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PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March 1872:—

We, the undersigned, the Members of the Select Committee of the Council of the Governor General

Office Memorandum, Home Department, No. 316, dated 16th June 1868, forwarding Circular from Home Department, Nos. 307-316, dated 21st July 1865, with replies.

Endorsement, Home Department, No. 476, dated 21st November 1870, forwarding letter from President and Secretary, Bengal Christian Association, dated 20th October 1870, and enclosure.

Office Memorandum, Foreign Department, No. 636G, dated 8th April 1870, forwarding letter from Governor General's Agent, Ráputána, No. 309G, dated 19th March 1870, and enclosure.

Endorsement, Home Department, No. 5595P, dated 20th December 1871, forwarding letter from President and Sub-Committee of Bengal Christian Association, dated 25th November 1871.

From Reverend James Ross, dated 27th December 1871, forwarding memorial from Ministers of Religion, Calcutta.

President, Bengal Christian Association, dated 11th January 1872.

Chief Commissioner, Oudh, No. 238, dated 13th January 1872, and enclosures.

Reverend C. E. Vines, Agra, dated 8th January 1872.

H. Stern, Gorakpúr, dated 18th January 1872.

Secretary to Chief Commissioner, Central Provinces, No. 317, dated 30th January 1872.

Officiating Second Assistant Resident, Haidarábád, No. 3, dated 3rd February 1872.

Reverend T. P. Hughes, Pesháwar, dated 2nd February 1872.

Secretary to Chief Commissioner, Mysore, No. 417 J, dated 9th February 1872, and enclosure.

Reverend C. B. Leupolt, Benares, dated 13th February 1872.

Secretary to Government, North-Western Provinces, No. 661A, dated 1st March 1872, and enclosures.

Secretary to Government, Bengal, No. 749, dated 29th February 1872, and enclosures.

C. Sanderson, Esq., dated 8th March 1872.

Secretary to Government, Panjáb, No. 785, dated 8th March 1872.

Secretary to Government, N. W. Provinces, No. 896A, dated 18th March 1872.

any place other than a church, we have explained that the restriction applies to any place within five miles distance from a church.

3. Under the existing law, any person wishing to have his or her marriage solemnized by a licensed Minister is required to reside for four days previous to giving notice of the intended marriage at the place where such notice is given. But although the law requires certain forms to be gone through with the object of giving the utmost possible publicity to any notice of an intended marriage, it suffers such marriage to take place immediately after notice has been given, if the parties to the marriage so desire. We think that an interval of four days between notice and marriage will be advantageously substituted for the four days enforced residence previous to notice, and we have amended the Bill accordingly.

4. We think that, with the alteration of procedure just stated, the fourteen days' delay between the notice and the issue of the Minister's certificate required by the present law where one of the parties to the intended marriage is a minor, may, in cases in which the consent of the person authorized to give consent to such marriage has been obtained, be dispensed with. It is proposed that this relaxation of the existing rule should extend only to cases in which the licensed Minister is satisfied that such consent has been given to the intended marriage.

5. Section 52 of the Bill, as introduced, provided that, when no marriage is registered during any month, a certificate to that effect shall be submitted. We think this involves unnecessary labour, and propose that the practice of sending such certificates be discontinued.

6. We have altered section 54 of the Bill as introduced, by restricting the proviso thereto so as to make the consent of parents or guardians (where there are any) essential to the validity of certificates for the marriage of native Christians only when either of the parties to the marriage has not completed his or her eighteenth year; we think that the exception to this rule contemplated by the Bill as originally drawn would have been liable to abuse.

7. We have provided that the ordinary rules of procedure in regard to the registration of marriages shall not be applicable to marriages between Natives of this country. For the record of such marriages, it is proposed to keep distinct registers, and to subject the persons keeping the same to less onerous obligations in the matter of making returns. Some doubt has been experienced as to the intention of the provisions of the existing law on this subject, and it is thought desirable to draw a clear distinction between marriages the record of which is required for statistical purposes in England, and those in regard to which there is no such need.

8. The alteration of the law as regards the interval between notice and issue of certificate of marriage has been applied, in the amended Bill, also to marriages by Registrars, the extent of such interval being

made the same in both cases. In the case of minors, no modification of the rule as to delay seems called for, as the law provides a means whereby the persons intending marriage may obtain the issue of certificate without waiting for the expiration of the fourteen days after notice has been given.

9. We have introduced into the amended Bill provisions against the practice of polygamy, under cover of a professed change of religious belief, by persons who have contracted a marriage of the kind provided for by this Bill.

10. We have made other verbal alterations, and recommend that the Bill as amended by us be passed; but as some of the alterations of the existing law to be effected by this Bill are of an important character, we think that it should be republished for general information before this report is taken into consideration.

F. R. COCKERELL.
J. F. STEPHEN.
J. F. D. INGLIS.
W. ROBINSON.
F. S. CHAPMAN.
J. R. BULLEN SMITH.

The 19th March 1872.

THE INDIAN CHRISTIAN MARRIAGE BILL, 1872.

ARRANGEMENT OF SECTIONS.

PREAMBLE.

PRELIMINARY.

SECTIONS.

1. Short title.
Extent.
Commencement.
2. Enactments repealed.
3. Interpretation-clause.

PART I.

THE PERSONS BY WHOM MARRIAGE MAY BE SOLEMNIZED.

4. Marriage to be solemnized according to Act.
5. Persons by whom marriage may be solemnized.
6. Licenses to solemnize marriage by whom to be granted.
7. Appointment of Marriage Registrars.
Appointment of Senior Marriage Registrar.
When Magistrate to be Marriage Registrar.
8. Appointment of Marriage Registrar in allied Native States.
9. Licensing of persons to grant certificates of marriage between Native Christians.

PART II.

TIME AND PLACE AT WHICH MARRIAGE MAY BE SOLEMNIZED.

10. Time for solemnizing marriage.
Exceptions.
11. Place for solemnizing marriage.
Fee for special license.

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THE ACT.

12. Notice of intended marriage.
13. Publication of such notice.
Return or transfer of notice.
14. Notice of intended marriage in private dwelling.

SECTIONS.

15. Transmission of copy of notice to Marriage Registrar when one of the persons is a minor.
16. Procedure on receipt of notice.
17. Certificate of notice given and declaration made to be issued.
Proviso.
18. Declaration to be made before issue of certificate.
19. Consent of parent or guardian necessary.
20. Power to prohibit by notice of issue of certificate.
21. Procedure of Minister on receipt of such notice.
22. In case of minority, certificate not to issue until fourteen days after receipt of notice.
23. Proceedings before issue of certificate to Native Christians.
24. Form of certificate.
25. After issue of certificate, marriage may be solemnized.
26. Certificate void if marriage not solemnized within two months.

PART IV.

REGISTRATION OF MARRIAGES.

27. Marriages, with certain exceptions, to be registered as herein prescribed.
28. Registration of marriages solemnized by Clergymen of the Church of England.
29. Quarterly returns to Archdeaconry.
Contents of returns.
30. Registration and returns of marriages solemnized by Clergymen of the Church of Rome.
31. Registration and returns of marriages solemnized by Clergymen of the Church of Scotland.
32. What marriages to be entered in register book and certificate prescribed in Schedule IV.
33. Such entries to be signed and attested.
34. Certificate to be forwarded to Marriage Registrar, copied, and transmitted to Government.
35. Copies of certificates to be entered and numbered.
36. Registrar to add number of entry to certificate, and send to Government.
37. Registration of marriages between Native Christians, and custody and disposal of register book.

PART V.

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE
OF, A MARRIAGE REGISTRAR.

SECTIONS.

38. Notice of intended marriage before Marriage Registrar.
39. Notice how to be published in ordinary cases, and how in the case of minors.
40. Notice to be filed, and copy entered in the Marriage Notice Book.
41. Certificate of notice given and declaration made to be issued on request.
If no impediment shown or issue not forbidden.
After what interval certificate to issue.
42. Oath or declaration to be made before issue of certificate.
43. When parties may petition High Court to order certificate in less than fourteen days.
Order on petition.
44. Provision as to consent of parent or guardian to apply and issue of certificate may be forbidden.
Effect of protest.
45. Where person whose consent is necessary is insane, or unjustly withholds consent, parties may petition.
Procedure on petition.
46. When Marriage Registrar refuses certificate, party may petition.
Procedure on petition.
47. When Registrar in allied Native State refuses certificate, petition may be made to Governor General in Council.
48. If Registrar doubt authority of person forbidding, he may petition High Court, or District Judge.
Contents of, and procedure on petition.
Marriage Registrar in allied State, not satisfied of want of authority in person forbidding, may refer to Governor General.
Procedure on reference.
49. Liability of person protesting on frivolous grounds against issue of certificate.
50. Form of certificate.
51. After issue of certificate, marriage may be solemnized in presence of Marriage Registrar and two witnesses.
52. When marriage is not had within three months after notice, a new notice required.
53. Marriage Registrar may ask for particulars to be registered.
54. Registry of marriages.
55. Certificates to be transmitted monthly to Secretary to Government.
Custody and transmission of Register-book.
56. Registrars in allied Native States to transmit certificates to Foreign Secretary.

SECTIONS.

57. In case of a Native Christian, Registrar to ascertain that notice and certificate are understood.
58. Native Christians to be made to understand declarations at marriage.
59. Registration of marriages between Native Christians.

PART VI.

MARRIAGE OF NATIVE CHRISTIANS.

60. On what conditions marriages of Native Christians may be certified.
61. On marriage (the conditions having been fulfilled) licensed person to grant certificate.
62. Register-book to be kept.
63. Search in Register-book to be allowed and copy of entry given.
64. Part VI. not to apply to Roman Catholics.
Saving of certain marriages.

PART VII.

PENALTIES.

65. Punishments—
for false oath, declaration, notice, or certificate for procuring marriage;
66. for forbidding, by false personation, issue of certificate by Marriage Registrar;
67. for solemnizing marriage without due authority;
68. for solemnizing marriage out of proper time, or without witnesses;
excepting marriages solemnized under special licenses;
69. for solemnizing, without notice or within fourteen days after notice, marriage with minor.
70. for issuing certificate, or marrying, without publication of notice;
marrying after expiry of certificate;
solemnizing marriage with minor within fourteen days, without authority of Court, or without sending copy of notice;
issuing certificate against authorized prohibition.
71. for issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice or against authorized forbiddal;
72. for unauthorizedly marrying according to usage of—
the Church of England;
or Church of Scotland;
or Church of Rome;
for issuing certificate or marrying without publishing notice,
or after expiry of certificate;
for issuing certificate for, or solemnizing marriage with minor, within fourteen days after notice;

SECTIONS.

- for issuing certificate authorizedly forbidden ;
for solemnizing marriage authorizedly forbidden ;
73. for unlicensed person granting certificate pretending to be licensed ;
74. for destroying or falsifying Register-books.
75. Limitation of prosecutions.

PART VIII.

MISCELLANEOUS.

76. Bar of right, by change of religion, to practise polygamy.
77. Punishment for marrying again during continuance of marriage under law forbidding polygamy.
78. What matters need not be proved in respect of marriage in accordance with Act.
79. Corrections of errors.
80. Searches to be allowed and copies of entries given on payment of fee.
81. Certified copy of entry in marriage register, &c., to be evidence of marriage without further proof.
82. Transmission of certificates of certain marriages to Secretary of State for India.
83. Local Government to prescribe fees.
84. Power to make rules.

SCHEDULE I.—Notice of Marriage.

SCHEDULE II.—Certificate of receipt of notice.

SCHEDULE III.—Form of Register of Marriages.

SCHEDULE IV.—Marriage Register Book.
Certificate of Marriage.

SCHEDULE V.—Enactments repealed.

A Bill to consolidate and amend the law relating to the solemnization in India of marriages of persons professing the Christian Religion.

Whereas it is expedient to consolidate and amend the law relating to the solemnization in India of marriages of persons professing the Christian religion; It is enacted as follows:—

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Christian Marriage Act, 1872."

It extends to the whole of British India, and, so far only as regards Christian British subjects of Her Majesty, to the territories of any Native Prince or State in alliance with Her Majesty;

and it shall come into operation on the passing thereof.

2. The enactments specified in the fifth schedule hereunto annexed are repealed.

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

"Church of England" and "Anglican" mean and apply to the Church of England as by the law established;

"Church of England."
"Anglican."

"Church of Scotland" means the Church of Scotland as by law established;

"Church of Scotland."

"Church of Rome" and "Roman Catholic" mean and apply to the Church which regards the Pope of Rome as its spiritual head;

"Church of Rome."
"Roman Catholic."

"Church" includes any chapel or other building generally used for public Christian worship;

"Church."

"Minor" means a person who has not completed the age of twenty-one years;

"Minor."

"Native Christian" includes the Christian descendants of Natives of India converted to Christianity, as well as such converts.

"Native Christian."

PART I.

THE PERSONS BY WHOM MARRIAGE MAY BE SOLEMNIZED.

4. Every marriage between persons, one or both of whom professes or profess the Christian religion, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with the said provisions, shall be void.

Persons by whom marriage may be solemnized. 5. Marriages may be solemnized in India—

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies, and customs of the Church of which he is a Minister;

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies, and customs of the Church of Scotland;

(3) by any Minister of Religion who, under the provisions of this Act, or any Act hereby repealed, has obtained a license to solemnize marriages;

(4) by, or in the presence of, a Marriage Registrar appointed under this Act or any Act hereby repealed;

(5) by any person who, with respect to marriages between Native Christians, shall have received a license to grant certificates of marriage.

6. The Governor General of India in Council, the Governors of Madras and Bombay in Council, and the Lieutenant-Governors of Bengal, the

North-Western Provinces, and the Panjáb, may grant licenses to Ministers of Religion to solemnize marriages within the territories under the immediate administration of such Governor General, or subject to such Governors and Lieutenant-Governors respectively, and may revoke such licenses.

