the same Bank or any of its branches or other agencies.

The directors may discontinue any branch or agency maintained or established under this section.

Power to purchase business of other Banks.

16. The directors may, if authorized to do so by a special resolution, from time to time, purchase the business of any other Bank in British India, of which the capital is divided into shares, upon such terms as may be agreed on in each case, and may pay for any business so purchased either in cash, or in shares, or partly in cash or partly in shares, and, for that purpose, may increase, within the limits prescribed by section seventeen, the capital of the Bank by the issue of such number of shares as may be determined on.

The shareholders or proprietors of the purchased Bank to whom such new shares are allotted shall be shareholders of the Bank, and be in all respects in the same position as if they had respectively subscribed and paid for the shares so allotted to them.

The business so purchased shall, after the purchase, be carried on by the Bank with, and subject to, the several restrictions contained in this Act.

CHAPTER IV.

Capital.

Capital of Bank of Bengal.

17. The capital of the Bank of Bengal shall consist of twenty millions of rupees in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to thirty millions of rupees.

Capital of Bank of Madras.

The capital of the Bank of Madras shall consist of five millions sixty-two thousand five hundred rupees, in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to twelve millions of rupees.

Capital of Bank of Bombay.

The capital of the Bank of Bombay shall consist of ten millions of rupees in shares of five hundred rupees each, divisible into half shares, with power to increase the same, in manner hereinafter provided, to twenty millions of rupees.

Capital of New Bank of Bombay, Limited, to be capital of Bank of Bombay.

18. The capital of the said New Bank of Bombay, Limited, already created, shall, on the *first* day of *March* 1876, constitute the capital of the Bank of Bombay, subject to be increased as aforesaid.

Surrender of paid-up shares for stock.

19. Any shareholder may from time to time surrender his wholly paid-up shares, or any of them, to the directors, and demand and receive from the Bank, in lieu thereof, capital stock to the like amount as represented by the shares so surrendered,

Surrender of stock for shares.

and any proprietor may from time to time surrender his stock, or any portion thereof, to the directors, and demand and receive from the Bank in lieu thereof shares to the like amount, or as near thereto as practicable.

Power to increase or reduce capital.

20. The proprietors and shareholders of the Bank may from time to time by special resolution and with the previous sanction of the Governor General in Council increase or reduce the capital of the Bank:

Provided that no such special resolution shall be deemed to have been passed, unless at least one-half in number of the shareholders or proprietors holding at least one-half of the paid-up capital of the Bank for the time being, be present in person or by proxy, and a majority poll by open voting in favour of the said resolution.

Procedure on resolution to increase capital.

21. When any such special resolution to increase the capital has been passed, the directors may, subject to the provisions of this or any other Act for the time being in force regulating such Bank, and to the special direction (if any) given in reference thereto by the meeting at which such resolution has been passed,

(*a*) make such orders as they think fit for the opening of subscriptions towards such increase or capital by the proprietors and shareholders;

(*b*) allow to the proprietors and shareholders such period to fill up the subscription as to the directors seem fit;

(*c*) prescribe the manner in which the proprietors and shareholders shall subscribe and pay into the Bank the proportions of new capital which they may respectively desire to subscribe; and

(*d*) make such orders as the directors think fit for the disposal and allotment of the amount of new capital that may not be subscribed for and paid up in manner aforesaid:

Provided that the capital, including any increase therein that may be made under section sixteen, shall not exceed, in the case of the Bank of Bengal, thirty millions of rupees, in the case of the Bank of Madras, twelve millions of rupees, and in the case of the Bank of Bombay, twenty millions of rupees.

Procedure on resolution to reduce capital.

22. When any such special resolution to reduce the capital has been passed, the directors may (subject as aforesaid) prescribe the manner in which the reduction shall be carried into effect,

23. Any new capital created under the provisions of section twenty shall be subject to the provisions of this or any other Act regulating the Bank in force for the time being.

New capital to be subject to provisions of Act.

CHAPTER V.

Forfeiture of Stock and Shares.

