

THE



Bombay Government Gazette.

Published by Authority.

THURSDAY, 9TH SEPTEMBER 1886.

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

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 1st September 1886 :—

Bill No. 21 of 1886.

A Bill to extend the Glanders and Farcy Act, 1879, to the Bombay Presidency.

WHEREAS it is expedient that the Glanders and Farcy Act, 1879, should extend to the territories XX of 1879 administered by the Governor of Bombay in Council; It is hereby enacted as follows :—

1. The words "the Governor of Bombay in Council" in section 1 of the Glanders and Farcy Act, XX of 1879, are hereby repealed.

STATEMENT OF OBJECTS AND REASONS.

OCCASION having arisen in the Bombay Presidency, as it did in Upper India in 1879, for a law to provide for the better prevention of glanders among horses, the Government of Bombay has expressed a wish that the Glanders and Farcy Act, 1879, may be extended to the Bombay Presidency.

The object of this Bill is to give effect to that wish.

(Signed) C. P. ILBERT.

The 1st September 1886.

S. HARVEY JAMES,
Offg. Secretary to 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 1st September 1886 :—

Bill No. 22 of 1886.

A Bill for further shortening the language used in Acts of the Governor-General in Council, and for other purposes.

WHEREAS it is expedient further to shorten the language used in Acts made by the Governor-General in Council, and to make certain further provisions relating to those Acts; It is hereby enacted as follows :—

1. (1) This Act may be called the General Clauses Act, 1886; Short title and commencement.

(2) It shall come into force at once.

PART I.

ADDITIONAL CLAUSES.

2. This Part shall apply to this Act and to all Application of this Part. Acts made by the Governor-General in Council under the Indian Councils Act, 1861, after the passing of this Act.

3. In any Act to which this Part applies, unless Definitions. there is something repugnant in the subject or context,—

(1) "abet," with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code:

(2) "Chapter," "Part" and "schedule" shall denote, respectively, a Chapter and Part of, and schedule to, the Act in which the word occurs:

(3) "sub-section" shall denote a sub-section of the section in which the word occurs:

(4) "commencement", used with reference to an Act, shall mean the day on which the Act comes into force:

(5) "financial year" means the year commencing on the first day of April:

(6) "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund:

(7) "master," used with reference to a ship, means any person (except a pilot or harbour-master) having for the time being control or charge of the ship:

(8) "offence" shall mean any act or omission made punishable by any law for the time being in force:

(9) "public nuisance" shall have the meaning assigned to that expression in section 268 of the Indian Penal Code: [Act XLV 1860, s. 268., XLV of 1860.]

(10) "registered" shall mean registered under the law for the time being in force for the registration of documents: [Act VIII, 1885, s. 3 (13).]

(11) "sign", with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark," with its grammatical variations and cognate expressions: [Act XIV, 1882, s. 2; Act VI, 1886, s. 3.]

(12) "ship" includes every description of vessel used in navigation not exclusively propelled by oars: [Act V, 1883, s. 3.]

(13) "soldier" shall mean a person who is a soldier within the meaning of the Army Act, 1881: [cf. 44 & 45 Vic., c. 58, ss. 176 (1) and 190 (6) and (8). 44 & 45 Vic., c. 58.]

(14) "value", used with reference to a suit, shall mean the amount or value of the subject-matter of the suit: [Act XVIII, 1884, s. 3 (3).]

(15) "write", with its grammatical variations and cognate expressions, shall include "print" and "lithograph", with their grammatical variations and cognate expressions. [Act X, 1882, s. 4 (e); and Act XIV, 1882, s. 2.]

24 & 25 Vic., c. 67.

[Chapter V. Act XLV, 1860.]

[cf. Act I, 1868, s. 2.]

[cf. Act I, 1868, s. 2.]

[Act VIII, 1885, s. 1.]

[Act I, 1883, s. 2.]

[Act XII, 1885, s. 3.]

[Act V, 1883, s. 3.]

[Act X, 1882, s. 4 (p).]

4. Where, by an Act to which this Part applies and which is not to come into force immediately on the passing thereof, a power is conferred on the Governor-General in Council or on a Local Government or a High Court to make rules, or to issue orders with respect to the application of the Act, or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act, the power may be exercised at any time after the passing of the Act, but rules or orders so made or issued shall not take effect till the commencement of the Act. [Act XVIII, 1884, s. 1 (4).]

5. Any power conferred on the Governor-General in Council or a Local Government by an Act to which this Part applies may be exercised from time to time as occasion requires. [Act X, 1882, s. 557.]

6. Where, by an Act to which this Part applies, a power to make rules is expressed to be subject to the condition of the rules being made after previous publication, the following provisions shall apply, namely :—

(1) The authority having power to make the rules shall, before making them, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

Provisions applicable to making of rules after previous publication.

(2) The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Governor-General in Council or the Local Government prescribes.

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(4) The authority having power to make the rules, and, where the rules are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider the objection or suggestion which may be received by the authority having power to make the rules from any person with respect to the draft before the date so specified.