Licenses to solemnize marriage by whom to be granted.

7. The Local Government may appoint one or more Marriage Registrars, either by name or as holding any office for the time being, for any portion of the Presidency or territory subject to its administration. But no person shall be a Marriage Registrar who does not profess the Christian religion.

Where there are more than one Marriage Registrar in any district, the Local Government shall appoint one of them to be the Senior Marriage Registrar.

When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or in case of the death of the only Marriage Registrar in a district, or of any temporary vacancy in such office, the Magistrate of such district shall act as, and be, Marriage Registrar thereof during such absence, illness, or temporary vacancy as aforesaid.

8. The Governor General of India in Council may appoint any person, being a Christian, to be a Marriage Registrar in any district, to be assigned by the Governor General of India in Council, in any place within the territories of any Native Prince or State in alliance with Her Majesty.

9. The Local Government may issue a license to any person being a Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between Native Christians. Any such license may be revoked by the local Government by whom it was granted, and every such grant or revocation shall be notified in the official Gazette.

Appointment of Marriage Registrars in allied Native States.

Licensing of persons to grant certificates of marriage between Native Christians.

PART II.

TIME AND PLACE AT WHICH MARRIAGE MAY BE SOLEMNIZED.

10. Every marriage hereafter solemnized in India by any person who has received episcopal ordination, or by any Clergyman of the Church of Scotland, or by any Minister licensed under this Act to solemnize marriages, shall be solemnized between the hours of six in the morning and seven in the evening:

Provided that nothing in this section shall apply to—

(1).—A Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

(2).—A Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license.

VI.—113 b

11. No Clergyman of the Church of England shall solemnize a marriage in any building or place other than a church, where there is a church within 5 miles distance from such building or place, unless he has received a special license authorizing him to do so under the hand and seal of the Bishop of the Diocese, or from the Commissary of such Bishop.

For such special license the Registrar of the Diocese shall be entitled to charge such additional fee as the said Bishop may sanction.

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THE ACT.

12. In all cases in which a marriage is intended to be solemnized by a Minister of Religion who has obtained a license to solemnize marriages under this Act, or any Act hereby repealed,—

one of the persons intending marriage shall give notice in writing, according to the form contained in the first schedule hereto annexed, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein the name or names, and the profession or condition, of each of the persons intending marriage, the dwelling place of each of them, and the time during which each has dwelt there, and the church or private dwelling in which the marriage is to be solemnized:

Provided that, if either of such persons shall have dwelt in the place stated in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

13. If the Minister of Religion to whom such notice has been delivered be entitled to officiate in the church in which it is intended to solemnize the said marriage, he shall publish every notice of marriage received by him, by causing the same to be published and affixed in some conspicuous part of such church.

If such Minister of Religion is not entitled to officiate as a Minister in such church, he shall, at his option, either return the notice to the person delivering the same to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be so published and affixed as aforesaid.

14. If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section twelve, shall forward it to the Marriage Registrar of the district, who shall affix the same to some conspicuous place in his own office.

15. When one of the persons intending marriage (not being a widow or widower) is a minor, every such Minister as aforesaid, who receives such notice, shall, unless

Place for solemnizing marriage.

Notice of intended marriage.

Publication of such notice.

Return or transfer of notice.

Notice of intended marriage in private dwelling.

Transmission of copy of notice to Marriage Registrar when one of the persons is a minor.

within twenty-four hours after his receipt thereof he returns the same to the person from whom it was received under the provisions of section thirteen, send by the post, or otherwise, a copy of such notice to the Marriage Registrar of the district, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar.

16. The Marriage Registrar or Senior Marriage Registrar, on receiving any such notice, shall affix the same to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed.

17. Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making such declaration as is herein-after required, issue under his hand a certificate of such notice having been given and of such declaration having been made:

Provided that—

(1) no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such Minister;

(2) no lawful impediment, according to the law of England, be shown to his satisfaction why such certificate should not issue, and

(3) the issue of such certificate shall not have been sooner forbidden in the manner herein-after mentioned by any person authorized in that behalf.

18. The certificate mentioned in section seven-
Declaration to be made before issue of certificate.
 teen shall not be issued until one of the persons intending marriage shall have appeared personally before the Minister and made a solemn declaration that he or she believes that there is not any impediment of kindred or affinity or other lawful hindrance to the said marriage, and, when either or both of the parties, not being a widower or widow, is or are a minor or minors, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is or are no person or persons resident in India having authority to give such consent, as the case may be.

19. The father, if living, of any minor, not being a widower or widow, or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage, and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

20. Every person whose consent to a marriage is required under section nineteen, is hereby authorized to prohibit the grant of the certificate by any Minister, at any time before the issue of the same,

by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position, with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

21. If any such notice prohibiting the marriage be received by such Minister as aforesaid, he shall not issue his certificate and shall not solemnize the said marriage until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition, or until the said notice is withdrawn by the person who gave it.

22. When either of the persons intending marriage is a minor, and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section nineteen has been obtained, such Minister shall not grant such certificate until the expiration of fourteen days after the receipt by him of such notice of marriage.

23. When any Native Christian about to be married takes a notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section seventeen, such Minister shall, before issuing such certificate, ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be translated, such notice or certificate to such Native Christian into his language, or into some language which he understands.

24. The certificate to be issued by such Minister as aforesaid shall be in the form contained in the second schedule hereto annexed, or to the like effect.

25. After the issue of the certificate by such Minister of Religion, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt: Provided that the marriage be solemnized in the presence of at least two witnesses.

26. Whenever a marriage is not solemnized within two months after the date of the certificate which has been issued by such Minister as aforesaid, such certificate and all other proceedings thereon shall be void, and no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in the manner aforesaid.

PART IV.

REGISTRATION OF MARRIAGES.

27. All marriages hereafter solemnized in India between persons one or both of whom professes or profess the Christian Religion, except mar-
Marriages, with certain exceptions, to be registered as herein prescribed.

riages solemnized under Parts V. and VI. of this Act, shall be registered in the manner hereinafter prescribed: Provided that no omission or defect in such registration shall invalidate any marriage not otherwise invalid.

28. Every marriage solemnized by a Clergyman of the Church of England shall be registered by the Clergyman solemnizing the same in a register of marriages to be kept by him, according to the form contained in the third schedule hereto annexed.

29. Every Clergyman of the Church of England shall send four times in every year returns in duplicate, authenticated by his signature, of the entries in the register of marriages solemnized at or in any station or district at which he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or within the limits of which such station or district is situated.

Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January to the thirty-first day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September, and from the first day of October to the thirty-first day of December, of each year respectively, and shall be transmitted by such Clergyman within two weeks from the expiration of each of the quarters above specified. The said Registrar upon receiving the same shall transmit one copy to the Secretary to the Local Government.

30. Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized, and such person shall forward quarterly to the Secretary to the Local Government returns of the entries of all marriages registered by him during the three months next preceding.

31. Every marriage solemnized by a Clergyman of the Church of Scotland shall be registered by the Clergyman solemnizing the same in a register of marriages to be kept by him for the station or district in which the marriage is solemnized, in the form prescribed in section twenty-eight for marriages solemnized by Clergymen of the Church of England, and such Clergyman shall forward quarterly to the Secretary to the Local Government, through the Senior Chaplain of the Church of Scotland, returns similar to those prescribed in section twenty-nine for Clergymen of the Church of England, of all marriages solemnized by him.

32. Every marriage solemnized by any person authorized to solemnize marriages under clauses (1) and (3) of section five, other than the persons mentioned in sections

twenty-eight and thirty, shall immediately, after the solemnization thereof, be registered in duplicate by the person solemnizing the same in a marriage register book to be kept by him for that purpose, according to the form contained in the fourth schedule hereto annexed, and also in a certificate attached to the marriage register book as a counterfoil.

33. The entry of such marriage in both the certificate and marriage register book shall be signed by the person by whom the said marriage has been solemnized, and also by the persons married, and shall be attested by two credible witnesses who were present at the solemnization of the marriage, and every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage register book.

34. The person solemnizing the said marriage shall forthwith separate the certificate from the Marriage Registrar of the district in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall cause such certificate to be copied into a book to be kept by him for that purpose, and shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the Secretary to the Local Government.

35. Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied, and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which each certificate was received by the said Marriage Registrar.

36. The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall, at the end of every month, transmit the same to the Secretary to the Local Government.

37. When any marriage between Native Christians is solemnized under Part I. or III. of this Act, the person solemnizing the same shall, instead of proceeding in the manner provided by sections twenty-eight to thirty-six, both inclusive, register such marriages in a separate register book, and shall keep safely the said register book until the same shall be filled, or, if he shall leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district.

And the person having the control of the book at the time when it shall be filled, shall send the same to the Marriage Registrar of the district, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the Secretary to the Local Government, to be kept by him with the records of his office.

The provisions of sections sixty-two and sixty-three as to the form of the Register book, the deposit of extracts therefrom, and the granting searches and copies of the contents of such register, shall apply to the Register books kept under this section.

PART V.

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR.

38. When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed, or to the like effect, to any Marriage Registrar of the district within which the parties shall have dwelt,

or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district, and shall state therein the name and surname, and the profession or condition, of each of the parties intending marriage, the dwelling place of each of them, and the time during which each has dwelt therein, and the place in which the marriage is to be solemnized:

Provided that, if either party has dwelt in the place stated in the notice during more than one month, it may be stated therein that he or she hath dwelt there one month and upwards.

39. Every Marriage Registrar shall, on receiving any such notice, publish the same, by causing a copy thereof to be affixed in some conspicuous place in his office.

When one of the parties intending marriage (not being a widower or widow) is under twenty-one years of age, every Marriage Registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, by the post or otherwise, a copy of such notice to all the other Marriage Registrars (if any) in the same district, who shall likewise affix the same in some conspicuous place in their own offices as aforesaid.

40. The Marriage Registrar shall file all such notices and keep them with the records of his office, and shall also forthwith enter a true copy of all such notices in a book to be for that purpose furnished to him by the Local Government, to be called the "Marriage Notice Book," and the Marriage Notice Book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

41. The Marriage Registrar, upon being requested so to do by or on behalf of the party by whom the notice was given, and one of the parties intending marriage having made oath or declaration as hereinafter required, shall issue under his hand a certificate of such notice having been given and of such oath or declaration having been made:

Provided that no lawful impediment according to the law of England be shown to the satisfaction of the Marriage Registrar why such certificate should not issue, and the issue of such certificate has not been sooner forbidden, in manner hereinafter mentioned, by any person or persons authorized in that behalf by this Act:

Provided also that in no case shall the certificate be issued until the expiration of four days after the receipt of the notice, and

After what interval certificate to issue. further that where, by such oath or declaration, it appears that one of the parties intending marriage (not being a widower or widow) is under twenty-one years of age, the Marriage Registrar shall not issue his certificate until the expiration of fourteen days after the entry of such notice of marriage.

42. The certificate mentioned in section forty-one shall not be issued by any Marriage Registrar, until one of the parties intending marriage shall appear personally before such Marriage Registrar, and shall make oath that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and that both the parties have, or (where they have dwelt in the districts of different Marriage Registrars) that the party making such oath hath, had their, his, or her usual place of abode within the district of such Marriage Registrar, and where either or each of the parties, not being a widower or widow, is under the age of twenty-one years, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

43. When one of the parties intending marriage (not being a widower or widow) is under twenty-one years of age, and both parties intending marriage are at the time resident in

any of the towns of Calcutta, Madras, or Bombay, and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid, both parties intending marriage may apply by petition to the High Court of such town, or any Judge thereof, for an order upon the Marriage Registrar to whom the notice of marriage has been given, directing him to issue his certificate before the expiration of the said fourteen days required by section forty-one.

And the said High Court, or any Judge thereof may, on sufficient cause being shown in its or his discretion, make an order upon such Marriage Registrar, directing him to issue his certificate at any

Certificate of notice given and declaration made to be issued, on request.

If no impediment shown or issue not forbidden:

After what interval certificate to issue.

Oath or declaration to be made before issue of certificate.

When parties may petition High Court to order certificate in less than fourteen days.

Order on petition.

time to be mentioned in the said order, before the expiration of the said fourteen days required by section forty-one; and the said Marriage Registrar, on receipt of the said order, shall issue his certificate in accordance therewith.

44. The provisions of section nineteen shall apply to any marriage under this Part, either of the parties to which (not being a widower or widow) is a minor, and any person whose consent to such marriage would be required thereunder may enter a protest against the issue of the Marriage Registrar's certificate, by writing at any time before the issue of such certificate the word "forbidden," opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her character in respect of either of the parties, by reason of which he or she is so authorized;

When such protest has been entered, no certificate shall issue until the Marriage Registrar has examined into the matter of the protest, and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage, or until the protest be withdrawn by the party who entered the same.

45. If any person whose consent is necessary to any marriage under this Part is *non compos mentis*, or if any such person (other than the father) without just cause withholds his or her consent to the marriage, the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras, and Bombay, to the High Court, or if the person is not resident within any of the said towns, then to the Judge of the district within which such person is resident; and the said Court or any Judge thereof, or the said Judge of the district, may examine the allegations of the petition in a summary way.

If upon examination such marriage appears proper, such High Court or any Judge thereof, or such Judge of the district, shall declare the marriage to be a proper marriage, and such declaration shall be as good and effectual as if the person whose consent was needed had consented to the marriage; and if such person has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued, and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden by such person.