24. If any proprietor or shareholder become indebted to the Bank, the Bank may withhold payment of the dividends on the stock or shares of such proprietor or shareholder registered as his own property, and not as held in trust, or as executor or administrator, until payment of such debt, and apply such dividends in or towards payment thereof;

Powers in regard to proprietors or shareholders indebted to Bank.

and, after demand and default of payment, and notice in that behalf given to such proprietor or shareholder, or his constituted agent, or by public advertisement in the local official Gazette, the Bank may refuse to register the transfer of any such stock or shares until payment of such debt;

and, if the same remain unpaid for the space of three months after such notice, the Bank may advertise in the local official Gazette such stock or shares for sale on a day not less than fifteen days from the publication of such advertisement;

and may, on such day, sell by public auction such stock or shares, or so much or so many thereof as may be necessary, and apply the proceeds thereof in or towards payment of the said debt, with interest, from the day appointed for the payment of such debt to the time of actual payment, at such rate as may have been agreed upon, or, in the absence of such agreement, at the highest rate current for advances by way of local discounts by the Bank;

and shall pay over the surplus, if any, to such proprietor or shareholder or to his lawful representative;

and the purchasers of all stock or shares sold under this section shall upon payment of the consideration therefor be registered as proprietors or shareholders in respect of such stock or shares and all such stock and shares shall be subject to the other provisions of this or any other Act regulating the Bank in force for the time being.

CHAPTER VI.

Certificates, Transfer and Transmission of Shares and Stock.

25. Every shareholder shall be entitled to a certificate, under the corporate seal of the Bank, and signed by two Directors and the Secretary and Treasurer, specifying the shares held by him, and in the case of shares which are not wholly paid up, the amount paid thereon,

Certificates for shares.

and any holder of more than one-half share may, at his option, demand a certificate for each such half share, or one or more certificates for all or any of such half shares, and such certificate or certificates shall be delivered to him accordingly: provided that the number of such certificates shall in no case exceed the number of half shares in respect of which they are so delivered.

Every proprietor of capital stock shall be entitled to a receipt signed by two directors and the Secretary and Treasurer, and specifying the amount of stock held by him and any such proprietor may, at his option, demand one receipt for the whole of the stock, or separate receipts for any portions of the stock, so held by him, and such receipt or receipts shall be delivered to him accordingly: Provided that no receipt shall be delivered for a portion of stock less than two hundred and fifty rupees.

Receipts for stock.

For every certificate and receipt delivered under this section there shall be paid such fee as may for the time being be prescribed under section sixty-three: Provided that no fee shall be payable for certificates or receipts delivered to the persons referred to in section four for shares in or stock of the Bank.

Fees for certificates and receipts.

Every such certificate and receipt shall be *primâ facie* evidence of the title of the shareholder or proprietor to the shares or stock therein specified.

Certificates and receipts to be evidence.

26. The stock and shares of every proprietor and shareholder shall be moveable property, capable of being transferred in manner provided by the regulations contained herein, or in any other Act regulating the Bank for the time being in force, and shall not be of the nature of immoveable property; and each share shall be distinguished by its appropriate number.

Stock and shares to be moveable property.

27. Every transfer of stock or shares shall be in such form as the Board from time to time may approve, and shall be presented to the Bank accompanied by such evidence as the Board may require to prove the title of the transferor.

Form of transfer to be approved by Board.

Every such transfer shall be verified in manner as the Board require, and the Board may refuse to register any such transfer until the same be so verified, and, in the case of shares not fully paid up, unless the transferee is approved by the Board.

Board may require evidence of transmission.

The Board may refuse to register any transfer of stock or shares registered as the property of any proprietor or shareholder and not as held in trust or as executor or administrator, whilst such proprietor or shareholder is either alone, or jointly with any other person, indebted to the Bank on any account.

Board may decline to register certain transfers.

The transferor shall be deemed to remain the proprietor or holder of the stock or shares transferred until the name of the transferee is registered in respect thereof.

Transferor to remain proprietor till transfer registered.

28. The directors may from time to time close the register and transfer-books of the Bank for any period or periods not exceeding in the whole thirty days in any twelve consecutive months.

Power to close transfer-books.

29. The proprietors and shareholders for the time being, and no other persons, shall be members respectively of the bodies corporate hereby constituted,

Corporation to consist of registered proprietors or shareholders only.

and, save as provided by section twenty-four, the Bank shall not be bound or affected by notice of any trust to which any stock or share may be subject in the hands of the proprietor or holder thereof;

Notice of trust.

and when any stock or share is vested in more than one proprietor or holder, such proprietors or shareholders shall, as between themselves and the Bank, be considered as joint tenants with benefit of survivorship:

Shares vested in several holders.

Provided that, as regards voting at meetings, service of notices, and receipt of dividend, the person first named in the register may, at the option of the Board, be deemed the sole holder of such stock or share.