(5) The publication in an official Gazette of a rule purporting to have been made in exercise of a power to make rules after previous publication shall be conclusive proof that the rule has been duly made.

[cf. 45 & 46
Vic., c. 50, s.
230.] 7. (1) Where a limited time from any date or from the happening of any event is appointed or allowed, by an Act to which this Part applies, for the doing of any act or the taking of any proceeding in a Court or office, and the last day of the limited time is a day on which the Court or office is closed, then the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

(2) Where, by an Act to which this Part applies, any act or proceeding is directed or allowed to be done or taken in a Court or office on a certain day, then, if the Court or office is closed on that day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the

next day afterwards on which the Court or office is open.

(3) This section does not apply to any act or proceeding to which the Indian Limitation Act, XV of 1877, applies.

8. Where an act or omission constitutes an offence under two or more enactments of which either or any is an Act to which this Part applies, the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence. [cf. Act XI, 1886, s. 34.]

PART II.

SUPPLEMENTAL PROVISIONS.

9. The words "wholly or partially" shall be inserted before the word "repealed" in clause (1) of section 3 of the General Clauses Act, 1868, and shall be deemed to have been there from the commencement of that Act. [cf. 13 & 14 Vic., c. 21 s. 5, and Law Rep. 4 Q. B. 333.]

10. In the Cantonments Act, 1880, the word "soldier" shall not include a warrant-officer but shall otherwise have the meaning assigned to it by clause (13) of section 3 of this Act. [I. L. R. 3, All. 214.]

11. This Act and the General Clauses Act, 1868, shall apply to all Regulations which may receive the assent of the Governor-General under the Statute 33, Victoria, chapter 3, section 1, after the commencement of this Act. [Application of this Act and Act I, 1868, to Regulations under 33 Vic., c. 3, s. 1.]

STATEMENT OF OBJECTS AND REASONS.

THIS Bill is supplementary to the General Clauses Act, 1868, and is designed, as stated in the preamble, to further shorten the language used in Acts of the Governor-General in Council.

2. In section 3 there is nothing which calls for remark. The definitions in the section will materially shorten the defining clauses of Acts to be hereafter passed.

3. Section 4 is a repetition of a clause very generally employed by the Council of the Governor-General with the object of enabling the executive authorities, in the interval between the passing of an Act and its coming into force, to make preparations for bringing the Act into full operation as soon as it is legally possible to do so.

4. The English rule that a power given to the Crown by statute, having been once exercised, is exhausted and cannot be exercised again, has been applied by Indian Courts to powers conferred by the Indian legislature on the Governor-General in Council and Local Governments. Section 5 of the Bill is intended to remove the inconvenience resulting from the application of that rule.

5. Provisions in the terms of section 6 have been inserted in no fewer than eighteen Acts during the last three or four years and form part of several pending Bills. Their object is to give persons likely to be affected by statutory rules an opportunity, before the rules are made, of making objections and suggestions with respect to any matter which it is proposed to insert in them.

6. Section 7 is taken from the English Municipal Corporations Act, 1882, and is much needed in this country in the case of acts and proceedings to which the Indian Limitation Act, 1877, does not apply.

7. Section 8 is a repetition of a section which is very frequently inserted in Acts of the Governor-General in Council.

8. Clause (1) of section 3 of the General Clauses Act, 1868, has always been construed by the legislature as though the words "wholly or partially" were inserted before the word "repealed." It is proposed by section 9 of the Bill to insert those words in the clause and to require them to be deemed to have been there since the Act of 1868 was passed.

9. Difficulty has been experienced by some Courts in interpreting the word "soldier" in section 14 of the Cantonments Act, III of 1880. With the judgment of the High Court for the North-Western Provinces at I. L. R. 3 All. 214, to the effect that a warrant-officer is not a soldier within that section, the military authorities are content; but they consider it desirable that the word should have a wider meaning than has recently been assigned to it in Oudh, where the Judicial Commissioner has held a private in an European regiment, employed as a telegraph-signaller, not to be a soldier within the meaning of the section.

10. Section 11 of the Bill applies the General Clauses Act, 1868, and the proposed General Clauses Act, 1886, to Regulations to be hereafter made under the Statute 33 Vic., chapter 3.

The 1st September 1886.

(Signed) C. P. ILBERT.

S. HARVEY JAMES,
Offg. Secretary to 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 1st September 1886:—

Bill No. 23 of 1886.

A Bill to amend the Code of Civil Procedure and the Indian Limitation Act, 1877.

XIV of 1882. WHEREAS it is expedient to amend the Code
XV of 1877. of Civil Procedure and the Indian Limitation Act, 1877; It is hereby enacted as follows:—

1. (1) This Act may be called the Civil Short title and com- Procedure Code Amend- mencement. ment Act, 1886; and

(2) It shall come into force on the first day of January 1887.

2. (1) In this Act "section" means a section, and "Chapter" a Chapter, of the Code of Civil Construction. Procedure.