46. Whenever a Marriage Registrar has refused to issue a certificate under this Part, either of the parties intending marriage may apply by petition, where the district of such Registrar is within any of the towns of Calcutta, Madras, and Bombay, to the High Court, or if such district is not within any of the said towns, then to the Judge of the said district; and the said Court or any Judge thereof, or the Judge of the district, may examine the allegations of the petition

in a summary way, and shall decide thereon. The decision of such Court or any Judge thereof, or of the District Judge, shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith.

47. Whenever a Marriage Registrar resident in the territories of any Native Prince or State in alliance with Her Majesty, refuses to issue his certificate, either of the parties intending marriage may apply by petition to the Governor General of India in Council, who shall decide thereon; such decision shall be final, and the Marriage Registrar to whom the application was originally made shall proceed in accordance therewith.

48. Whenever a Marriage Registrar, acting under the provisions of section forty-four, is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall apply by petition, where the district of such Registrar is within any of the towns of Calcutta, Madras, and Bombay, to the High Court of Judicature in the Presidency or place within which such district is comprised, or, if such district be not within any of the said towns, then to the Judge of the district within which the same is comprised.

The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same, and the said High Court, or any Judge thereof, or such Judge of the district, shall examine into the allegations of the petition and the circumstances of the case, and if, upon such examination, it shall appear that the person forbidding the issue of such certificate is not authorized by law so to do, such High Court or any Judge thereof, or such Judge of the district, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid, and then, and in such case, such certificate shall be issued, and the like proceedings may be had in relation to such marriage as if the issue of such certificate had not been forbidden by such person.

In all cases where a Marriage Registrar appointed under section eight, to act within the territories of any Native Prince or State in alliance with Her Majesty, is not satisfied that the person forbidding the issue of the certificate is not authorized by law so to do, the said Marriage Registrar shall transmit a statement of all the circumstances of the case, together with all documents and papers relating thereto, to the Governor General of India in Council; and, if it appears to the Governor General of India in Council that the person forbidding the issue of such certificate is not authorized by law so to do, the Governor General of India in Council shall declare that the party forbidding the issue of such certificate is not authorized as aforesaid, and then, and in such case, such certificate shall be issued, and the like proceedings may be had in

relation to such marriage as if the issue of such certificate had not been forbidden by such person.

49. Every person entering a protest with the Marriage Registrar, under this Part, against the issue of any certificate on grounds which such Marriage Registrar, under section forty-four, or the High Court or Judge thereof, or the District Judge, under section forty-five or forty-six, declares to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto and for damages to be recovered by suit by the person against whose marriage such protest was entered.

50. The certificate to be issued by the Marriage Registrar under the provisions of section forty-one shall be in the form contained in the second schedule to this Act annexed, or to the like effect, and the Local Government shall furnish to every Marriage Registrar a sufficient number of forms of certificate.

51. After the issue of the certificate of the Marriage Registrar, or where notice is required to be given under this Act to the Marriage Registrars for different districts after the issue of the certificates of the Marriage Registrars for such districts, marriage may, if there be no lawful impediment to the marriage of the district, described in such certificate or certificate, solemnized between such parties, according to such form and ceremony as they think fit to adopt. But every such marriage shall be solemnized between the hours of six in the morning and seven in the evening, in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more witnesses, and in some part of the ceremony each of the parties shall declare as follows or to the like effect—

"I do solemnly declare that I know not of any lawful impediment why I, A. B., may not be joined in matrimony to C. D."

And each of the parties shall say to the other as follows or to the like effect—"I call upon these persons here present to witness that I, A. B., do take thee, C. D., to be my lawful wedded wife [or husband]."

52. Whenever a marriage is not had within three months after the notice has been entered by the Marriage Registrar, as required by section thirty-nine, the notice and the certificate, if any, issued thereupon, and all other proceedings thereupon, shall be utterly void; and no person shall proceed to solemnize the marriage, nor shall any Marriage Registrar enter the same, until new notice has been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

53. A Marriage Registrar before whom any marriage is solemnized under this Part may ask for particulars to be registered of the persons to be married the several particulars required to be registered touching such marriage.

54. After the solemnization of any marriage under this Part, the Marriage Registrar present at the solemnization thereof shall forthwith register such marriage in duplicate, that is to say, in a Marriage Register Book, according to the form of the fourth schedule hereto annexed, and also in a certificate attached to the Marriage Register Book as a counterfoil; and the entry of such marriage in both the certificate and the Marriage Register Book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not the marriage is solemnized by him, and also by the parties married, and attested by two witnesses.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the Marriage Register Book.

55. The Marriage Registrar shall forthwith separate the certificate from the Marriage Register Book and transmit it, at the end of every month, to the Secretary to the Local Government.

The Marriage Registrar shall keep safely the said Register Book until it be filled, and shall then transmit the same to the Secretary to the Government, or to such other officer as aforesaid, to be kept by him with the records of his office.

56. The Marriage Registrars in the territories of any Native Prince or State in alliance with Her Majesty, shall transmit the certificates mentioned in section fifty-seven to the Secretary for the Foreign Department of the Government of India.

57. When any Native Christian about to be married applies for or tenders a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said Native Christian understands the English language, and, if he does not, the said Marriage Registrar shall translate such notice or certificate, or both of them, as the case may be, or shall cause the same to be translated to such Native Christian in the language of such Native Christian, or the said Marriage Registrar shall otherwise ascertain whether such Native Christian is cognizant of the purport and effect of the said notice and certificate.

58. When any Native Christian is married under the provisions of this Part, the party solemnizing the said marriage shall ascertain whether such Native Christian understands the English language, and, if he does not, the party solemnizing the said marriage shall, at the time of the solemnization thereof, translate, or cause to be translated, to such Native Christian, in the language of such Native Christian, the declarations made at such marriage in accordance with the provisions of this Act.

59. The registration of marriages between Native Christians under this Part shall be conducted in conformity to the rules laid down in section thirty-seven (so far as they are applicable), and not otherwise.

PART VI.

MARRIAGE OF NATIVE CHRISTIANS.

60. Every marriage between Native Christians applying for a certificate, shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled, and not otherwise:—

(1.) The age of the man intending to be married shall exceed sixteen years, and the age of the woman intending to be married shall exceed thirteen years:

(2.) The man and the woman shall not stand to each other within the prohibited degrees of consanguinity or affinity:

(3.) Neither of the persons intending to be married shall have a wife or husband still living:

(4.) In the presence of the person licensed under section nine, and of at least two credible witnesses, each of the parties shall say to the other—

“I call upon these persons here present to witness that I, *A. B.*, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, *C. D.*, to be my lawful wedded wife [*or husband*],” or words to the like effect:

(5.) Such declaration shall be made between the hours of six in the morning and seven in the evening:

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section nineteen has been given to the intended marriage, or unless it appears that there is no person living authorized to give such consent.

61. When, in respect to any marriage falling under this Part, the conditions prescribed in section sixty have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration shall have been made, shall, on the application of either of the parties to such marriage, and on the payment of a fee of four annas, grant a certificate of such marriage. Such certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive evidence of the same marriage having been performed.

62. A Register Book of all marriages of which certificates are granted under section sixty-one, shall be kept by the person granting such certificates in his own vernacular language. Such Register Book shall be kept according to such form as the Local Government from time to time prescribes, and the said book, or true extracts therefrom, duly authenticated,

shall be deposited at such places and at such times as the Local Government directs.

63. Every person licensed under this Act to grant certificates of marriage and keeping a Marriage Register Book under section sixty-two, shall, at all reasonable times, allow search to be made in such book, and shall, on payment of the fees prescribed by the Local Government under section eighty-three, give a copy, certified under his hand, of any entry or entries in the same.

64. This Part of this Act, except so much of Part VI not to apply to sections sixty-two and sixty-three as are referred to in section thirty-seven, shall not apply to marriages between Roman Catholics. But nothing herein contained shall be construed to invalidate any marriage contracted between Roman Catholics under the provisions of Part V. of Act No. XXV. of 1864, previous to the repeal of that Act.

PART VII.

PENALTIES.

65. Whoever intentionally makes any false oath or declaration, or signs any false notice or certificate required by this Act, for the purpose of procuring any marriage, shall be deemed guilty of the offence described in section one hundred and ninety-three of the Indian Penal Code.

66. Whoever forbids the issue by a Marriage Registrar of a certificate by falsely representing himself or herself to be a person whose consent to the marriage is required by law, knowing such representation to be false, shall be deemed guilty of the offence described in section two hundred and five of the Indian Penal Code.

67. Whoever, not being authorized under this Act to solemnize a marriage in the absence of a Marriage Registrar of the district in which such marriage is solemnized, knowingly solemnizes a marriage between persons one or both of whom professes or profess the Christian religion, shall be punished with imprisonment which may extend to ten years, and shall also be liable to fine; or, in lieu of a sentence of imprisonment for seven years or upwards, to transportation for a term of not less than seven years, and not exceeding ten years;

or, if the offender be an European or American, to penal servitude according to the provisions of Act No. XXIV. of 1855 (to substitute penal servitude for the punishment of transportation in respect of European and American convicts, and to amend the law relating to the removal of such convicts).

68. Whoever knowingly and wilfully solemnizes a marriage between persons one or both of whom professes or profess the Christian Religion at any time other than between the hours of six in the morning and seven in the evening, or in the ab-

sence of at least two credible witnesses, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

The provisions of this section shall not apply to marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his Commissary, nor to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section ten.

69. Any Minister of Religion licensed to solemnize marriages under this Act, who, without a notice in writing, or when one of the parties to the marriage, not being a

for solemnizing without notice or within fourteen days after notice, marriage with minor;

widower or widow, is a minor, and the required consent of the parents or guardian to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III., shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

70. A Marriage Registrar under this Act, who commits any of the following offences;

for issuing certificate, or marrying, without publication of notice;

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing or affixing in some conspicuous place the notice of such marriage as directed by this Act;

(2) after the expiration of two months after a certificate in respect of a marriage shall have been issued by him, solemnizes such marriage;

marrying after expiry of certificate;

(3) without an order of a competent Court authorizing him to do so, solemnizes any marriage when one of the persons intending marriage (not being a widower or widow) is a minor, before the expiration of fourteen days after the receipt of such notice, or without sending, by the post or otherwise, a copy of such notice of marriage to the Senior Marriage Registrar of the district (if there be more Marriage Registrars of the district than one), and, if he himself be not the Senior Marriage Registrar;

(4) issues any certificate, the issue of which shall have been prohibited as in this Act provided by any person authorized to prohibit the issue thereof,

issuing certificate against authorized prohibition;

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

71. Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of three months after the notice has been entered by him as aforesaid, or knowingly and wilfully issuing, with-

for issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice, or against authorized forbiddal;

out the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage (not being a widower or widow) is under twenty-one years of age, before the expiration of fourteen days after the entry of such notice or any certificate the issue of which has been forbidden as aforesaid by any person authorized to forbid such issue, shall be deemed to have committed an offence under section one hundred and sixty-six of the Indian Penal Code.

for unauthorizedly marrying according to usage of—
the Church of England,

72. Whoever, being a person authorized under the provisions of this Act to solemnize a marriage,

and not being a Clergyman of the Church of England, solemnizing a marriage after due publication of banns or under a license from the Anglican Bishop of the Diocese or a surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies, and customs of that Church,

or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rules, ceremonies, and customs of that Church,

knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid

without publishing, or causing to be affixed, the notice of such marriage as directed in Part III. of this Act, or after the expiration of two months after the certificate shall have been issued by him;

or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage, not being a

widower or widow, is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the district;

or knowingly and wilfully issues any certificate, the issue of which has been forbidden under this Act by any person authorized to forbid the issue;

for issuing certificate authorizedly forbidden;

or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same,

for solemnizing marriage authorizedly forbidden.

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

73. Whoever, not being licensed to grant a certificate of marriage under Part VI. of this Act, grants such certificate intending thereby to make

for unlicensed person granting certificate pretending to be licensed;

it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

74. Whoever wilfully destroys or injures, or causes to be destroyed or injured, any Register book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom,

or falsely makes or counterfeits any part of such register book or counterfoil certificates,

or wilfully inserts, or causes to be inserted, any false entry in any such Register book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

75. All prosecutions under this Act shall be commenced within the space of two years after the offence is committed.

PART VIII.

MISCELLANEOUS.

76. No European British subject and no person domiciled in any country by the law of which polygamy is prohibited, shall acquire a right to practise polygamy by any change in his religious belief.

77. If any person who has contracted any such marriage as is provided for by this Act, or any other marriage which by the law to which he is subject would render any subsequent marriage during its continuance illegal, marries any other person during the continuance of such marriage, he shall, whatever religion he may profess at the time of such subsequent marriage, be deemed guilty of the offence described in section four hundred and ninety-four of the Indian Penal Code, and every such subsequent marriage shall be void.

78. Whenever any marriage has been solemnized in accordance with the provisions of sections four and five, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely:

- (1).—Any statement made in regard to the dwelling of the persons married, or the consent of any person whose consent to such marriage is required by law :
- (2).—The notice of the marriage :
- (3).—The certificate or translation thereof :
- (4).—The time at which the marriage may have been solemnized.

VI.—113 d

79. Every person charged with the duty of registering any marriage, who shall discover any error to have been committed in the form or substance of any entry, may, within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, who shall respectively attest the same, correct the erroneous entry according to the truth of the case, by entry in the margin without any alteration of the original entry, and shall sign the marginal entry, and add thereunto the day of the month and year when such correction shall be made, and such person shall make the like marginal entry, attested in the like manner, in the certificate thereof.

And, in case such certificate has been already transmitted to the Secretary to the Local Government, such person shall make and transmit in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

80. Every person solemnizing a marriage under this Act, and hereby required to register the same, and every Marriage Registrar or Secretary to a Local Government having the custody for the time being of any Register of marriages, or of any certificate or copies of certificate under this Act, shall, at all reasonable times, allow searches to be made of any marriage register book, or of any certificate, or duplicate, or copies of certificate, in his custody, and shall give a copy under his hand of any entry in the same, on the payment of the fees prescribed by the Local Government under section eighty-three.