30. When, by the death of any proprietor or shareholder, his stock or shares shall devolve on his legal representative, the Bank shall not be bound to recognise any legal representative of such deceased proprietor or shareholder other than a person who has taken out probate to the will, or letters of administration to the estate of the deceased—

Recognition of legal representatives of deceased shareholders.

in the case of the Bank of Bengal, from the High Court of Judicature at Fort William;

in the case of the Bank of Madras, from the High Court of Judicature at Madras; and

in the case of the Bank of Bombay, from the High Court of Judicature at Bombay;

in the case of any of the said Banks, a probate granted by any of the said High Courts and taking effect throughout the whole of British India;

or who has obtained a certificate in respect of the estate of the deceased under Act No. XXVII of 1860, or any other Act relating to the collection of debts on successions, describing such stock or shares, from a Court of competent jurisdiction within the Presidency of Fort William, the Presidency of Madras, or the Presidency of Bombay, as the case may be.

31. Any person becoming entitled to stock or shares in consequence of the bankruptcy or insolvency of any proprietor or shareholder, or in consequence of the marriage of any female proprietor or shareholder, may be registered as a proprietor or shareholder upon such evidence being produced as the directors may from time to time require.

Transmission on insolvency or marriage.

CHAPTER VII.

Directors.

32. The business of the Bank shall be managed by the Board, which shall in the first instance consist of six directors, and may subsequently consist of such number, not less than six, and not more than nine, as may be fixed by a special resolution.

Board.

Such directors shall be selected by vote of a general or special meeting.

Three of the directors shall form a quorum for the transaction of business.

Quorum.

33. The persons who, on the *first* day of *March* 1876, are respectively directors of the Bank of Bengal, the Bank of Madras, and the New Bank of Bombay, Limited, shall be respectively directors of the Bank of Bengal, the Bank of Madras, and the Bank of Bombay, as constituted by this Act, subject to removal as hereinafter provided and to the other provisions herein contained.

Present directors to be continued.

34. The two directors who have been longest in office shall go out of office at the general meeting.

Two directors to go out by rotation annually.

Any director so retiring shall be eligible for re-election at such meeting, and, if any question arise as to which of the directors who have been the same time in office shall retire, such question shall be decided by the directors by ballot.

35. *Clause* 1.—No person shall be eligible or qualified to serve as a director of a Bank who is not a proprietor or holder in his own right of unencumbered stock or shares of such Bank, to the amount of ten thousand rupees at the least.

Qualification of directors.

Clause 2.—No person shall be eligible or qualified to serve as a director—

Disqualification of directors.

If he holds the office of director, provisional director, promoter, agent or manager of any other Bank established, or having a branch or agency, in British India; or advertised as about to be established, or to have a branch or agency, in British India;

If he is a Judge of any High Court; or

If he is a salaried officer of Government not specially authorised by the Governor General in Council to serve as a director;

And the office of director shall be vacated—

If the person holding it accepts or holds any other office of profit under the Bank;

If he becomes bankrupt or insolvent, or compounds with his creditors;

If he is declared lunatic, or becomes of unsound mind;

If he is absent from the Board for more than three consecutive months;

If he ceases to hold in his own right the amount or number of stock or shares required to qualify him for the office.

Clause 3.—No two persons who are partners of the same mercantile firm, or one of whom is the general agent of, or holds a power of procuration from, the other, or from a mercantile firm of which the other is a partner, shall be eligible or qualified to serve as directors at the same time.

Co-partners of same firm not to serve as directors at same time.

Clause 4.—The proprietors or shareholders may, by a special resolution passed by the votes of proprietors or shareholders holding in the aggregate not less than one-half of the capital, remove any director before the expiration of his period of office, and appoint, in his stead, a qualified person, who shall in all respects stand in his place.

Power to remove directors.

36. At the first meeting of the directors in every year, they shall choose a president and vice-president from among themselves, and whenever the office of president or vice-president becomes vacant, they shall, at their next meeting, choose a successor for the remainder of the current year.

Directors to choose president and vice-president.

The president, or in his absence the vice-president, shall be chairman at all meetings whether of directors or of proprietors or shareholders, or of proprietors and shareholders, and shall have an additional or casting vote in all cases of an equal division of votes. Provided that if both the president and vice-president be absent at any meeting the directors present shall elect a chairman for such meeting from among themselves, and such chairman shall, in case of an equal division of votes, have an additional or casting vote.

Chairman.

Casting vote.

37. The Board shall have power at any time and from time to time, to supply any vacancies in their number arising from the death, resignation, or disqualification under section thirty-four, of any director, or from his temporary absence from the Board exceeding one month.

Vacancies among directors how filled up.