XIV of 1882.

(2) All references to that Code made in enactments heretofore passed or hereafter to be passed shall be read as if made to that Code as amended by this Act.

3. The second para- graph of section 8 is hereby repealed.

[Cf. Act XV, 1882, Schedule I.]

4. In section 17, after Explanation II, the following shall be inserted, namely:—

[I. L. R. 4 All. 423 and 5 All. 277.]

"EXPLANATION III.—In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely:—

- (i) at the place where the contract was made,
- (ii) at the place where the contract was to be performed, and
- (iii) at the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable."

5. In section 27, after the words "the Court may" the words "at any time" shall be inserted.

[I. L. R. 6 Cal. 370. Cf. Rules under Judicature Acts, XVI. 2.]

6. In section 53, for the words "at or before the first hearing" the words "at any stage of the suit" shall be substituted.

[I. L. R. 9 Cal. 695; 6 Mad. 239; 5 Bom. 609; and 7 All. 79.]

7. Section 95 is hereby repealed.

[Government of India (Financial Dept.) Resolution No. 225, dated the 12th April, 1882.]

8. In section 137, after the word "pleader" the words "or recognised agent" shall be inserted.

9. (1) For the proviso to section 141 the following shall be substituted, namely:—

"Provided that—

(a) if the document is an entry in a shop-book or other book, the party on whose behalf the book is produced may furnish a copy of the entry; and

(b) if the document is an entry in a record produced from a public office or by a public officer, or an entry in a book belonging to a person other than a party on whose behalf the book is produced, the Court may require a copy of the entry to be furnished—

(i) where the record or book is produced on behalf of a party, then by that party, or

(ii) where the record or book is produced in obedience to an order of the Court acting of its own motion, then by either or any party;

and the copy of the entry may be endorsed as aforesaid and shall be filed as part of the record, and the Court shall mark the entry and shall then return the book or record to the person producing it."

(2) To the same section the following shall be added, namely:—

"If a party required under this section to furnish a copy of an entry in a record or book fails to comply with the requisition, the Court may cause the copy to be made and order the cost thereof to be levied by attachment and sale of the moveable property of the defaulting party."

10. To section 216 the following shall be added, namely:—

"The provisions of this section shall apply whether the set-off is admissible under section 111 or otherwise."

11. For the proviso to section 245 the following shall be substituted, namely:—

"Provided that, in the case of a decree for money,—

(a) if the Court has reason to believe that the decree can be satisfied by execution against the property of the debtor, it may in its discretion refuse execution against his person;

(b) the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made."

12. (1) In section 266, for clause (b) the following shall be substituted, namely:—

Amendment of, and addition to, section 266.

"(h) the salary of a public officer or of any servant of a Railway Company to the extent of—

- (i) the whole of the salary where the salary does not exceed twenty rupees;
- (ii) twenty rupees where the salary exceeds twenty rupees and does not exceed forty rupees; and
- (iii) one moiety of the salary in any other case."

(2) In the same section, after clause (l), the following shall be inserted, namely:—

24 & 25 Vic.,
c. 67.

"(m) any allowance declared by any law passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council to be exempt from liability to attachment or sale in execution of a decree."

13. In section 271, between the words "or shall" and the words "break open any outer door of a dwelling-house" the words "without the special order of the Court causing the execution of the process" shall be inserted.

14. To section 320 the following shall be added, namely:—

[I. L. R. 5
All. 314.]

"The rules may also provide for the cases in which, the authorities to which, and the conditions on which, orders passed by the Collector or his subordinates under this Code or the rules thereunder shall be subject to appeal, and for the revision of the proceedings of appellate authorities in respect of those orders."

[I. L. R. 7
Rom. 332.]

"In executing a decree transferred to the Collector under this section, the Collector and his subordinates shall be subject to the control of the Court only to the extent expressly provided by this Code."

15. (1) In section 341, after clause (f), the following shall be inserted, namely:—

"or

"(g) if his discharge is ordered by the Government on the ground of his suffering from any infectious or contagious disease, or by the District Court or, in a presidency-town, the committing Court on the ground of his suffering from any serious illness."

(2) In the proviso to the same section the word "committing" shall be inserted before the word "Court."

[I. L. R. 11
Cal. 451.]

16. (1) In section 349, for the words "is under arrest" the words "is in custody under the foregoing provisions of this Code" shall be substituted.

(2) In section 350, for the words "judgment-debtor's discharge" the word "application", and for the words "is not entitled" the words "ought not", shall be substituted.

(3) For section 351 the following shall be substituted, namely:—

"351. (1) If the Court is satisfied that the Declaration of insolvency and appointment of receiver. statements in the application are substantially true, the Court may declare the judgment-debtor to be an insolvent and appoint a receiver of his property."

"(2) If the Court is not so satisfied, it shall reject the application."

(4) In section 352 the word "then" shall be repealed, and to that section the following shall be prefixed, namely:—

"When the Court has declared the judgment-debtor to be an insolvent." [I. L. R. 5
All. 268.]