81. Every certified copy purporting to be signed by the person entrusted under this Act with the custody of any marriage register or certificate, or duplicate certificate, required to be kept or delivered under this Act, of any entry of a marriage in such register, or of any such certificate or duplicate certificate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate, or duplicate copy, or of any entry therein, respectively, or of such copy.

82. The Secretary to the Local Government shall, at the end of every quarter in each year, select from the certificates of marriages forwarded to him during such quarter, the certificates of the marriages of which the Governor General of India in Council may desire that evidence shall be transmitted to England, and forward the same certificates, signed by him, to the Secretary of State for India, for the purpose of being delivered to the Registrar General of Births, Deaths, and Marriages.

83. The Local Government shall determine what fees shall be chargeable under this Act for

Local Government to prescribe fees.

the receipt and publication of notices of marriages;

the issue of certificates of marriage and the registration of marriages by Marriage Registrars;

and for the entry of protests with, or prohibitions of, the issue of marriage certificates by the said Registrars;

for searching Register books, or certificates, or duplicates, or copies thereof;

and for the issue of copies of entries in the same under sections sixty-three and eighty;

and may from time to time vary or remit such fees either generally or in special cases, as to it may seem fit.

84. The Local Government may make rules in regard to the disposal of the fees mentioned in section eighty-three, the supply of Register books, and the preparation and submission of returns of marriages solemnized under this Act.

SCHEDULE I.

NOTICE OF MARRIAGE.

To a Minister [or Registrar] of

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say):—

Names.	Condition.	Rank or Profession.	Age.	Dwelling-place.	Length of residence.	Church, chapel, or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
<i>James Smith.</i>	<i>Widower.</i>	<i>Carpenter.</i>	<i>Of full age.</i>	<i>16, Clive Street.</i>	<i>23 days.</i>	<i>Free Church of Scotland Church, Calcutta.</i>	
<i>Martha Green.</i>	<i>Spinster.</i>	<i>.....</i>	<i>Minor.</i>	<i>20, Hastings' Street.</i>	<i>More than a month.</i>		

Witness my hand, this

day of

seventy-two.

(Signed) *JAMES SMITH.*

[The *Italics* in this schedule are to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

SCHEDULE II.

CERTIFICATE OF RECEIPT OF NOTICE.

I,

do hereby certify that, on the _____ day of _____, notice was duly entered in my Marriage Notice Book of the marriage intended between the parties therein named and described, delivered under the hand of _____, one of the parties (that is to say):—

Names.	Condition.	Rank or Profession.	Age.	Dwelling-place.	Length of residence.	Church, chapel, or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
<i>James Smith.</i>	<i>Widower.</i>	<i>Carpenter.</i>	<i>Of full age.</i>	<i>16, Clive Street.</i>	<i>23 days.</i>	<i>Free Church of Scotland Church, Calcutta.</i>	
<i>Martha Green.</i>	<i>Spinster.</i>	<i>.....</i>	<i>Minor.</i>	<i>20, Hastings' Street.</i>	<i>More than a month.</i>		

and that the declaration required by section seventeen or forty-one of "The Indian Christian Marriage Act, 1872," has been duly made by the said (*James Smith*).

Date of notice entered
Date of certificate given

} The issue of this certificate has not been prohibited by any person authorized to forbid the issue thereof.

Witness my hand, this _____ day of _____ *seventy-two.*

(Signed)

This certificate will be void unless the marriage is solemnized on or before the _____ day of _____

[The *Italics* in the schedule are to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

SCHEDULE IV.
MARRIAGE REGISTER BOOK.

VI-113 e

Number.	WHEN MARRIED.			NAMES OF PARTIES.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and Surname.
				Christian Name.	Surname.					
	Day.	Month.	Year.							
1				<i>James</i>	<i>White</i>	<i>26 years</i>	<i>Widower</i>	<i>Carpenter</i>	<i>Agra</i>	<i>William White.</i>
				<i>Martha</i>	<i>Duncan</i>	<i>17 years</i>	<i>Spinster</i>	<i>Agra</i>	<i>John Duncan.</i>

414 g

Married in the

This marriage was solemnized between us { *James White,*
Martha Duncan, } in the presence of us { *John Smith,*
John Green. }

SCHEDULE IV.—continued.

CERTIFICATE OF MARRIAGE.

Number.	WHEN MARRIED.			NAMES OF PARTIES.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and Surname.
				Christian Name.	Surname.					
	Day.	Month.	Year.							
1				<i>James</i>	<i>White</i>	<i>26 years</i>	<i>Widower</i>	<i>Carpenter</i>	<i>Agra</i>	<i>William White.</i>
				<i>Martha</i>	<i>Duncan</i>	<i>17 years</i>	<i>Spinster</i>	<i>Agra</i>	<i>John Duncan.</i>

Married in the

This marriage was solemnized between us { *James White,*
Martha Duncan, } in the presence of us { *John Smith,*
John Green. }

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th March 1872, and was referred to a Select Committee with instructions to make their report thereon in a week :—

Bill No. 8 of 1872.

A Bill to Amend Act XV. of 1859.

WHEREAS, by Act XV. of 1859, provision was made for the grant of certain privileges to the inventors of new manufactures ; and whereas it is desirable that provision should be made for the grant of similar privileges to the inventors of new patterns and designs in British India ; It is hereby enacted as follows :—

1. This Act may be called "The Patterns and Designs Protection Act, 1872 :"

Short title.

Designs Protection Act, 1872 :"

It extends to the whole of British India, and shall come into force on the passing thereof.

Extent.
Commencement.

2. At the end of section one of the said Act Addition to section I. XV. of 1859, the following shall be read :—

" For the purposes of this Act, ' New manufacture' shall be deemed to include any new and original pattern or design, or the application of such pattern or design to any substance or article of manufacture."

3. At the end of section IV. of the said Act the following shall be read :—

" Provided that in the case of a pattern or design or the application thereof to any substance or article of manufacture, such privilege shall be granted for the term of three years and no more."

4. After section XXXVII. of the said Act XV. of 1859, the following shall be read :—

Addition to Act XV. of 1859 after section XXXVII.

4. After section XXXVII. of the said Act XV. of 1859, the following shall be read :—

" XXXVII A. Whenever, by any law for the time being in force in the United Kingdom, any person is entitled in the United Kingdom to an exclusive right in any pattern or design or in the application of such pattern or design to any substance or article of manufacture, such person shall be entitled in British India to the sole and exclusive right in such pattern or design or in such application thereof, and shall be entitled in British India to the same civil remedies in respect of any infringement thereof in British India, as those to which he would be entitled in the United Kingdom."

Persons invested by English law with rights as to patterns and designs to have same rights in British India.

5. This Act shall be read with and as part Act to be read as part of the said Act XV. of 1859. 1859.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is (1st) to provide that the privileges conferred by Act XV. of 1859 on the inventors of new manufactures, may be extended to the inventors of new patterns and designs ;

and (2ndly), to provide for the enforcement in Indian Courts, of the rights of persons who have registered patterns and designs in the United Kingdom according to the English law, in the case of the infringement of those rights in British India.

(Signed) R. STEWART.

The 18th March 1872.

H. S. CUNNINGHAM,

Officiating Secretary to the Council of the Governor General for making Laws and Regulation

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 12th March 1872:—

We, the undersigned, the Members of the Select Committee of the

Council of the Governor General of India for the purpose of making Laws and Regulations, to which the Bill to define and amend the Law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

2. We have recast Parts I., II. and III. of the original Bill, composing the first sixty-one sections and have thrown the provisions which they embodied into a form which appears to us to be simpler and more intelligible. In particular, we have remodelled that portion of the Bill which treats of contracts in general, and which as it originally stood, was, we thought, somewhat obscurely arranged. The fundamental terms of the subject have also been more precisely defined. The following are the grounds of the alterations which we suggest—

3. Section 4 of the Bill is in these words—‘A contract is an agreement between parties, whereby a party engages to do a thing or engages not to do a thing.’ A contract may contain several engagements, and they may be either by the same party or by different parties.

Throughout the Bill, the expressions ‘agreement,’ ‘contract,’ ‘binding agreement,’ ‘engagement’ and ‘engagement by contract’ are used indiscriminately. This wording appeared to us to be wanting in precision, and we have endeavoured to place the subject in a clearer light by a definition of contract, which is based on the following theory: The first step towards a contract is a proposal. If the proposal is accepted, it becomes a promise. Where two men agree, either by proposal and acceptance of a promise, or by entering into reciprocal promises, there is an agreement; and, if the agreement is not purely gratuitous, that which causes it is its consideration. These terms proposal, promise, agreement, consideration are all in common use, and fitly describe relations which arise between man and man quite independently of law. What difference, then, does the law make? It enforces some

From Secretary of State for India (Judicial), No. 42, dated 14th September 1866. Second Report of Her Majesty’s Commissioners appointed to prepare a body of Substantive Law for India

Report on Native papers for the week ending 17th August 1867.

Note by the Assistant Secretary in the Home Department (Legislative) on the Second Report of the Indian Law Commissioners.

From Secretary to Chief Commissioner, British Burma, No. २५११, dated 4th November 1867.

Remarks by Honourable Sir W. Morgan, Chief Justice, High Court, North-Western Provinces, on Part IV.

Observations by the Assistant Secretary to Government of Bengal, Legislative Department.

From Under Secretary to Government of Bengal, No. 6680, dated 20th December 1867, and enclosure.

Remarks by John Cochrane, Esq., dated 18th December 1867.

From Under Secretary to Government of Bengal, No. 6759, dated 30th December 1867, and enclosure.

Observations by the Officiating Deputy Commissioner, Delhi, dated 18th December 1867.

Further remarks by John Cochrane, Esq., dated 24th December 1867.

From First Assistant Resident, Haidarabad, No. 45, dated 12th December 1867, and enclosures.

Certain questions by Major General the Hon’ble Sir H. M. Durand, dated 16th December 1867.

Note by C. D. Field, Esq., dated 14th January 1868.

Remarks by Rae Chhanna Mull of Delhi, dated 15th January 1868.

Note by Assistant Secretary to Government of India, Home Department (Legislative), dated 24th January 1868.

From Junior Secretary to Government of Bengal, No. 495, dated 28th January 1868, and enclosure.

From Civil and Sessions Judge of Rājshāhi, No. 41, dated 31st January 1868.

From Deputy Commissioner, Lohārdāga, No. 1069, dated 7th January 1868.

From Judicial Commissioner, Chota Nāgpur, No. 7, dated 31st January 1868.

From Under Secretary to Government of Bombay, No. 328, dated 31st January 1868, and enclosures.

Remarks by Secretary and Treasurer, Bank of Bengal, dated 11th February 1868.

From Secretary of State for India, No. 42, dated 14th September 1866, and enclosures.

From Secretary of State for India, No. 8, dated 8th February 1867, and enclosures.

From Commissioner of Mysore, No. 105-8, dated 2nd April 1868, and enclosures.

From Secretary to Government North-Western Provinces, No. 425, dated 18th April 1868, and enclosures.

From J. W. B. Money, Esq., Barrister-at-law, dated 21st May 1868.

From Officiating Magistrate and Collector of Naldea, No. 1688, dated 26th August 1868, and enclosure.

From First Judge, Calcutta Small Cause Court, No. 39, dated 7th September 1868, and enclosures.

From Registrar, High Court, Calcutta, dated 8th September 1868.

Minute by Honourable H. S. Maine, dated 11th September 1868.

From Secretary to Government, Panjāb, No. 915, dated 3rd April 1868, and enclosures.

From Chief Secretary to Government, Fort St. George, No. 691, dated 28th April 1868, and enclosures.

From Commissioner of Coorg, No. 81-5, dated 29th April 1868.

From Secretary to Government, North-Western Provinces, No. 219, dated 6th May 1868.

From Secretary to Government, Panjāb, No. 616, dated 11th May 1868.

From Under Secretary to Government, Bombay, No. 1478, dated 19th May 1868, and enclosure.

From Under Secretary to Government, Bombay, No. 1595, dated 29th May 1868.

From Secretary to Chief Commissioner, British Burma, No. 171-6, dated 10th June 1868, and enclosure.

From Secretary to Government, Fort St. George, No. 1108, dated 14th July 1868, and enclosures.

From Under Secretary to Government, Bengal, No. 4411, dated 10th August 1868, and enclosures.

From Secretary to Chief Commissioner, Oudh, No. 3782, dated 7th September 1868, and enclosures.

From Secretary to Chief Commissioner, Oudh, No. 3903, dated 14th September 1868.

From Assistant Secretary to Chief Commissioner, Central Provinces, No. 102, dated 16th September 1868, and enclosures.

From Secretary to Government, Panjāb No. 1567, dated 3rd December 1868.

Despatch from the Right Hon’ble the Secretary of State for India, No. 7, dated 18th March 1869.

Despatch from the Right Hon’ble the Secretary of State for India, No. 8, dated 18th March 1869.

Note by Hon’ble J. F. Stephen, dated 6th February 1870.

Despatch from the Right Hon'ble the Secretary of State for India, No. 47, dated 24th November 1870.

Notes by the Hon'ble Members on Secretary of State's Despatch, No. 47, dated 24th November 1870.

Despatch from the Right Hon'ble the Secretary of State for India, No. 11, dated 23rd February 1871.

From P. W. Department, No. 1809R, dated 25th September 1871, forwarding letter from Secretary to Government, Panjáb, P. W. Department, Railway Branch, No. 3078G, dated 9th September 1871, and enclosures.