Any director so appointed shall, for the purposes of section thirty-four, be considered to have held office from the date on which the director in whose place he is appointed was elected, or (where such director was appointed under this section) from the date on which his mediate or immediate predecessor was elected.

38. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Acts of directors valid notwithstanding subsequent discovery of disqualification.

CHAPTER VIII.

Officers of the Bank.

39. The directors shall have power—

Appointment, salaries, suspension and removal of officers.

to appoint such officers, clerks and servants as may be necessary to conduct the business of the Bank,

to fix the salaries of such officers, clerks and servants, and

to suspend or remove any officer, clerk or servant of the Bank.

40. The Secretary and Treasurer and Secretary of the Bank are hereby severally empowered for and on behalf of the Bank to endorse and transfer promissory notes, stock-receipts, stock, debentures, shares, securities, and documents of title to goods, standing in the name of, or held by, the Bank,

Accounts, receipts and documents of Bank by whom to be signed.

and to draw, accept and endorse bills of exchange, bank post-bills, letters of credit, in the current and authorized business of the Bank,

and to sign all other accounts, receipts and documents connected with such business.

41. No Secretary and Treasurer, Secretary, Inspector, Agent, Manager, or Accountant, in the service of the Bank,

Officers forbidden to engage in other commercial business.

and no Khazánchi or Shroff in the service of the Bank at the principal office,

and, without the previous sanction of the Board, no Khazánchi or Shroff at any branch or agency of the Bank,

shall engage in any other banking or commercial business, either on his own account or as agent for any other person or persons, or shall act as broker for the sale or purchase of Government or other securities.

42. Every person appointed to hold, or act in any one or more of the said offices, and every other officer from whom the directors may from time to time think fit to require it, shall give security to the directors, for the faithful discharge of his duty to the satisfaction of the directors, in such amount and in such manner as they think proper.

Security from officers.

The security to be given as aforesaid by the person holding or acting in the office of Secretary and Treasurer, shall not be in a less amount than fifty thousand rupees.

CHAPTER IX.

Accounts and Dividends.

43. The directors shall cause the books of the Bank to be balanced on every thirty-first day of December and every thirtieth day of June.

Books to be balanced twice a year.

A statement of the balance at every such period, signed by a majority of the directors, shall be forthwith sent to a Secretary to the Government of India, and in the cases of the Bank of Madras and the Bank of Bombay, also to a Secretary to the Local Government.

The Governor General in Council in the case of each of the said Banks, and the Local Government in the case of the Bank of Madras and the Bank of Bombay, shall (so long as any such arrangement with the Government as aforesaid, which has already been, or shall hereafter be, entered into remains in force) at all times be entitled to require of the directors any information touching the affairs of the Bank and the production of any document of the Bank,

and in the case of each of the said Banks the Governor General in Council may require the publication of such statements of its assets and liabilities, at such intervals and in such form and manner as the Governor General in Council thinks fit.

Every requisition under this section shall be signified in writing under the hand of a Secretary to the Government of India or to the Local Government (as the case may be), and the directors shall comply with every such requisition.

Dividends to be determined half-yearly.

44. An account of the profits of the Bank during the previous half-year shall be taken on or immediately after every thirty-first day of December and every thirtieth day of June,

and a dividend thereof shall be made as soon thereafter as conveniently may be,

and the amount of such dividend shall be determined by the directors, subject to the provisions of section forty-five;

No unpaid dividend shall bear interest as against the Bank.

Reserve-fund.

45. The directors, before declaring any dividend, may set aside out of the profits of the Bank such a sum as they think proper as a reserve-fund, and invest the same upon any of the securities specified in section nine, paragraph (*a*), clauses (1), (2), (3) and (4).

Application of reserve-fund.

46. The directors may from time to time apply such portion as they think fit of the reserve-fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the buildings and business premises of the Bank, or any part thereof, or for any other purposes of the Bank, which they from time to time deem expedient.

CHAPTER X.

Audit.

Election of auditors.

47. Two auditors shall be elected and their remuneration fixed at the annual general meeting.

Who may be auditors.

The auditors may be proprietors or shareholders; but no person shall be elected auditor who is interested, otherwise than as a proprietor, shareholder or depositor in any transaction of the Bank; and no director or other officer of the Company is eligible during his continuance in office.

Auditors re-eligible.

Any auditor shall be re-eligible on his quitting office.

Auditors' tenure of office.

The persons who shall be auditors on the *first* day of *March* 1876, and all auditors elected under this section, shall severally be and continue to act as auditors until the first general meeting after their respective elections:

Supply of casual vacancy in office.