(5) To section 355 the following shall be added, namely:—

"In determining whether the insolvent should be discharged, and, if so, on what conditions, the Court shall have regard to whether he has committed any of the acts of misconduct referred to in section 359."

(6) In section 357 the figures and word "351 or" shall be omitted in each place where they occur.

(7) In section 359, for the words "Whenever, at the hearing under section 350 it is proved that the applicant has—" the words "whenever in the course of proceedings on an application under this Chapter it is proved that the judgment-debtor has—" shall be substituted.

(8) For the second paragraph of section 360 the following shall be substituted, namely:— [I. L. R. 8
Bom. 196, &
7 Mad. 510.]

"A Court so invested may entertain an application under section 344 by any person who has been arrested or imprisoned, or against whose property an order of attachment has been made, in execution of a decree for money passed by that Court."

17. (1) For sections 363 and 364 the following shall be substituted, namely:—

"363. If there are more plaintiffs than one, and any of them dies, Cal. 590; 9 Mad. 1; and 7 All. 693: Punjab Record Vol. XXI. No. 7, Civil Judgment No. 81: Rules under Judicature Acts. L.] and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court shall cause the legal representative, if any, of the deceased plaintiff to be made a party, and shall cause an entry to that effect to be made on the record, and the suit shall thereupon proceed."

(2) For section 365 the following shall be substituted, namely:—

"365. In case of the death of a sole plaintiff or sole surviving plaintiff the legal representative of the deceased may, where the right to sue survives, apply to the Court, at any time before an order for the abatement of the suit is passed, to have his name entered on the record in place of the deceased plaintiff, and thereupon the Court shall enter his name and the suit shall proceed."

(3) In section 366 the words "within the time limited by law" are hereby repealed.

(4) In the third paragraph of section 368, between the words "the plaintiff may" and the words "make an application" the words "at any time before an order for the abatement of the suit is passed" shall be inserted.

(5) In the last paragraph of section 368, the words "within the period prescribed therefor" and the words "unless he satisfies the Court that he had sufficient cause for not making the application within such period" are hereby repealed.

(6) To section 368, as amended by this section, the following shall be added, namely:—

"The legal representative of a deceased defendant may apply to have himself made a defendant in place of the deceased defendant, and the provisions of this section, so far as they are applicable, shall apply to the application and to the proceedings and consequences ensuing thereon."

Addition to section 381.

18. To section 381 the following shall be added, namely:—

"Where a suit is dismissed under this section, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time fixed, the Court shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

"The dismissal shall not be set aside unless the plaintiff has served the defendant with notice in writing of his application.

"The provisions of this Code and of the Indian Limitation Act, 1877, with respect to an application and order under section 103 shall, so far as they can be made applicable, apply to an application for an order, and to an order, for setting aside a dismissal under this section."

19. In section 386, for the words "of a High Court" the words "or other person" shall be substituted.

20. To section 396 the following shall be added, namely:—

"If it appears to the Court that the property, by reason of its nature or of the number of the parties interested therein or of any other circumstance, cannot conveniently be divided, the Court may, if it thinks fit, on the request of any of the parties interested and notwithstanding the dissent of any others of them, pass a decree for the sale of the property and for the distribution of the proceeds among the parties according to their respective rights in the property."

21. In section 419, after the words "Government Pleader in any Court" the words "or such other person as the Local Government may for any Court appoint in this behalf" shall be inserted.

22. To section 432 the following shall be added, namely:—

"An appointment under this section may be made for the purpose of a specified suit or of

several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the Prince or Chief."

Substitution of new section for section 433.

23. For section 433 the following shall be substituted, namely:—

"433. (1) Any such Prince or Chief, and any Suits against Princes, Chiefs, ambassadors and envoys. ambassador or envoy of a Foreign State, may, with the consent of the Governor-General in Council certified by the signature of one of the Secretaries to the Government of India (but not without such consent), be sued in any competent Court.

(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued; but it shall not be given unless the Prince, Chief, ambassador or envoy—

- (a) has instituted a suit in the Court against the person desiring to sue him, or
- (b) by himself or another, trades within the local limits of the jurisdiction of the Court, or
- (c) is in possession of immoveable property situate within those limits and is to be sued in relation to his possession of that property."

(3) No such Prince, Chief, ambassador or envoy shall be arrested under this Code, and, except with the consent of the Governor-General in Council certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy."

Transposition of section 434. 24. Section 434 shall become section 651. [Act X, 1886, s. 24 (2).]

25. After section 433 the following section shall be inserted, namely:—

"434. A Sovereign Prince or ruling Chief may sue, and shall be sued, in the name of his State: [Cf. I. L. R., 2 All. 690: 7 Bom. H. C. Rep. O. C. J. 150.]

"Provided that in giving the consent referred to in the last foregoing section the Governor-General in Council may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name."

26. (1) After the first paragraph of section 443 the following shall be inserted, namely:— [Cf. paragraph 4 of the Statement of Objects and Reasons of the Guardians & Wards Bill, 1886.]