Note by Hon'ble J. F. Stephen, dated 21st October 1871.

From P. W. Department, No. 167G. R, dated 31st January 1872.

From Financial Department, No. 1338, dated 23rd February 1872, and enclosure.

From Secretary to Government, Bombay, No. 1257, dated 18th March 1872.

at the option of either party, and the third at the option of one party, but not of the other. All agreements may be put into one or other of these three classes; those which cannot be enforced at all we have called void agreements; those which can be enforced by any of the parties we have called contracts; and those which can be enforced at the option of one party only, we have called voidable contracts.

4. In some cases, a contract which, when made, is enforceable, ceases to be enforceable owing to subsequent occurrences, as, for instance, when a person contracts to paint a picture, and dies before he can complete it. In this case the contract becomes void.

5. By defining these fundamental terms, we think that the Act is made much clearer throughout, and, in particular, it becomes easy to arrange it in a systematic way.

6. The first point to be dealt with is, obviously, the law as to proposals, which are the first step towards a contract. Accordingly, chapter I. of the draft deals with the communication, acceptance, and revocation of proposals. Its provisions do not differ very materially from sections 6 and 7 of the Bill, but they are adapted to some extent from the New York Civil Code.

7. Sections 6, 8, 9, 10 and 11 in the Bill treat of the validity of contracts under certain circumstances; but it seemed to us that they are not so drawn as to convey readily to the mind of a student the general theory on which they rest. They correspond to chapter II. (sections 10-30) of the present draft, which embodies them all, with the addition of a few sections suggested by, or adapted from, the New York Code. The theory on which the whole subject depends is contained in section 10 of the present draft, which explains the rest. 'All agreements are contracts, if they are made by the free consent of parties competent to contract, for a lawful consideration, and with a lawful object, and are not hereby expressly declared to be void.' Each member of this proposition is then separately explained. Section 11 defines who are 'competent persons,' and section 12 defines 'soundness of mind,' which is an element of competency; section 13 defines 'consent'; section 14 specifies the five causes—namely, coercion, undue influence, fraud, misrepresentation and mistake—which may interfere with the freedom of consent; section 15 defines 'coercion'; section 16 defines 'undue influence'; section 17 defines 'fraud'; section 18 defines 'misrepresentation'; section 19 describes the effect upon an agreement of coercion, undue influence, fraud and misrepresentation; and sections 20 and 22 deal with the effects of mistakes in fact and law.

8. These sections together give, broadly and fully, the meaning of a valid contract and of the nature of the elements of which it is composed. The following sections, 24-30, declare what agreements are void. These matters in the original draft are mixed up indiscriminately with its other provisions. Thus, agreements void for uncertainty are dealt with in section 12, between the subject of mistake and that of consideration. It is not expressly said, but only implied (section 13), that an unlawful agreement is void, and section 13 is somewhat clumsy. Nothing is said as to agreements in restraint of marriage or trade, or as to wagers, or as to agreements not to sue. We have recommended distinct provisions to be made for the effect of an unlawful object or consideration, the absence of consideration, contracts in restraint of marriage or trade, and contracts in restraint of legal proceedings; contracts the meaning of which cannot be ascertained, and contracts by way of wager. As to contracts in restraint of legal proceedings, we have provided, in section 28, that while, on the one hand, a contract, by which a person is restricted absolutely from enforcing his claims in Court, is void; on the other hand, parties may agree that, in the event of a dispute arising between them in respect to any specified matters, it shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable. We recommend that, when such a contract to refer has been made, it shall be a bar to any action brought in respect of the matters to which it relates, other than an action for the amount awarded in arbitration. This appears to us to embody the results of the latest English decisions, and to be consonant with justice and good sense.

9. Sections 14-17 of the original Bill are replaced by chapter III. of the draft now submitted, headed "Of Contingent Contracts." The original sections appeared to us to mix up two matters which are essentially distinct, namely, (1) agreements contingent upon an event collateral to the agreement—as, if A contracts to pay a sum of money to B, if B lives to be twenty-one. (2) Reciprocal promises—as, if A contracts to pay for a horse, if B delivers it. The result is a good deal of confusion. It is difficult to see why sections 14, 15 and 16 of the Bill are separated by nine other sections from the seven sections which are put under the heading "Of Conditional Contracts." When carefully examined, it will be

apparent that the attempt to simplify by neglecting the distinction to which we have referred has caused this, and that the result is to make a clear subject obscure. It also introduces, we think, positive error. Thus, sections 26 and 27, taken together, provide that 'an engagement by contract may be made with the condition superadded that it shall be terminated in case a specified uncertain event shall happen;' and that, 'if at the time of the contract the event is repugnant to law or morality,' the condition is invalid. Suppose a man engages, by contract, to carry goods safely unless they are taken from him by thieves or robbers, the contract is clearly good; yet, under the terms of these sections, the condition would be void. This arises from the neglect to distinguish between conditions independent of a contract, and conditions which form a part of the contract. It is surely one thing to contract to indemnify a man if some one else robs him, and another to contract to indemnify him if he robs some one else. Each contract contemplates the commission of a crime; but the first regards it simply as a possible contingency, the second involves a promise to commit it. Besides this, it is extremely difficult to make any clear distinction, if the arrangement of the Bill is maintained, between the provisions of sections 26 and 27, referred to above, and those of section 13, which relates to consideration. According to section 13, it is essential to the validity of a contract that there should be a good consideration, and lawfulness is essential to the goodness of a consideration. By section 14, a condition may be something which constitutes the consideration; by sections 26 and 27 the condition 'must not be repugnant to law.' If the condition is part of the consideration, sections 26 and 27 re-enact, in a somewhat obscure and disjointed way, what is enacted much more clearly by section 13.

10. The present draft is intended to avoid this by separating three cases—

1. The consideration for the contract. This is provided for in sections 24 and 25.
2. The case of agreements made contingently upon some event independent of them. This is provided for in chapter III. sections 31-36.
3. The effect which the relation between reciprocal promises has on the order in which they are to be performed. This is provided for in sections 51 to 58, which form one of the sub-divisions of chapter IV. "Of the Performance of Contracts."

11. No doubt the word 'condition,' or 'conditional,' might be applied in a popular way to each of these three matters. If A's promise is the consideration of B's; or if A makes a promise to B contingently on C's death; or if the intention is to say that, if A promises to pay for B's horse on delivery, A need not pay unless and until B is ready to deliver—it might be said that the consideration of A's promise in the first case, C's death in the second case, and B's readiness to deliver the horse in the third case, were respectively the *conditions* of A's promise, or that A's promise was *conditional* upon them; but we think that, if the sections to which we have referred (namely, 24 and 25, and 51 to 58 of the draft) are read and compared with the corresponding sections (13 to 31) in the Bill, it will be found that the distribution of the subject under the three heads now suggested makes it much clearer.

12. Section 32 of the original Bill has been omitted. Its substance is disposed of in the Evidence Act.

13. The sections in the Bill (33 to 51 inclusive) relating to Performance of Contracts are not arranged upon any particular principle, though they appear sound in substance. We propose to arrange them as follows:—

- Contracts which must be performed:
- By whom contracts must be performed:
- Time and place for performance:
- Order of performance of reciprocal promises:
- Appropriation of payments:
- Contracts which need not be performed.

14. These headings appear to place the subject in its natural order, which is not the case with the original Bill. The arrangement there adopted is such, that the general principle that each party to a contract must perform his own part in it, unless he is in some way excused from doing so, is nowhere plainly laid down. The first section (33), which relates to the subject, lays down a principle of no great or general importance, namely, that a man may, in certain cases, perform a contract vicariously; so, too, the draft Bill puts the subject of Tender (sections 45, 46) at the very end of the chapter. It ought, in our opinion, to come at the beginning, as a qualification upon the general rule that contracts must be performed. We have accordingly placed it there (see sections 37, 38). As to the question by whom contracts should be performed, the original Bill is arranged in a rather confused way. In sections 33 and 34 it provides for two unimportant matters about delegating the performance of a contract, and accepting performance by a third person. It then goes on (sections 35, 36) to a most important mat-

ter—dispensation from an old contract and the substitution of one contract for another; and, after an interval of ten sections, it provides for the devolution of liabilities on the representatives of contractors (sections 47-50). It appears to us that sections 35 and 36 fall properly under the head of 'Contracts which need not be performed;' and sections 47 to 50 under the head of 'Persons by whom Contracts must be performed.'

15. Part III. of the Bill relates to what are commonly called quasi-contracts. As to this we have omitted sections 54 and 55. The Law of Evidence provides, to a large extent, for the cases referred to in sections 54, by the rule that one party to a contract is precluded from setting up a state of facts other than that which he caused or intentionally allowed the other party to believe to exist. Section 55 seems to us to belong more properly to the law of torts. Illustration (c), especially, is a pure case of an action for misrepresentation, and the mode of computing the damage which the misrepresentation has occasioned.

16. We have omitted all reference to special branches of the law of contract, which, at present, are regulated either by express legislation or recognized custom, *e. g.*, the law of Shipping, of Bills of Exchange, Insurance, Master and Servant, Carriers, &c. This omission renders the present Bill so far incomplete; but we consider this incompleteness a less evil than the inconvenience of dealing with so many varied and intricate subjects in a single enactment. It will be easy at a future period, when the present Bill has been for a time in operation, and its results have been practically tested, to deal with all or any of the subjects above referred to, and to add them as a new chapter to the Act. With this view leave has already been asked to introduce a Bill to amend and consolidate the law relating to Carriers, and it would no doubt be desirable that the law of master and servant should at an early date be put into a clearer form than that in which it is at present. No sufficient information has at present been collected to render legislation on this subject safe.

17. As to the question of title in the vendor, the original Bill provided that a *bonâ fide* purchase from the person in possession of goods should have the effect of passing the ownership, provided that the circumstances were not such as to raise a presumption that the vendor had no right to sell. The propriety of this provision was much discussed, and its probable result in facilitating the disposal of stolen property strongly insisted upon. When property has been stolen from its rightful owner, and has found its way into the hands of an innocent purchaser, it is a mere question of expediency as to which of the two shall bear the loss of the transaction. It is difficult to lay down any general rule, grounded on equitable considerations, because the blame, if any, in the transaction may quite as easily attach to one party as the other. The owner may have used every reasonable precaution and the purchaser may have been grossly negligent, or the purchaser may have been cautious and the owner negligent. After much consideration, we have resolved on abandoning the principle laid down in section 75 of the original Bill, and have provided for the subject in section 108 of the draft now submitted. We propose that a seller shall be unable to give a better title to goods than he has himself, except in the following cases, namely:—

1. When the seller is by consent of the owner in possession of a dock-warrant or other document showing title to the goods sold:
2. When the seller is one of several joint owners of the goods sold and in possession of the goods by permission of the other joint owners:
3. When the seller has obtained possession of the goods under a voidable contract and the contract has not been avoided before the sale; provided that the circumstances which render the contract voidable do not amount to an offence.

In each of the above cases, it is necessary that the purchaser should have acted on good faith, and that the circumstances should not have been such as to give him reasonable ground to suspect that the seller had a right to sell.

18. With regard to the distinction between "penalties" and "liquidated damages," we have seen reason to modify the terms of the original section (53). It provides that, "when a contract has been broken, if a sum is named in the contract itself as the amount to be paid in the case of such breach, the amount so named shall be paid accordingly," in other words, it treats all such sums as if they were liquidated damages, and never regards them as penalties. We are quite conscious that it is highly desirable to simplify the law by removing the distinction between penalties and liquidated damages; but we are clearly of opinion that, under the peculiar circumstances of this country, the best way to do so is to provide that all such sums shall be treated as penalties. It is notoriously the practice of the Natives to introduce heavy penal stipulations into their agreements, and these are always intended to operate simply *in terrorem*. It may, no doubt, be said that, by changing the law, the people might be led in time to a better system. But partly through the tenacity of habit in the Natives, partly through the time which it takes to diffuse acquaintance with a new rule, and partly also through the fact that, in the case of bond-debits, it is the creditor who frames the instrument, there would be a great deal of positive suffering inflicted, and possibly more than the legislature has a right to impose, before the result aimed at by the Bill could be attained. We have accordingly altered the first clause of this section as follows:—

"When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named."

We have provided, however, that when, by the provisions of any law, a person binds himself under a penalty to perform any condition, he shall be liable to pay the whole of the penalty if he fails to perform the condition. This is intended to provide for the case of recognizances, bail-bonds, and the like.

19. Section 152 of the Bill provides that, "where the bailment is gratuitous, the bailor is entitled at any time, upon reasonable notice, to the restoration of the goods bailed." We have substituted (section 159) the following provision grounded on the New York Code, paragraph 958:—"The lender of a thing for use may at any time require its return if the loan was gratuitous, even though he lent it for a specified time or purpose. But if on the faith of such loan the borrower has acted in such a manner that the return of the thing before the time agreed upon would cause him loss exceeding the benefit derived actually by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived."

20. In section 159 of the Bill we have inserted (section 166) the words "in good faith" before "delivers."

21. Section 161.—After this section we have introduced, from the New York Code, § 943, the following clause (169):—

"When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses upon demand to pay the lawful charges of the finder, the finder may sell it—

(1) when a thing is in danger of perishing or of losing the greater part of its value; or (2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value."

22. Section 163 of the original Bill provides that "in the absence of any agreement to the contrary, bankers, factors, and wharfingers have no right to retain any goods bailed to them as a security for a general balance of account." No reason is given for the abolition of the general lien in these cases, and we think it expedient to alter the section (171) thus:—

"Bankers, factors, wharfingers, attorneys of a High Court, and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them, but no other persons have a right to retain as a security for such balance, goods bailed to them, unless there is an express contract to that effect."