Provided that if any casual vacancy occurs in the office of any auditor, the directors shall forthwith call a special meeting for the purpose of supplying the same.

Rights and duties of auditors.

48. Every auditor shall be supplied with a copy of the half-yearly balance-sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

Every auditor shall have a list delivered to him of all books kept by the Bank, and shall at all reasonable times have access to the books and accounts of the Bank, and may (at the expense of the Bank) employ accountants or other persons to assist him in investigating such accounts, and may in relation to such accounts, examine the directors or any other officer of the Bank.

The auditors shall make a report to the proprietors and shareholders upon the annual balance-sheet and accounts; and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by the bye-laws made under this Act and properly drawn up so as to exhibit a true and correct view of the state of the Bank's affairs, and in case they have called for any explanation or information from the directors, whether it has been given by the directors and whether it has been satisfactory.

Such report shall be read together with the report of the directors at the annual general meeting.

CHAPTER XI.

Meetings.

Annual general meeting.

49. On the first Monday of the month of August in every year, or as soon after such day as is convenient, a general meeting shall be held, at which the directors shall submit to the proprietors and shareholders a statement of the affairs of the Bank made up to the preceding thirtieth day of June.

A notice convening such meeting, signed by the Secretary and Treasurer, shall be published in the local official Gazette, and in the case of the Bank of Bengal also in the *Gazette of India*, at least fifteen days before the meeting is held.

Special meetings.

50. Any ten or more proprietors or shareholders holding stock or shares, or both, to the aggregate amount of fifty thousand rupees, or any three directors, may convene a special meeting upon giving fifteen days' previous notice of such meeting

and of the purpose for which the same is convened, as well to the directors as also by public advertisement in the local official Gazette, and in two of the English and one of the Vernacular daily newspapers:

Provided that three months' previous notice shall be thus given of any special meeting held for the purpose of increasing or reducing the capital of the Bank.

Quorum.

51. No business shall be transacted at any meeting, whether general or special, unless a quorum of twenty proprietors or shareholders, or both, in person or by proxy, is present at the commencement of such business.

If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened by proprietors or shareholders not being directors, shall be dissolved: in any other case it shall stand adjourned to the same day in the following week at the same time and place, and if at such adjourned meeting a quorum is not present it shall be adjourned *sine die*.

Decision by majority of votes.

52. At meetings whether general or special, every election and other matter submitted to the meeting shall be decided by a majority of votes, except as in section twenty and in section thirty-five, clause 4, is specially provided,

Persons not allowed to vote.

and no person shall be allowed to vote at any such meeting in respect of any stock or share acquired by transfer, unless such transfer shall have been completed and registered at least three months before the time of such meeting.

Shareholders in arrear as to calls.

And no shareholder shall be entitled to vote at any meeting in respect of any shares held by him alone or jointly, whilst any call due from him alone or jointly remains unpaid.

Power to declare resolution carried by show of hands.

53. A declaration by the chairman of any meeting, except a special meeting held under section twenty, that a resolution has been carried thereat upon a show of hands, shall be conclusive, and an entry to that effect in the book of proceedings of the Bank shall be sufficient evidence of that fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution, unless, immediately on such declaration, a poll be demanded in writing by five proprietors or shareholders present and entitled to vote at such meeting.

Poll to be taken, if demanded.

54. If a poll be demanded, it shall be taken at such time and place, and (except at the special meeting last aforesaid) either by open voting or by ballot, as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Proceedings and resolutions at meetings to be binding.

55. The proceedings at any meeting, and all resolutions and decisions of such meeting, shall be valid and binding on the Bank so far as such proceedings, resolutions and decisions are consistent with the provisions of this or any other Act for the time being in force and regulating the Bank.

Scale of votes.

56. At all such meetings, the proprietors or shareholders shall vote according to the following scale:—

The proprietor of capital stock amounting to Rs. 2,000 or the holder of shares of which the total nominal amounts are equal to Rs. 2,000, shall be entitled to	1 vote.
The proprietor of capital stock amounting to Rs. 10,000, or the holder of shares of which the total nominal amounts are equal to Rs. 10,000, shall be entitled to	2 votes.
The proprietor of capital stock amounting to Rs. 20,000, or the holder of shares of which the total nominal amounts are equal to Rs. 20,000, shall be entitled to	3 „
The proprietor of capital stock amounting to Rs. 30,000, or the holder of shares of which the total nominal amounts are equal to Rs. 30,000, shall be entitled to	4 „
The proprietor of capital stock amounting to Rs. 40,000, or the holder of shares of which the total nominal amounts are equal to Rs. 40,000, shall be entitled to	5 „
The proprietor of capital stock amounting to Rs. 50,000, or the holder of shares of which the total nominal amounts are equal to Rs. 50,000, shall be entitled to	6 „
The proprietor of capital stock amounting to Rs. 60,000, or the holder of shares of which the total nominal amounts are equal to Rs. 60,000, shall be entitled to	7 „

Where a person is both a proprietor of stock and a holder of shares, his shares shall, for the purpose of this section, be deemed to be stock.