"Where an authority competent in this behalf has appointed or declared a guardian or guardians of the person or property, or both, of the minor, the Court shall appoint him or one of them, as the case may be, to be the guardian for the suit under this section unless it considers, for reasons to be recorded by it, that some other person ought to be so appointed."

(2) After section 446 the following shall be added, namely:—

"If the next friend is not a guardian appointed or declared by an authority competent in this behalf, and the application under this section is made by a guardian so appointed or declared

[I. L. R. 9 Bom. 56, and 7 All. 396.]

[I. L. R. 6 Bom. 482, and Act VIII, 1859, s. 35.]

[Act XIV, 1882, s. 588 (8): Act XV 1877, Sched. II, No. 163. XV of 1877.]

[31 & 32 Vic., c. 40. Cf. I. L. R. 10 Cal. 675.]

who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor."

(3) For section 461 the following shall be substituted, namely:—

"461. (1) A next friend or guardian for the suit shall not receive any money or other moveable property under a decree or order in favour of a minor without the leave of the Court.

"(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is not thereby entitled to receive the money or other moveable property under the decree or order, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application."

(4) For section 464 the following shall be substituted, namely:—

"464. Nothing in this Chapter shall be construed to effect, or in any way derogate from, the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind."

[2 Swanst. 518, and I. L. R. 8 Cal. 32, and 7 All. 178.]

27. In section 539, for the words "having a direct interest" the words "having an interest" shall be substituted.

[I. L. R. 8 Cal. 272, 2 Bom. 644, & 4 All. 287.]

28. To section 540 the following shall be added, namely:—

"An appeal may lie under this section from an original decree passed *ex parte*."

[Cf. Act X. 1877, s. 561, & I. L. R. 8 Bom. 559 & 4 All. 248.]

29. (1) For the proviso to the first paragraph of section 561 the following shall be substituted, namely:—

"provided he has, not less than seven days before the hearing, filed the objection in the Appellate Court and left with the chief ministerial officer of the Court a notice of the filing thereof for service on the appellant or his pleader."

[I. L. R. 4 All. 430.]

(2) To the same section the following shall be added, namely:—

"The provisions of section 5 of the Indian Limitation Act, 1877, applicable to an appeal shall apply to the objection and notice under this section."

30. In section 568, clause (b), for the word "for" where that word first occurs, the word "or" shall be substituted.

Amendment of section 568.

[I. L. R. 2 Mad. 75.]

31. To section 584 the following shall be added, namely:—

"An appeal may lie under this section from an appellate decree passed *ex parte*."

[Gazette of India, 19th August, 1882, Part I, page 355.]

32. In section 588, clause (9), for the word "or" the word "for" shall be substituted.

33. Section 599, and in section 601 the words "within thirty days from the date of the order", are hereby repealed.

34. To section 626 the following proviso shall be added, namely:—

"and (c) an application made under section 624 to the Judge who delivered the judgment may, if that Judge has ordered notice to issue under proviso (a) to this section, be disposed of by his successor"

[I. L. R. 10 Cal. 80 and 4 All. 278.]

35. (1) For the third paragraph of section 648 Amendment of, and the following shall be added to, section 648. substituted:—

"and the Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or (where the case is one under Chapter XXXIV) for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

(2) To section 648 the following shall be added, namely:—

"Where a person to be arrested or property to be attached under this section resides or is situate within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or Bombay, or of the Recorder of Rangoon, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court."

[Cf. Provincial Small Cause Courts Bill, 1885, s. 19.]

36. To section 652 the following shall be added, namely:—

Addition to section 652.

"A High Court not established under the Statute 24 and 25 Victoria, chapter 104 (*an Act for establishing High Courts of Judicature in India*) may from time to time, with the previous sanction of the Local Government, make, with respect to any matter other than procedure, any rule which any High Court so established might under section 15 of that Statute make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a presidency-town. Rules so made shall be published in the same manner, and shall thereupon have the same force, as rules made and published under this section for the regulation of matters connected with procedure."

[New.]

37. (1) Nos. 171, 171A and 171B of the second schedule to the Indian Limitation Act, 1877, are hereby repealed.

Amendment of the Indian Limitation Act, 1877.

XV of 1877.

(2) In No. 171C of that schedule, for the words "of the same Code" the words and figures "or section 582 of the Code of Civil Procedure" shall be substituted.

Cf. I. L. R. 7 All. 693: Panjab Record, Vol. XXI. No. 7, Civil Judgment No. 81.1 XIV of 1882.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to correct certain minor defects in the Code of Civil Procedure which have been brought to the notice of the Government of India during the four years which have elapsed since the Code was passed, and to amend that portion of the Indian Limitation Act, 1877, which relates to Chapter XXI of the Code.