23. Section 170 of the original Bill provided that "a person who is in possession of goods, or of any bill of lading, dock-warrant, warehousekeeper's certificate, warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods, or documents; Provided that the pawnee acts in good faith and under circumstances which are not such as to raise a reasonable presumption that the pawner is acting improperly."

To this we have added (section 178) a proviso which seems to us necessary with a view to discouraging the pledge of stolen property—

"Provided also that such goods or documents have not been obtained from their lawful owner or from any person in lawful custody of them by means of an offence or fraud."

24. Section 186 of the original Bill forbids an agent to employ another to perform acts which he has undertaken to perform personally. We have added, in section 190 of our draft, the words "unless, by the ordinary custom of trade, a sub-agent may, or, from the nature of the agency, a sub-agent must be employed."

35. Section 191.—This section of the original Bill provides that an agent, in the absence of his principal's directions, is bound to conduct his business according to the custom which prevails in doing business of the same kind. We have added, in section 211 of our draft, the words "at the place where the agent conducts such business" [*Ireland v. Livingston*, 2. L. R. Q. B. 107, per Shee, J.]

We have provided in section 217 that "an agent may retain, out of any sums received on account of the principal in the business of the agency, all monies due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent."

26. Section 201 of the original Bill provides that "gross" misconduct in the business of an agency shall disentitle the agent to remuneration in respect of the matter misconducted. The illustrations, however, are not of gross misconduct, and we think that any misconduct should disentitle him. We have omitted the epithet 'gross,' and, in illustration (a), we have changed 'insufficient' into 'bad'

27. Section 202.—This section of the original Bill declares the agent's lien on "goods, papers and other property of the principal." We have, in section 220 of our draft, inserted the words "whether moveable or immoveable," after "property."

28. Section 203 of the original Bill provides that, "where acts are done by one person on behalf of another, *but without his knowledge*, he may elect to ratify or to disown" them. We have inserted, in section 196 of the present Bill, after "knowledge," the words "or authority."

Section 226 of original Bill we have altered (section 202 of our draft) thus:

29. "Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, *in the absence of an express contract*, be terminated to the prejudice of such interest."

30. Section 262.—We propose to limit the winding-up jurisdiction conferred by section 262 of the original Bill (section 265 of our draft) to "the Court not inferior to the Court of a District Judge within the local limits of whose jurisdiction the place, or principal place of business of the firm is situate."

31. We have, in numerous instances throughout the Bill, omitted illustrations, wherever they appeared to us either to be unnecessary, or too complicated to be readily intelligible, or when, as being the result of English decisions, they introduced collateral circumstances and principles other than those which they were intended to illustrate, and were thus liable to be misunderstood, except when read in connection with the whole of the surrounding facts.

32. Subject to these amendments we recommend that the Bill be passed.

J. F. STEPHEN.
J. STRACHEY.
R. TEMPLE.
J. F. D. INGLIS.
W. ROBINSON.
F. S. CHAPMAN.
R. STEWART.
J. R. BULLEN SMITH.
F. R. COCKERELL.

The 12th March 1872.

THE INDIAN CONTRACT BILL.

CONTENTS.

Preamble.

PRELIMINARY.

SECTIONS.

1. Short title.
Extent.
Commencement.
Enactments repealed.
2. Interpretation-clause.

CHAPTER I.—OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.

3. Communication, acceptance and revocation of proposals.
4. Communication when complete.
5. Revocation of proposals and acceptances.
6. Revocation how made.
7. Acceptance must be absolute.
8. Acceptance by performing conditions.
9. Promises, express and implied.

CHAPTER II.—OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS.

10. What agreements are contracts.
11. Who are competent to contract.
12. What is a sound mind for the purposes of contracting.
13. 'Consent' defined.
14. 'Free consent' defined.

SECTIONS.

15. 'Coercion' defined.
16. 'Undue influence' defined.
17. 'Fraud' defined.
18. 'Misrepresentation' defined.
19. Agreements caused by fraud or misrepresentation.
20. Mistake of fact.
21. Effect of mistakes as to law.
22. Mistake of one party not caused by the other.
23. What considerations and objects are lawful and what not.

VOID AGREEMENTS.

24. Considerations and objects unlawful in part.
25. Promises without consideration void unless registered, or for certain purposes.
26. Contract in restraint of marriage void.
27. Contract in restraint of trade void.
Exception in favour of sale of good-will.
Exception in favour of partnership arrangements.
28. Restraints upon legal proceedings.
29. Certainty of subject.
30. Wagers.

CHAPTER III.—OF CONTINGENT CONTRACTS.

31. Contingent contract defined.
32. Enforcement of contingent contracts.
33. Contingent contracts on an event which becomes impossible.
34. When contingency is a living person's future conduct.

SECTIONS.

35. Contingent contracts on an event to happen within a fixed time.
36. Contingent agreements on impossible events.

CHAPTER IV.—OF THE PERFORMANCE OF CONTRACTS.

CONTRACTS WHICH MUST BE PERFORMED.

37. What contracts must be performed.
38. Effect of refusal to accept offer of performance.
39. Power to terminate contract on refusal of party to perform it wholly.

BY WHOM CONTRACTS MUST BE PERFORMED.

40. Person by whom promise is to be performed.
41. Effect of accepting performance from a third person.
42. Devolution of joint liabilities.
43. Any one of joint promisors may be compelled to perform.
Each promisor may compel contribution.
Sharing of loss by default.
44. Release of one joint contractor.
45. Devolution of joint rights.

TIME AND PLACE FOR PERFORMANCE.

46. Time for performance of engagement where no time is specified, and no application to be made.
47. Time for performance of engagement where time is specified, and no application to be made.
48. Application for performance at a proper time and place.
49. Place for performance of engagement where no application to be made and no place fixed.
50. Performance in manner or at time prescribed or sanctioned by person entitled to claim it.

ORDER OF PERFORMANCE OF RECIPROCAL PROMISES TO BE SIMULTANEOUSLY PERFORMED.

51. Promisor not bound to perform unless reciprocal promisee ready and willing to perform.
52. Order of performance of different engagements.
53. Liability of party preventing event on which contract is to take effect.
54. Effect of default as to that promise which should be first performed in contract consisting of reciprocal promises.
55. Effect as to time in contract to do certain things at certain times.
56. Promise to do an impossible act or one which afterwards becomes illegal.
57. Alternative reciprocal promises one set of which is unlawful.
58. Reciprocal promises, one of which is in the alternative, one branch of the alternative being unlawful.

APPROPRIATION OF PAYMENTS.

59. Where there are several distinct debts and the debt to which payment is to be applied is indicated.
60. Where there are several distinct debts and the debt to which payment is to be applied is not indicated.
61. Where neither party make any appropriation.

CONTRACTS WHICH NEED NOT BE PERFORMED.

62. Contracts may be rescinded or altered.
63. Dispensation with, or remittance of, or acceptance of, satisfaction in lieu of performance.
64. Consequences of rescission or alteration.
65. Obligation of person who has received advantage under agreement or contract void or rescinded.

SECTIONS.

66. Mode of communicating or revoking rescission of voidable contract.
67. Parties mutually bound to facilitate performance.

CHAPTER V.—OF CERTAIN OBLIGATIONS RESEMBLING THOSE CREATED BY CONTRACT.

68. Supply of necessaries to persons incapable of contracting.
69. Reimbursement of person paying what another is bound to pay.
70. Effect of non-gratuitous act of which a person enjoys the benefit.
71. Responsibility of finder of goods.
72. Liability of person to whom money is paid by mistake or coercion.

CHAPTER VI.—OF THE CONSEQUENCES OF THE BREACH OF CONTRACT AND NON-PERFORMANCE OF OBLIGATIONS.

73. Party 'rightfully terminating contract entitled to compensation.
74. Payment of sum specified to be paid in case of breach.
Payment of compensation.
75. Title to compensation for breach of contract in which a sum is named as payable in case of breach.

CHAPTER VII.—SALE OF GOODS.

WHEN PROPERTY IN GOODS SOLD PASSES.

76. 'Goods' defined.
77. 'Sale' defined.
78. Sale how effected.
79. Effect of agreement for sale of thing to be ascertained, made or finished.
80. Sale of goods which the seller is to put into state in which buyer is to take them.
81. Sale of goods when seller has to do anything thereto in order to ascertain price.
82. Sale when goods are unascertained at date of agreement.
83. Ascertainment of goods by subsequent appropriation.
84. Ascertainment of goods by seller's selection.
85. Agreement for sale of immoveable and moveable property combined.
86. Buyer's risk.
87. Transfer of ownership of goods agreed to be sold while non-existent.
88. Contract to sell and deliver at a future day, goods not in seller's possession at date of contract.
89. Determination of unfix price.

DELIVERY.

90. Delivery how made.
91. Effect of delivery to wharfinger or carrier.
92. Effect of part-delivery.
93. Seller not bound to deliver until buyer applies for possession.
94. Place of delivery.

SELLER'S LIEN.

95. Seller's lien.
96. Lien where payment to be made at a future day, but no time fixed for delivery.
'Insolvency' defined.
97. Where payment to be made at future day, and buyer allows goods to remain in seller's possession.
98. Seller's lien against subsequent buyer.

STOPPAGE IN TRANSIT.

99. Power to stop in transit.
100. When goods are to be deemed in transit.
101. Continuance of right of stoppage.
102. Cessation of right on assignment of bill of lading.

SECTIONS.

103. Stoppage on payment to pledgee of amount of claim.
104. Stoppage how effected.
105. Notice of seller's claim.
106. Right of seller on stoppage.

RE-SALE.

107. Re-sale on buyer's failure to perform.

TITLE.

108. Title conveyed by seller of goods to buyer.

WARRANTY.

109. Seller's responsibility for badness of title.
110. Implied warranty of goodness or quality.
111. Warranty of soundness on sale of provisions.
112. Warranty on sale of goods by sample.
113. Warranty on sale of goods sold as being of a certain denomination.
114. Warranty where goods ordered for a specified purpose.
115. Sale of article of a well-known ascertained kind.
116. Non-responsibility for latent defects.
117. Buyer's right on breach of warranty.
118. Rejection or return of goods sold with warranty.

MISCELLANEOUS.

119. Refusal to accept when goods not ordered are sent.
120. Effect of wrongful refusal to accept.
121. Rescission on failure to pay price at time fixed.
122. Sale of several lots by auction.
123. Puffers at auction.

CHAPTER VIII.—OF INDEMNITY AND GUARANTEE.

124. 'Indemnity' defined.
125. Rights and liabilities of indemnity-holder when sued.
126. Definitions of 'guarantee,' 'surety,' 'principal debtor,' and 'creditor.'
127. Consideration for guarantee.
128. Surety's liability.
129. Continuing guarantee.
130. Revocation of continuing guarantee.
131. Revocation of continuing guarantee by surety's death.
132. Liability of two persons primarily liable, not affected by a private arrangement as to suretyship.
133. Discharge of surety by variance in terms of contract.
134. Discharge of surety by release or discharge of principal debtor.
135. Discharge of surety when creditor compounds with, gives time to, or agrees not to sue principal debtor.
136. Agreement to give time to principal debtor made with a third person.
137. Creditor's forbearance to sue.
138. Release of one co-surety.
139. Discharge of surety by creditor's act or omission impairing surety's eventual remedy.
140. Rights of surety on payment or performance.
141. Surety's right to benefit of creditor's securities.
142. Guarantee obtained by misrepresentation.
143. Guarantee obtained by concealment.
144. Guarantee on agreement that creditor shall not act on it until co-surety joins.
145. Implied promise to indemnify surety.
146. Co-sureties liable to contribute equally.
147. Liability of co-sureties bound in different sums.

CHAPTER IX.—OF BAILMENT.

148. 'Bailment,' 'bailor,' and 'bailee' defined.
149. Delivery to bailee how made.
150. Bailor's duty to disclose faults in goods bailed.
151. Care to be taken by bailee.

SECTIONS.

152. Bailee when not liable for loss, &c., of thing bailed.
153. Termination of bailment by bailee's act inconsistent with conditions.
154. Liability of bailee making unauthorized use of goods bailed.
155. Mixture, with bailor's consent, of his goods with goods of bailee.
156. Mixture, without bailor's consent, when the goods can be separated.
157. Mixture, without bailor's consent, when the goods cannot be separated.
158. Re-payment by bailor of necessary expenses.
159. Restoration of goods bailed gratuitously.
160. Return of goods bailed on expiration of time or accomplishment of purpose.
161. Bailee's responsibility when goods are not duly delivered or tendered.
162. Termination of gratuitous bailment by death.
163. Increase or profit from goods bailed.
164. Bailor's responsibility to bailee.
165. Bailment by several joint owners.
166. Re-delivery to bailee who has no title.
167. Right of third person claiming goods bailed.
168. Right of finder of goods.
May sue for the amount not to apply to salvage.
169. When finder of thing commonly on sale may sell it.
170. Bailee's particular lien.
171. Bankers, factors, and wharfingers have no general lien.

BAILMENTS OF PLEDGES.

172. 'Pledge,' 'pawnor,' and 'pawnee' defined.
 173. Pawnee's right of retainer.
 174. In case of subsequent advances.
 175. Extraordinary expenses incurred by pawnee.
 176. Pawnee's right where pawnor makes default.
 177. Defaulting pawnor's right to redeem.
 178. Pledge by possessor of documentary title to goods.
 179. Pledge where pledgor has only a limited interest.
- SUITS BY BAILEES OR BAILORS AGAINST WRONG-DOERS.
180. Suits by bailor or bailee against wrong-doers.
 181. Apportionment of proceeds of such suits.

CHAPTER X.—AGENCY.

APPOINTMENT AND AUTHORITY OF AGENTS.