No proprietor or shareholder shall be entitled to more than seven votes at any such meeting.

Proxies of proprietors or shareholders.

57. Any proprietor or shareholder entitled to vote at any meeting under this Act may give a proxy in writing, either general or special, under his hand or the hand of his attorney duly authorized, to any other proprietor or shareholder.

Such proxy shall be produced at the time of voting, and shall entitle the person to whom it is given to vote on such matters as shall be authorized by the tenor of such proxy.

But no person shall be permitted to vote in virtue of such proxy unless it has been left for registration at the office of the Bank at least three clear days before the time for holding the meeting at which it is intended to be used:

Provided that a general proxy which has been registered at such office need not be again left for registration previous to any subsequent meeting.

Existing proxies.

Proxies existing and in force with reference to any of the present Banks, on the *first* day of *March* 1876, shall continue in force and be available at meetings under this Act, anything herein contained notwithstanding.

Voting by lunatic and minor shareholders.

58. If any proprietor or shareholder is a lunatic or idiot, he may vote by his committee or other legal curator, and if any proprietor or shareholder is a minor, he may vote by his guardian, or any one of his guardians, if more than one.

CHAPTER XII.

Notices.

Service of notices by Bank.

59. Every notice or other document requiring to be served by the Bank upon any proprietor or shareholder may be served either personally, or by leaving it for, or sending it through the post by registered letter addressed to, him at his registered place of abode;

and every notice sent through the post shall be deemed to have been served at the time at which in the usual course of post, it would have been delivered.

Notices by shareholders.

60. Every notice to be given on the part of any proprietor or shareholder shall be left at the office of the Bank, or sent through the post by registered letter addressed to the Secretary and Treasurer of the Bank at its principal office.

Shareholder bound by notices, to previous holders.

61. Every person who by operation of law, transfers or otherwise becomes entitled to any stock or shares, shall be bound by any and every notice or other document which, previously to his name and address being entered upon the register of the Bank in respect of such stock or shares, has been given to the person from whom he derives his title thereto.

Service of notices good notwithstanding shareholder's death.

62. When any notice or document is delivered or sent, in accordance with this Act, at or to the registered place of abode of a proprietor or shareholder, then, and notwithstanding he be then deceased, and whether or not the Bank have notice of his decease, such service of the notice or other document shall, for all purposes of this Act, be deemed service thereof on him, or, if dead, on his heirs, executors, administrators, and every of them.

CHAPTER XIII.

Bye-laws.

Power of directors to make bye-laws.

63. The directors may from time to time make bye-laws, regulating the following matters or any of them :—

(*a*) the distribution of business amongst the directors,

(*b*) their remuneration,

(*c*) the delegation of any powers of the directors to committees consisting of members of their body,

(*d*) the procedure at the meetings of the board or of any committee of the directors,

(*e*) the bills which may be discounted and the amount which may be advanced by way of discount,

(*f*) the limits for advances and the conditions on which they may be made,

(*g*) the circumstances under which alone advances may be made to directors or officers of the Bank, or the relatives of such directors or officers, or to companies, firms, or individuals with which or with whom such directors, officers, or relatives are connected as partners, directors, managers, servants, shareholders, or otherwise,

(*h*) the books and accounts to be kept at the head and other offices respectively,

(*i*) the reports and statements to be prepared and made by the Chief Accountant, the heads of departments, and the other officers of the Bank,

(*j*) the particulars to be contained in the half-yearly balance-sheet,

(*k*) the proportion which the reserve fund must bear to the paid-up capital at the time of declaring or paying any dividend,

(*l*) the management of the branches and agencies,

(*m*) the fees payable for certificates of shares or receipts for stock, or for registration of transfers of shares or stock,

(*n*) the renewal of certificates of shares and receipts for stock, which have been worn-out or lost,

(*o*) and, generally, for the conduct of the business of the Bank;

Power of proprietors and shareholders to make bye-laws.

and the proprietors and shareholders may, from time to time, at any meeting, whether general or special, make bye-laws regulating the matters mentioned in clauses (*a*) to (*o*), both inclusive, of this section, and otherwise for the direction of the affairs of the Bank, and the same shall be binding on the directors and officers, and on the proprietors and shareholders, until rescinded or varied at any subsequent meeting :

Proviso.