The several amendments which it is proposed to make in the Code are noticed in the following remarks in the order in which they occur in the Bill:—

Section 3.—The second paragraph of section 8 of the Code, which, as the second paragraph of section 8 of Act X of 1877, was repealed by the Presidency Small Cause Courts Act, XV of 1882, was unintentionally reproduced in Act XIV of 1882. Its place has been taken by section 23 and the second schedule of the Presidency Small Cause Courts Act.

Section 4.—The Explanation which it is proposed to add to section 17 of the Code is suggested by the cases reported at I. L. R. 4 All. 423 and 5 All. 277.

Section 5.—The addition proposed by this section to be made to section 27 of the Code has been suggested by Mr. Justice Plowden of the Panjab Chief Court with reference to the remark of Pontifex, J., at I. L. R. 6 Cal. 376.

Section 6.—In proposing to amend section 53 of the Code in the manner set forth in this section, the Government of India has followed the almost unanimous advice of the authorities whom it consulted in its letter Nos. 22-27, dated the 5th January, 1886.

Section 7.—In April, 1882, the Governor-General in Council published a resolution directing that postage-charges on all processes, notices and such other document, as are issued from any Court, and are required to be transmitted by post, should in future be paid by means of service postage-stamps without any additional charge being levied from the parties at whose instance the documents are issued. This resolution practically superseded the section of the Code which it is now proposed to repeal.

Section 8.—The addition to section 137 of the Code has been suggested by Bábú Brajendra Coomar Seal, the District Judge of Bankoora, on the ground of the difficulty which occurs in obtaining affidavits where the applicant under the section is a *pardánashin* lady.

Section 9.—The object of the amendments proposed to be made in section 141 of the Code is to remove the inconvenience caused to both public officers and private persons by the detention of their records in Civil Courts. The detention of the records of a village-accountant may bring his work to a standstill, and the Hon'ble Mr. Gibbon stated to the Select Committee on the Bengal Tenancy Bill that the inconvenience is quite as great in the case of private as of public records.

Section 10.—The addition to section 216 removes the doubt expressed in the case reported at I. L. R. 7 All. 284.

Section 11.—The circumstances which have suggested clause (a) of the proposed proviso to section 245 of the Code have been described in the Statement of Objects and Reasons of the Debtors Bill. If the clause becomes part of the Code, the Courts will be competent to require the property of a judgment-debtor to be proceeded against before proceedings are taken against his person.

Section 12.—As clause (h) of section 266 is at present drawn, half the salary of a public officer or railway servant in receipt of a monthly salary of twenty-one rupees may be attached. This was not the intention of the legislature.

The primary object of the additional clause (m) which it is proposed to insert in the section is to empower the Council of the Governor of Bombay to proceed with a Bill to declare and amend the law relating to *toda girás* allowances.

Section 13.—This section has been introduced at the suggestion of the Advocate General of Bombay, its object being to abolish, as regards the seizure of moveable property, the privilege conferred on debtors by the fourth resolution in Semayne's case (*Smith's Leading Cases*, Vol. I). At present that privilege operates mainly to enable debtors to avoid or delay payment of their just debts.

Section 14.—The necessity for the first of the proposed additions to section 320 of the Code is shown by the Full Bench judgment of the High Court for the North-Western Provinces at I. L. R. 5 All. 314. As regards the second addition, it appears to the Government of India that, if the Collector is to act effectively under section 320 and the following sections of the Code, he ought to be subject to the control of the Civil Court only to the extent expressly provided by the Code, being as to the rest subject only to the control of the higher revenue-authorities.

Section 15.—The addition to section 341 has been proposed by the High Court and Government of Madras with reference to cases which have recently occurred in Southern India. In one of these cases the debtor committed to prison was suffering from leprosy in an advanced form, and in the other the prisoner was suffering from illness so serious as in the opinion of the medical officer to render it necessary that he should be immediately released from confinement.

Section 16.—The object of sub-sections (1) to (7) is to assimilate practice under Chapter XX of the Code to that to be prescribed by the proposed Indian Bankruptcy Act.

Sub-section (8) is designed to extend the jurisdiction of subordinate Courts in matters of insolvency. Most cases under Chapter XX are of little importance and may properly be disposed of by

munsifs. Where any considerable sum is involved, the District Judge, who will have concurrent jurisdiction, can transfer the case to his own Court.

Sections 17 and 37.—The amendments proposed to be made in Chapter XXI of the Code and in the second schedule to the Indian Limitation Act, 1877, have their origin in the complaints of the hardship caused by the rules of limitation required by that Chapter and schedule to be observed in the substitution of legal representatives in the place of deceased parties to suits and appeals. With respect to these portions of the Code and Limitation Act, Mr. Rattigan, the Government Advocate of the Panjab, by whom the form of the amendments has been suggested, has recorded the following remarks:—