182. 'Agent' and 'principal' defined.
 183. Who may be a principal.
 184. Who may be an agent.
 185. Agency created without consideration.
 186. Agents' authority may be expressed or implied.
 187. Definitions of expressed and implied authority.
 188. Extent of agent's authority.
 189. Agent's authority in an emergency.
- SUB-AGENTS.
190. When agent cannot delegate.
 191. 'Sub-agent' defined.
 192. Representation of principal by sub-agent properly appointed.
Agent's responsibility for sub-agent.
Sub-agent's responsibility.
 193. Agent's responsibility for sub-agent appointed without authority.
 194. Relation between principal and person to whom agency is duly delegated.
 195. Agent's duty in naming such person.

RATIFICATION.

196. Effect of ratification.
197. Ratification may be expressed or implied.
198. Knowledge requisite to valid ratification.
199. Effect of ratifying unauthorized act forming part of a transaction.
200. Ratification of unauthorized act cannot injure third person.

REVOCATION OF AUTHORITY.

SECTIONS.

201. Termination of agency.
202. Where agency is coupled with an interest.
203. Revocation of agent's authority.
204. Revocation where authority has been partly exercised.
205. Compensation for revocation or renunciation.
206. Notice of revocation or renunciation.
207. Revocation and renunciation may be expressed or implied.
208. When termination of agent's authority takes effect.
209. Agent's duty on termination of agency by principal's death or insanity.
210. Termination of sub-agent's authority.

AGENT'S DUTY TO PRINCIPAL.

211. Agent's duty in conducting principal's business.
212. Skill and diligence required from agent.
213. Agent's accounts.
214. Agent's duty to communicate with principal.
215. Agent dealing on his own account in business of agency without principal's consent.
216. Principal's right to benefit gained by agent dealing on his own account in business of agency.
217. Agent's right of retainer out of sums received on principal's account.
218. Agent's duty to pay sums received for principal.
219. When agent's remuneration becomes due.
220. Misconduct disentitles agent to remuneration.
221. Agent's lien on principal's goods and papers.

PRINCIPAL'S DUTY TO AGENT:

222. Agent's indemnity against consequences of lawful acts.
223. Agent's indemnity against consequences of acts done in good faith.
224. Non-liability of employer of agent to do a criminal act.
225. Compensation to agent for injury caused by principal's neglect.

EFFECT OF AGENCY ON CONTRACTS WITH THIRD PERSONS.

226. Enforcement and consequences of agent's contracts.
227. Principal how far bound when agent exceeds authority.
228. When excess of agent's authority is not separable.
229. Consequences of notice given to agent.
230. Agent cannot personally enforce nor be bound by contracts on behalf of principal. Implication of contract to contrary.
231. Rights of parties to a contract made by agent not disclosed.
232. Performance of contract with agent supposed to be principal.
233. Principal's liability where agent personally liable.
234. Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.
235. Liability of pretended agent.
236. Person falsely contracting as agent, not entitled to performance.
237. Liability of principal inducing belief that agent's unauthorized acts were authorized.
238. Effect on agreement of misrepresentation or fraud by agent.

CHAPTER IX.—OF PARTNERSHIP.

239. 'Partnership' defined. 'Firm' defined.
240. Lender not a partner by advancing money for share of profits.

SECTIONS.

241. Property left in business by retiring partner or deceased partner's representative.
242. Contract for servant's remuneration by share of profits.
243. Annuity out of profits to widow or child of deceased partner.
244. Portion of profits received for sale of good-will.
245. Responsibility of person leading another to believe him a partner.
246. Liability of person permitting himself to be represented as a partner.
247. Minor partner.
248. Liability of minor partner on attaining majority.
249. Partner's liability for debts of partnership.
250. Partner's liability to the third person for neglect or fraud of co-partner.
251. Partner's power to bind co-partners.
252. Annulment of contract defining partner's rights and obligations.
253. General rule determining partner's mutual relations.
254. When Court may dissolve partnership.
255. Dissolution of partnership by prohibition of business.
256. Application of original terms to partnership continued under them.
257. General duties of partners.
258. Benefit derived from transaction affecting partnership.
259. Profits made in competing business.
260. Liability of incoming partner.
261. Revocation of continuing guarantee by change in firm.
262. Non-liability of deceased partner's estate for subsequent obligations.
263. Payment of partnership debts, and of separate debts.
264. Continuance of partner's rights and obligations after dissolution.
265. Notice of dissolution.
266. Winding-up by Court after termination of partnership.
267. Limited liability partnerships, incorporated partnerships, and joint stock companies.

SCHEDULE.

THE INDIAN CONTRACT BILL.

As amended by the Select Committee.

WHEREAS it is expedient to define and amend certain parts of the law relating to contracts; It is hereby enacted as follows:—

PRELIMINARY.

Short title. 1. This Act may be called "The Indian Contract Act, 1872."

It extends to the whole of British India, and Extent. it shall come into force Commencement. on the first day of September 1872.

The enactments mentioned in the schedule hereto are repealed to the extent specified in third column thereof; but nothing herein contained shall affect the provisions of any Statute, Act, or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

(a).—When one person signifies to another his willingness to do or to abstain from doing any thing with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

(b).—When the person, to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.

(c).—The person making the proposal is called the 'promisor,' and the person accepting the proposal is called the 'promisee.'

(d).—When, at the desire of the promisor the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise.

(f).—Every promise and every set of promises, forming the consideration for each other, is an agreement.

Promises which form the consideration or part of the consideration for each other, are called reciprocal promises.

(g).—An agreement not enforceable by law is said to be void.

(h).—An agreement enforceable by law is a contract.

(i).—An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.

(j).—A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

CHAPTER I.

OF THE COMMUNICATION, ACCEPTANCE, AND REVOCATION OF PROPOSALS.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are said to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, revocation, or acceptance or which has the effect of communicating them respectively.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

As against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete, as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge.

Illustrations.

(a). A proposes, by letter, to sell a house to B at a certain price.

The communication of the proposal is complete when B receives the letter.

(b). B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete, as against A, when the letter is posted, as against B, when the letter is received by A.

(c). A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. His revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations.

A proposes by a letter sent by post to sell his house to B. B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his letter of acceptance at any time before or at the moment when it reaches A, but not afterwards.

6. A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

7. In order to convert a proposal into a promise the acceptance must—

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the

acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

8. Performance of the conditions of a proposal or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal is an acceptance of the proposal.

9. In so far as the promise or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS.

10. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations.

- (a.) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.
- (b.) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

Free consent defined. 14. Consent is said to be free when it is not caused by—

- (1) coercion, as defined in section fifteen, or
- (2) undue influence, as defined in section sixteen, or
- (3) fraud, as defined in section seventeen, or
- (4) misrepresentation, as defined in section eighteen, or
- (5) mistake.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

15. Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Coercion defined. *Explanation.*—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

Illustration.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to intimidation under the Indian Penal Code;

A afterwards sues B for breach of contract at Calcutta. A has employed coercion, although his act is not an offence by the law of England, and although section 508 of the Indian Penal Code was not in force at the time or place where the act was done.

Undue influence defined. 16. Undue influence is said to be employed in the following cases:—

(1.)—When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other, which, but for such confidence or authority, he could not have obtained.

(2.)—When a person whose mind is enfeebled by old age, illness, or mental or bodily distress is so treated as to make him consent to that to which, but for such treatment, he would not have consented, although such treatment may not amount to coercion.

Illustrations.

(1.) A, a young woman, who has resided during her minority in the family of B, her guardian, continues to reside with him after attaining majority, and is induced by means of his influence, to enter into a contract with him which is disadvantageous to herself. B employs undue influence.

(2.) A, having advanced money to his son, B, during his minority, upon B's coming of age, obtains, by parental influence, a bond from B for a greater amount than the sum due upon the advance. A employs undue influence.

3. A is induced, by B's influence over him as his legal adviser, to convey an estate to B for his benefit. B employs undue influence.

4. A, a man enfeebled by disease or age, is induced by B's influence over him, as his medical attendant, to agree to pay B an unreasonable sum for his professional assistance during the rest of A's life. B employs undue influence.

17. Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent

to deceive another party thereto or his agent, or to induce him to enter into the contract:—

- (1)—The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2)—The active concealment of a fact by one having knowledge or belief of the fact;
- (3)—A promise made without any intention of performing it;
- (4)—Any other act fitted to deceive;
- (5)—Any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that under the circumstances of the case, it is the duty of the person keeping silence to speak, or unless his silence in itself is equivalent to speech.

Illustrations.

- (a.) A and B are in treaty for a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.
- (b.) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.
- (c.) B says to A, "If you do not deny it, I shall assume that the horse is sound;" A says nothing. Here A's silence is equivalent to speech.
- (d.) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

Misrepresentation defined. 18. Misrepresentation means and includes—

- (1) The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;
- (3) causing a party to an agreement, however innocently, to make a mistake as to the substance of the thing which is the subject of the agreement.

19. When consent to an agreement is caused

by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

The party whose consent was so caused may, if he thinks fit, insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section seventeen, the contract, nevertheless, is not voidable, if the party, whose consent was obtained thereby, had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(a.) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(b.) A, by a misrepresentation, leads B to believe erroneously that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c.) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage debt redeemed.

(d.) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(e.) A is entitled to succeed to an estate at the death of B; B dies; C, having received intelligence of B's death, prevents the intelligence reaching A; and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be considered a mistake as to a matter of fact.

Illustrations.

(a.) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The agreement is void.

(b.) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c.) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

21. A contract is not voidable because it was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

Illustrations.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation: the contract is not voidable.

A and B make a contract grounded on an erroneous belief as to the law regulating bills of exchange in France: the contract is voidable.

22. A contract is not voidable because merely it was caused by one of the parties to it being under a mistake as to a matter of fact.

Mistake of one party not caused by the other. 23. The consideration or object of an agreement is lawful, unless—

it is forbidden by law; or
is of such a nature that, if permitted, it would defeat the provisions of any law; or
is fraudulent; or
involves or implies injury to the person or property of another; or
the Court regards it as immoral or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful, is void.

Illustrations.

(a.) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(b.) A promises to pay B 1,000 rupees at the end of six months if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party: and they are lawful considerations.

(c.) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations.

(d.) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e.) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f.) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g.) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A on his principal.

(h.) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i.) A's estate is sold for arrears of revenue under the provisions of an Act of the legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction in effect a purchase by the defaulter and would so defeat the object of the law.

(j.) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(k.) A engages her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

VOID AGREEMENTS.

24. If any part of a single consideration for one or more objects, or objects unlawful in part. Considerations and objects unlawful in part. any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Illustration.

A promises to superintend, on behalf of B, a legal manufacture of indigo and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

Promises without consideration void unless registered; 25. An agreement made without consideration is void unless—

(1) it is expressed in writing and registered under the law for the time being in force for the registration of assurances; or unless—

(2) it is a promise to compensate wholly or in part a person who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do; or

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation.—Nothing in this section shall affect the validity as between the donor and donee of any gift actually made.

Illustrations.

(a.) A promises for no consideration to give to B Rs. 1,000. This is a void agreement.

(b.) A puts his promise to give Rs. 1,000 to B into writing, and registers it. This is a contract.

(c.) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(d.) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e.) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A verbally promises to pay B Rs. 500 on account of the debt. This is a contract.

26. Every agreement in restraint of the marriage of any person other than a minor, is void.

27. Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business within specified local limits so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

Exception 2.—Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership, within such local limits as are referred to in the last exception.

Exception 3.—Partners may agree that some one or all of them will not carry on any business other than that of the partnership during the continuance of the partnership.

28. Every agreement by which any party thereto is restricted absolutely from enforcing his rights, under or in respect of any contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Exception 1.—This section shall not render illegal a contract by which two or more persons agree that any dispute that may arise between them in respect of any specified matters shall be

referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the matter so referred.

When such a contract to refer has been made, a suit may be brought for its specific performance, and if a suit other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party, in respect of any matter which they have so agreed to refer, the existence of such contract shall be a bar to the action.

Exception 2.—Nor shall this section render illegal any contract in writing by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

29. Agreements the meaning of which is not certain, or capable of being made certain, are void.

Illustrations.

(a.) A agrees to sell to B 'a hundred tons of oil.' There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b.) A agrees to sell to B one hundred tons of oil of a specified description known as an article of commerce. There is no uncertainty here to make the agreement void.

(c.) A, who is a dealer in cocoanut-oil only, agrees to sell to B 'one hundred tons of oil.' The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(d.) A agrees to sell to B "all the grain in my granary at Rammagar." There is no uncertainty here to make the agreement void.

(e.) A agrees to sell to B one thousand maunds of rice at a price to be fixed by C. As the subject of the agreement is capable of being made certain, there is no uncertainty here to make it void.

(f.) A agrees to sell B 'my white horse for rupees five hundred or rupees one thousand.' There is nothing to show which of the two prices was to be given. The agreement is void.

30. Agreements by way of wager are void, and no suit shall be brought for recovering any thing alleged to be won on any wager or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

CHAPTER III.

Of Contingent Contracts.

31. A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Contingent contracts defined.

Illustration.

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

32. Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened.

If the event become impossible such contracts become void.

Illustrations.

(a.) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

(b.) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(c.) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

33. Contingent contracts to do or not to do anything if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before.

Contingent contracts on an event which becomes impossible.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

34. If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when the person does anything which renders it impossible that he should do the thing within any definite time, or otherwise than under further contingencies.

When contingency is a living person's future conduct.

(a.) A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die, and that C may afterwards marry B.

35. Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time, become void if, at the expiration of time fixed, the event has not happened, or if, before the time fixed, the event becomes impossible.

Contingent contracts on an event to happen within a fixed time.

Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time has expired and the event has not happened, or, before the time has expired, if it becomes certain that the event will not happen.