Provided that no bye-law, or alteration or rescission of any bye-law, whether made by the directors or by the proprietors and shareholders, shall be of any validity, except in so far as the same is consistent with the provisions of this Act, and has been previously approved by the Governor General in Council, and such approval has been signified in writting under the hand of a Secretary to the Government of India.

CHAPTER XIV.

Miscellaneous.

64. The directors may institute, conduct, defend, compromise, refer to arbitration and abandon legal and other proceedings and claims by or against the Bank, or the directors or officers of the Bank and otherwise concerning its affairs.

Power to institute and compromise suits.

65. In any suit brought against any shareholder to recover any debt due for any call or other moneys due from him in his character of shareholder, it shall be sufficient to allege that the defendant is a shareholder of the Bank, and is indebted to the Bank in respect of a call made or other moneys due, whereby a right to sue has accrued to the Bank;

Evidence in legal proceedings against shareholders.

and, on the hearing of any suit to be brought by the Bank against any shareholder to recover any debt due for any call, it shall be sufficient to prove that the name of the defendant is on the register of shareholders of the Bank as the holder of the shares in respect of which such debt accrued, and that the call was made, and that notice of such call was duly given to the defendant in pursuance of this or any other Act for the time being in force regulating the Bank;

and it shall not be necessary to prove the appointment of the directors who made such call, nor that a quorum of directors was present at the Board at which such call was made, nor that the meeting at which it was made was duly convened or constituted.

66. Nothing in the Thirty-third of George the Third, session two, chapter fifty-two, shall be deemed to render it unlawful for any servant of Government or for any Judge of a High Court, to become a member of any corporation established under this Act.

Modification of 33 Geo. III., sess. 2, cap. 52.

67. And whereas the Government of India has agreed to sell, and the directors of the present Bank of Bengal have agreed to purchase, at a premium of twenty-two and a half per centum, the said two thousand two hundred shares of one thousand rupees each held by the Government of India in the same Bank; and it is intended that the directors of the Bank of Bengal as constituted by this Act shall cancel two thousand of such shares, and sell for the benefit of the Bank four hundred shares in the same Bank corresponding with the remaining two hundred shares so agreed to be sold and purchased;

Sale to Banks of Bengal and Madras of Government shares therein.

And whereas the Government of India has agreed to sell, and the directors of the present Bank of Madras have agreed to purchase, at a premium of ten per centum, the said five hundred and sixty-two and a half shares held by the Government of India in the same Bank, and it is intended that the directors of the Bank of Madras as constituted by this Act shall cancel the same shares;

And whereas the said respective directors of the present Bank of Bengal and Bank of Madras had no power to enter into the said agreements and the directors of the Bank of Bengal as constituted by this Act have no power to sell the four hundred shares referred to in this section;

And whereas the respective directors of the Bank of Bengal and Bank of Madras as constituted by this Act have no power to cancel the said two thousand shares or the said five hundred and sixty-two and a half shares;

And whereas it is expedient to confirm the said agreements, and to indemnify the said respective directors of the present Bank of Bengal and Bank of Madras for entering into the same, and to empower the directors of the Bank of Bengal as constituted by this Act to sell the said four hundred shares, and to empower the respective directors of the Bank of Bengal and Bank of Madras as constituted by this Act to cancel the said shares so intended to be cancelled; It is hereby further enacted as follows:—

(*a*).—The said agreements are hereby confirmed, and the said respective directors of the present Bank of Bengal and Bank of Madras are hereby indemnified for entering into the same; and no suit or other proceeding shall be maintained against any such director in respect of any thing *boná fide* done in pursuance of either of such agreements.

(*b*).—The directors of the Bank of Bengal as constituted by this Act shall have power to sell and shall, as soon as conveniently may be, sell, the said four hundred shares, either together or in parcels, and either by public auction or private contract, and shall apply the proceeds in or towards paying the price of the shares of the Government of India so agreed to be purchased by the directors of the present Bank as aforesaid, or otherwise for the benefit of the Bank of Bengal as constituted by this Act.

(*c*).—The directors of the Bank of Bengal as constituted by this Act shall have power to cancel, and shall, as soon as conveniently may be, cancel, the said two thousand shares, and the directors of the Bank of Madras as constituted by this Act shall have power to cancel, and shall, as soon as conveniently may be, cancel, the said five hundred and sixty-two and a half shares.