“Considerable hardship has been experienced in the Panjab in the working of those sections of the Civil Procedure Code which deal with the procedure to be followed in the case of the death of a plaintiff or defendant. It is of course perfectly correct and desirable that in the case of the death of one of the litigant parties, where the right to sue or be sued still survives, his legal representatives should be brought on the record, for it is clear that without such a process the suit could not validly proceed. But the hardship consists in requiring the legal representatives to apply for the above purpose within a comparatively short period after the death of the deceased plaintiff or defendant. In the Panjab it frequently happens in land-suits that fifty or a hundred persons are obliged, owing to community of interests, to sue or be sued in the one suit. Now, when such a suit comes up eventually to the Chief Court, a date for hearing is fixed which is generally not less than a year, and, at present, owing to the state of the work in the Court, is not unfrequently eighteen months from the date of filing the appeal. Within this period it often happens that one or more of the litigants is or are carried off by death from disease or violence; the representatives of the deceased, or the appellants, being ignorant agriculturists and not knowing the requirements of the law, take no action to put the representatives on the record, and thus, when the appeal finally comes on for hearing, a pleader on the opposite side takes the objection that no application has been made within the prescribed period, and, this being ascertained to be the fact, the appeal abates, and the unfortunate appellants find themselves deprived of all remedy simply in consequence of a harsh limitation law of which they had no knowledge. It is true that sections 368 and 371 allow the Court to extend the period if the plaintiff (or appellant-plaintiff) adduces sufficient cause for not making the required application within the prescribed period. But in nine cases out of ten of the kind I refer to the only cause assignable is ignorance of the requirements of the law—and this of course cannot be deemed to be ‘sufficient’ within the meaning of the section. So that the law as it stands at present works considerable hardship, and the hardship is irremediable.

“The question therefore arises, whether it is really necessary to prescribe a hard-and-fast period of limitation within which alone an application to put the legal representatives of a deceased plaintiff or defendant on the record can be entertained.

“For my own part I cannot see that there is any such necessity. If I remember rightly, the rules framed under the English Judicature Acts do not prescribe a period for such applications, and I do not see why the Indian law should do so. It would surely be sufficient to require the legal representatives of a deceased plaintiff or defendant, where the right to sue or be sued survived, to be put on the record; and to leave it to the Court to direct this to be done within such time, and upon such terms as to costs or otherwise, as it thinks fit.”

Sub-section (6) of section 15 of the Bill is intended to cure the defect noticed at I. L. R. 9 Bom. 56.

Section 18.—This section, which would restore the rule of the Code of 1859, has been proposed by Mr. Justice Straight.

Section 19.—The amendment made in section 386 of the Code by Act XII of 1879, whereby commissions to examine witnesses are required to be issued to a Court or a pleader of a High Court, has caused much inconvenience. In remote parts of the country High Court pleaders do not exist, and in few parts have Judges leisure to close their Courts and travel considerable distances for the purpose of taking the evidence of persons who cannot appear before them. Moreover, in some Provinces the Government maintains a staff of officials among whose duties is the execution of these commissions.

Section 20.—The addition which it is proposed to make to section 396 has been suggested by a gentleman of long standing at the Bombay bar. It is based on the Partition Act, 1868 (31 & 32 Vic., c. 40).

Section 21.—A Government Pleader does not exist in every Court.

Section 22.—It has been doubted whether the Government is empowered by section 432 to appoint a person generally to prosecute and defend all suits which it may from time to time be necessary to prosecute or defend on behalf of a Prince or Chief. It is obviously inconvenient that the Government should be compelled to make a special appointment in the case of each particular suit.

Sections 23 and 25.—The object of these sections is (a) to define more precisely, with reference to the definition of “Government” in section 2 of the Code, by whom consent to the institution of a suit against a Sovereign Prince, ruling Chief, ambassador or envoy may be given; (b) to make the provisions of section 433 more elastic as regards the mode of giving the consent, the cases in which the consent may be given, and the Courts to which the consent may apply; and (c) to prescribe the name in which a Prince or Chief may sue and is to be sued. To effect this last object it is proposed that a Prince or Chief may sue and shall ordinarily be sued in the name of his State.

Section 24.—Section 434 of the Code, under which execution may be had of a decree in a suit between British subjects, is out of place in a chapter relating to Suits by Aliens and by or against Foreign and Native Rulers. The section may conveniently take the place of section 651, which was repealed in March last by Act X of 1886.

Section 36.—The amendments proposed by this section to be made in Chapter XXXI of the Code are those referred to in paragraph 4 of the Statement of Objects and Reasons of the Guardians and Wards Bill. The additions to sections 443 and 446 confer on a guardian who has been appointed, or whose title has been declared, by a Civil Court, Court of Wards or other competent authority, a preferential right to be appointed next friend or guardian for the suit. The amendment of section 461 gives effect to a suggestion by Sir Charles Turner, late Chief Justice of Madras, that, when a Court makes over property to a next friend or guardian for the suit who is not a duly constituted guardian of the property of the minor, it should be required to give such directions as, having regard to the nature of the property, may sufficiently protect it from waste and secure its proper application. Section 464, as amended, saves all local laws relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

Section 27.—There are two reported cases, I. L. R. 8 Cal. 32, and I. L. R. 7 All. 178, with respect to the meaning to be assigned to the words "direct interest" in section 539. It appears that the authority for the insertion of the words "having a direct interest in the trust" is *In the matter of the Masters, Governors and Trustees of the Bedford Charity* (2 Swaust. 470). There certain Jews, some being residents of Bedford and others being members of Dutch and German Synagogues in London, sought to establish the title of Jews to the benefit of the Bedford Charity. It was contended that under Sir Samuel Romilly's Act (52 Geo. III, c. 101), on which section 539 of the Code of Civil Procedure is based, *any two or more persons* might be petitioners, and therefore the Jews of the London Synagogues, who, though *not interested*, considered it their duty to support the claims of those of their own persuasion, might be petitioners. With respect to that contention, Lord Eldon, admitting that every person possessing the character of an inhabitant of Bedford and describing himself as an object of the charity was entitled to apply to the Court, asked how he could notice the members of the London Synagogues. "Under Sir Samuel Romilly's Act," he observed, "no person can petition who has not a direct interest in the charity. The Act, indeed, authorises 'any two or more persons' to present a petition, but I conceive that those words must be understood to mean persons having an interest. * * * Those who are interested in the fund, provided Sir Samuel Romilly's Act, or the Bedford Charity Act apply to this case, namely, persons residing in Bedford, are entitled to the summary interference of the Court, but I know not on what ground these gentlemen residing in London can appear as petitioners."

The contention which Lord Eldon overruled was that any one, though he had no interest whatever, might petition. He did, no doubt, remark that "no person can petition who has not a direct interest," but he immediately qualified that remark by adding that the words of the Act "must be understood to mean persons having an interest." The case cannot, therefore, it seems, be taken as an authority for the proposition that the interest of the petitioner must be direct. On the contrary, it may be inferred from the case that an indirect interest would have been deemed sufficient; for, when, in support of the contention that the words "any persons" comprehend persons who may not have an interest, the counsel for the petitioners pointed out that, in the instance of charities for relief of the blind and the poor, it had been the practice to receive the petition of the minister of the parish, Lord Eldon observed that "the petition of the minister of the parish is received, because the poor may be burdensome to him."

It may be doubted whether the case justified the insertion of the word "direct" in the Code, where it assumes a peculiar pointedness and must have some definite meaning assigned to it; and after consultation with the High Courts it has been decided to propose the removal of the word.

Sections 28 and 31.—It is proposed, in accordance with the advice of the great majority of the authorities consulted by the Government of India in its letter of the 5th January last, to declare *ex parte* decrees to be appealable.

Section 29.—Section 561 has been so amended as to require the objection to be filed in the Appellate Court, and notice of the filing thereof to be given to the appellant, and to admit of the objection being filed and the notice given at any time not less than seven days before the actual date of hearing; and, on the suggestion of Babú Brajendra Coomar Seal, it applies to the objection and notice under the provisions of section 5 of the Indian Limitation Act, 1877, applicable to an appeal.

Sections 30 and 32.—The amendments proposed to be made by these sections merely correct typographical errors in sections 568 and 588 of the Code.

Section 33.—Section 599, and the portion of section 601 which it is proposed to repeal, were repealed by Act XV of 1877 and were unintentionally reproduced in the Code of 1882.

Section 34.—This section removes a doubt which has been expressed in the cases noted on the margin of the section with respect to the construction to be placed on the word "made" in section 624.

Section 35.—Sub-section (1) of this section has been suggested by the following remarks of the Hon'ble Judges of the High Court at Fort William in their Registrar's reply to the letter of the Government of India of the 5th January last:—

"I am further to request attention to another point in this section (648) which, though not referred to in your letter, seems to the Judges to call for notice. The section gives absolute power to a Court to cause the arrest through another Court of a person summoned as a witness, and so to cause him to be sent under arrest to the Court issuing the process. The Court to which the warrant is sent has no power of hearing the person arrested or of dealing with any question except the giving of security by him. It seems to the Judges that this is a power far too great to be entrusted at any rate to the subordinate Courts in the Mufassal."

Sub-section (2) has been transferred to this Bill from the Provincial Small Cause Courts Bill, and will be of general application instead of being applicable to Courts of Small Causes only. With respect to the necessity for this addition to section 648, the District Judge of the 24-Parganas writes as follows:—

“ Under Section 648 I would also beg to point out that a warrant for the arrest of a person residing within the limits of the original jurisdiction must be executed through the High Court. This is very inconvenient to small suitors, and, in a case which occurred in my Court only a few weeks ago, a defendant preferred abandoning all attempts to get a recusant witness into Court, to undergoing the trouble and expense of having a warrant of arrest served through the Original Side of the High Court. I would suggest that the procedure prescribed by section 86 should be made applicable to section 643, and that warrants of arrest which are to be served within the original jurisdiction should be executed by the Small Cause Court.”

Section 36.—This section is designed to remove a doubt as to the extent of the powers of unchartered High Courts to make rules on matters not strictly connected with procedure.

The 1st September 1886.

(Signed) C. P. ILBERT.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.