SCHEDULE.

(See Section 2.)

Part I.—Statute.

Number and year.	Abbreviated title.	Extent of repeal.
47 George III., sess. 2, cap. 68.	An Act for the better government of the Settlements of Fort St. George and Bombay, &c.	Sections eight, nine, and ten.

Part II.—Acts of the Governor General in Council.

Number and year.	Title.	Extent of repeal.
IV. of 1862.	An Act for regulating the Bank of Bengal.	The whole.
V. of 1862.	An Act to provide for the payment at the Banks of Bengal, Madras and Bombay, of monies payable at the General Treasuries of Calcutta, Madras and Bombay.	The whole.
VI. of 1862.	An Act to annex a schedule to Act IV. of 1862.	The whole.
XXIX. of 1863.	An Act to declare the receipts of the Banks of Bengal, Madras and Bombay to be sufficient in lieu of the receipts of the Sub-Treasurers of Fort William, Fort St. George and Bombay, respectively.	The whole.
XIX. of 1870.	An Act to enable the Directors of the Bank of Bengal to act by a quorum.	The whole.

Part III.—Acts of the Governor of Fort St. George in Council.

Number and year.	Title.	Extent of repeal.
VI. of 1866.	An Act for repealing Madras Act V. of 1862, and for regulating the Bank of Madras.	The whole.
I. of 1871.	An Act to amend Madras Act VI. of 1866, to give validity to certain acts done by the Directors of the Bank of Madras, and to enable outgoing Directors to be re-elected.	The whole.

Part IV.—Acts of the Governor of Bombay in Council.

X. of 1863	An Act for the Re-incorporation and re-constitution of the Bank of Bombay.	The whole.
XV. of 1866	An Act to amend Act No. X. of 1863 (Bombay).	The whole.
I. of 1867	An Act to reduce the amount of the capital of the Bank of Bombay and of the shares thereon, and to amend Act X. of 1863 and Act. XV. of 1863 (Bombay).	The whole.

STATEMENT OF OBJECTS AND REASONS.

The Government of India is a shareholder in the Banks of Bengal and Madras, and it appoints certain of the directors, and may vote by proxy at the meetings of the proprietors.

The Government has, however, determined to sell its shares, and to surrender its powers of appointing directors and voting. As those powers are conferred by Acts of the Indian legislatures, and as some of the arrangements connected with sale are beyond the powers of the directors, the present Bill is necessary.

The opportunity has been taken to repeal the present law on the subject, to consolidate the Acts relating to the Banks of Bengal and Madras, and to incorporate the New Bank of Bombay, Limited.

At the same time the Bill proposes to make certain changes, of which the following are the principal :—

(*a*). The capital of the Bank of Bengal will be reduced from Rs. 22,000,000 to Rs. 20,000,000, and that of the Bank of Madras from Rs. 5,625,000 to Rs. 5,062,500.

(*b*). The capital of those two Banks, which is now divided into shares of Rs. 1,000 each, will be divided into shares of only Rs. 500 each.

(*c*). The kinds of business which the Banks may transact are increased in number. They are empowered to lend upon the security of debentures of Indian municipalities, on goods the documents of title to which are assigned to the Banks as security, and on negotiable securities which, under the provisions of the proposed Act, may be discounted. They may also lend to the Governor General in Council without any specific security. On the other hand, they are expressly forbidden to make loans for a longer period than three months; to make unsecured loans to the same person or firm for more than six lakhs of rupees; to discount any negotiable security, payable where it is presented for discount, which does not carry on it the several responsibilities of at least two persons or firms unconnected in general partnership; or to discount negotiable securities having a longer period to run than three months, except in the case of the Bank of Madras, which may discount such securities payable in Ceylon and running for four months.

The Banks, as constituted by the proposed Act, will still be empowered to act as bankers for the Government of India; and though the Government will cease to have any direct pecuniary concern in the Banks, the interests of the public are so largely involved in their careful management, that it has been thought right to provide (*a*) that the capital of the Banks shall not be increased or diminished without the previous sanction of the Governor General in Council; (*b*) that the Governor General in Council in the case of each of the three Banks, the Local Government in the case of the Banks of Madras and Bombay, shall be entitled to require information touching the affairs of the Bank and the publication of statements of assets and liabilities; and (*c*) that the previous approval of the Government of India shall be required to validate bye-laws.

CALCUTTA,
The 7th December 1875.

(Signed) W. MUIR.

WHITLEY STOKES,
Secretary to the Government of India.

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