Illustrations.

(a.) A promises to pay B a sum of money if a certain ship returns within the year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(b.) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

36. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Contingent agreements on impossible events.

Illustrations.

(a.) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(b.) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

CONTRACTS WHICH MUST BE PERFORMED.

37. The parties to a contract must either perform, or offer to perform, their respective promises, or make compensation to the promisees for the non-performance of them, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of their death before performance, unless a contrary intention appears from the contract.

Illustrations.

(a.) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(b.) A promises to paint a picture for B by a certain day at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

38. Where a promisor has made an offer of performance to the promisee and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions:—

1. It must be unconditional.

2. It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound to do by his promise.

3. If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to offer.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustrations.

A contracts to deliver to B at his warehouse on the 1st March 1872, 100 bales of cotton of a particular quality. In order to make an offer of performance with the effect stated in this section, A must bring the cotton to B's warehouse under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

39. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

Illustrations.

(a.) A, a singer, enters into an engagement with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night the singer wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(b.) A, a singer, enters into an engagement with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night the singer wilfully absents herself. With the assent of B she sings on the seventh night. B has signified his acquiescence in the continuance of the contract and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

BY WHOM CONTRACTS MUST BE PERFORMED.

40. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Illustrations.

(a.) A promises to pay B a sum of money. He may perform this promise, either by personally paying the money to B, or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(b.) A promises to paint a picture for B. A must perform this promise personally.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

42. When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one of the promisors to perform the whole of the promise.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise unless a contrary intention appears from the contract.

If any one of two or more joint promisors makes default in such contribution, the remaining promisors must bear the loss arising from such default in equal shares.

Explanation.—Nothing in this section contained shall prevent a surety from recovering from his principal payments made by the surety on behalf of the principal, or entitle the principal to recover any thing from the surety on account of such payments.

Illustrations.

(a.) A, B, and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(b.) A, B, and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(c.) A, B, and C are under a joint promise to pay D 3,000 rupees, C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d.) A, B, and C are under a joint promise to pay D 3,000 rupees. A and B being only sureties for C, C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

44. Where two or more persons have made a joint promise, a release of one joint promisor by the promisee does not discharge the other joint promisor or joint promisors; neither does it free such joint promisor from responsibility to the other joint promisor or joint promisors.

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears by the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and, after the death of C, with the representatives of B and C jointly.

TIME AND PLACE FOR PERFORMANCE.

46. Where by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation.—The question 'what is a reasonable time' is in each particular case, a question of fact.

47. When a promise is to be performed on a certain day and the promisor has undertaken to perform it without application, he may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Illustration.

A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it; and they are not received. A has not performed his promise.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Explanation.—The question 'What is a proper time and place' is, in each particular case, a question of fact.

49. When a promise is to be performed without application, and no place of engagement where no application to be made and no place fixed. is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

50. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Illustrations.

(a.) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. This is a good payment by B.

(b.) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B respectively of the sums which they owed to each other.

(c.) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operate as a part payment.

(d.) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

ORDER OF PERFORMANCE OF RECIPROCAL PROMISES TO BE SIMULTANEOUSLY PERFORMED.

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(a.) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(d.) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

52. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations.

(a.) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay it.

(b.) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

53. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented, and he is entitled to compensation from the other party for any loss which he may have sustained in consequence of the non-performance of the contract.

Liability of party preventing event on which contract is to take effect.

the other from performing his promise, the contract becomes voidable at the option of the party so prevented, and he is entitled to compensation from the other party for any loss which he may have sustained in consequence of the non-performance of the contract.

Illustration.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B, and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

54. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed, till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may have sustained by the non-performance of the contract.

Effect of default as to that promise which should be first performed in contract consisting of reciprocal promises.

such that one of them cannot be performed, or that its performance cannot be claimed, till the other has been performed,

Illustrations.

(a.) A hires B's ship to take in and convey from Calcutta to the Mauritius a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise and must make compensation to B for his failure.

(b.) A contracts with B to execute certain builders' work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-execution of the contract.

(c.) A contracts with B to deliver to him at a specified price certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed and B must make compensation.

(d.) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

55. When any party to a contract promises to do a certain thing at or before a specified time or certain things at or before specified times, and fails to do them at those times, the contract, or so much of it as has not been performed, becomes voidable, at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to perform at the time agreed, but the promisee is entitled to compensation from the promisor for any loss he may have incurred by such failure.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to perform at the time agreed, but the promisee is entitled to compensation from the promisor for any loss he may have incurred by such failure.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by its non-performance at the proper time, unless, at the time of such acceptance, he gives notice of his intention to do so to the promisee.

56. An agreement to do an act impossible in itself is void.

Promise to do an impossible act or one which afterwards becomes illegal.

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Where one person contracts to do something which he knows, or with reasonable diligence might have known, and which the other party to the contract did not know, to be impossible, or unlawful, the person so contracting is bound to make compensation to such other party for any loss which he has sustained by the non-performance of the promise.

Illustrations.

(a.) A agrees with B to discover treasure by magic. The agreement is void.

(b.) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(c.) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy, A must make compensation to B for the loss caused to her by the non-performance of his promise.

(d.) A contracts to take in cargo for B at a foreign port. The Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(e.) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions B is too ill to act. The contract to act on those occasions becomes void.

57. If persons reciprocally promise to act in a certain way, and, under specified circumstances, to act in a certain other way, and, if any of the promises to be substituted under those circumstances for the first set of promises are for an unlawful object or consideration, the set of promises to be substituted are a void agreement; but the set of promises for which they are to be substituted may be a contract.

Alternative reciprocal promises one set of which is unlawful.

to act in a certain other way, and, if any of the promises to be substituted under those circumstances for the first set of promises are for an unlawful object or consideration, the set of promises to be substituted are a void agreement; but the set of promises for which they are to be substituted may be a contract.

Illustrations.

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, form a valid contract.

The second set are for an unlawful object, namely, that B may use the house as a gambling house, are a void agreement.

Reciprocal promises one of which is in the alternative, one branch of the alternative being unlawful.

58. In the case of an alternative promise one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Illustration.

A and B agree that A shall pay B 1,000 rupees for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

APPROPRIATION OF PAYMENTS.

59. Where a man, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Where there are several distinct debts and the debt to which payment is to be applied is indicated.

Where there are several distinct debts and the debt to which payment is to be applied is not indicated.

Illustrations.

(a.) A owes B (among other debts) 1,000 rupees upon a promissory note, which falls due on the 1st June. He owes B no other debt of that amount. On the 1st June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(b.) A owes to B (among other debts) the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

60. Where the debtor has omitted to intimate, and there are no other circumstances indicating, to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the payer, whether its recovery is or is not barred by the law in force for the time being relating to the limitation of suits.

Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not recoverable under the law relating to the limitation of suits. If they are of equal standing, the payment shall be applied in discharge of each proportionably.

61. Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not recoverable under the law relating to the limitation of suits. If they are of equal standing, the payment shall be applied in discharge of each proportionably.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Contracts may be rescinded or altered.

Illustrations.

(a.) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b.) A owes B 10,000 rupees. A enters into an arrangement with B, and gives him a mortgage of A's estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(c.) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees, B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

63. Every promisee may dispense with, or remit wholly or in part, the performance of the promise made to him, or may extend the time for it, or may accept instead of it any satisfaction which he thinks fit.

Dispensation with, or remittance of, or acceptance of satisfaction in lieu of performance.

Illustrations.

(a.) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b.) A owes B 5,000 rupees. A pays to B, and B accepts in satisfaction of the whole debt 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(c.) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(d.) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(e.) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a compensation of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

64. When a person, at whose option a contract is voidable, rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

Consequences of rescission or alteration.

65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it to the person from whom he received it.

Illustrations.

(a.) A pays B 1,000 rupees in consideration of A's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(b.) A contracts with B to deliver to him 250 maunds of rice before the 1st of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the 1st of May. He is bound to pay A for them.

(c.) A, a singer, contracts with B the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(d.) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which he would have made if A had been able to sing, but must refund the 1,000 rupees paid in advance.

66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

Mode of communicating or revoking rescission of voidable contract.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Parties mutually bound to facilitate performance.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration.

A contracts with B to repair B's house. B neglects or refuses to point out to A the places in which his house requires repair.

B is excused for the non-performance of the contract, if it is caused by such neglect or refusal.

CHAPTER V.

OF CERTAIN OBLIGATIONS RESEMBLING THOSE
CREATED BY CONTRACT.

68. If a person incapable of entering into a contract, or any one whom

Supply of necessaries to persons incapable of contracting.

he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(a.) A supplies B, a minor, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(b.) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

69. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Reimbursement of person paying what another is bound to pay.

Illustration.

B holds land in Bengal on a lease granted by A, the zemindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and the other enjoys the benefit thereof, the latter is bound to restore, or to make compensation to the former in respect of the thing so done or delivered.

Effect of non-gratuitous act of which a person enjoys the benefit.

Illustrations.

(a.) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b.) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

71. A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

Responsibility of finder of goods.

Liability of person to whom money is paid by mistake or coercion.

72. A person to whom money has been paid by mistake, or under coercion, must repay it.

Illustrations.

(a.) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b.) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

CHAPTER VI.

OF THE CONSEQUENCES OF THE BREACH OF CONTRACT AND NON-PERFORMANCE OF OBLIGATIONS.

73. A person who rightfully rescinds a contract, is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Illustration.

(a.) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

74. When a contract has been broken, and has not been discharged, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it, is entitled to receive the same compensation from the party in default as if he had contracted to discharge it and had broken his contract.

Explanation.—In estimating the loss, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations.

(a.) A contracts to sell and deliver 50 maunds of saltpetre to B at a certain price, to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b.) A hires B's ship to go to Bombay and there take on board, on the 1st of January, a cargo (which A is to provide) and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c.) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d.) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(e.) A, in November, contracts to buy of B, at a stated price, 100 bales of jute, to be delivered on the 1st of January. On the 15th of December, A gives notice to B that he will not accept the jute. On the 1st of January, the jute is tender-

ed to A, who refuses to accept it. A must pay to B, by way of compensation, the excess, if any, of the contract price over the sum which B could obtain for the jute on the 1st of January.

(f.) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some unavoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course and its market price at the time when it actually arrived.

(g.) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(h.) A contracts to let his ship to B for a year, from the 1st of January, for a certain price. Freight rises, and, on the 1st of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the 1st of January.

(i.) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(j.) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained by not obtaining the Government contract.

(k.) A having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and, in consequence, fails to perform his contract with B. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(l.) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A, and was compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(m.) A, a builder, contracts to erect and finish a house by the 1st of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the 1st of January, it falls down and has to be rebuilt by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of re-building the house, for the rent lost, and for the compensation made.

(n.) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(o.) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is

unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(p.) A contracts to deliver 50 maunds of saltpetre to B on the 1st of January, at a certain price. B afterwards, before the 1st of January, contracts to sell the saltpetre to C at a price higher than the market price of the 1st of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the 1st of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(q.) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(r.) A contracts to sell and deliver to B, on the 1st of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till long after the appointed time, and too late to be used that year in making caps. A is entitled to receive from B, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(s.) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the 1st of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the 1st of January, and B, after being, in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

75. When a contract has been broken, if a sum

Title to compensation is named in the contract for breach of contract as the amount to be paid which a sum is named in case of such breach, the party complaining of the breach is entitled, whether

or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named.

Explanation.—Where, under provisions of any law, any person enters into any bond to perform any condition under a specified penalty, he is liable to pay the full amount of such penalty if he does not perform the condition of the bond.

Illustrations.

(a.) A contracts with B to pay B Rs. 1,000 if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation not exceeding Rs. 1,000 as the Court considers reasonable.

(b.) A contracts with B that if A practises as a surgeon within Calcutta he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation not exceeding Rs. 5,000 as the Court considers reasonable.

(c.) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

CHAPTER VII.

SALE OF GOODS,

WHEN PROPERTY IN GOODS SOLD PASSES.

76. In this chapter, the word 'goods' means 'Goods' defined, and includes every kind of moveable property.

77. Sale is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer.

78. Sale is effected by offer and acceptance of ascertained goods for a price,
Sale how effected.

or of a price for ascertained goods,
together with payment of the price or delivery of the goods, or with tender, part payment, earnest, or part delivery, or with an agreement, express or implied, that the payment, or delivery, or both, shall be postponed.

Where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price or when the earnest is paid, or when the whole or part of the goods are delivered.

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

Illustrations.

(a.) B offers to buy A's horse for 500 rupees. A accepts B's offer, and delivers the horse to B. The horse becomes B's property on delivery.

(b.) A sends goods to B, with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B retains the goods, and informs A that he approves of them. The goods become B's when B retains them.

(c.) B offers A, for his horse, 1,000 rupees, the horse to be delivered to A on a stated day, and the price to be paid on another stated day. A accepts the offer. The horse becomes B's as soon as the proposal is accepted.

(d.) B offers A, for his horse, 1,000 rupees, on a month's credit. A accepts the offer. The horse becomes B's as soon as the offer is accepted.

(e.) B, on the 1st January, offers to A, for a quantity of rice, 2,000 rupees, to be paid on the 1st March following, the rice not to be taken away till paid for. A accepts the offer. The rice becomes B's as soon as the offer is accepted.

79. Where there is a contract for the sale of a thing which has yet to be ascertained, made, or finished, the ownership of the thing is not transferred to the buyer until it is ascertained, made, or finished.

Effect of agreement for sale of thing to be ascertained, made, or finished.

Illustration.

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B pays to A money from time to time on account of the price. The ownership of the barge does not pass to B until it is finished.

80. Where, by a contract for the sale of goods, the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

Sale of goods which the seller is to put into state in which buyer is to take them.

Illustrations.

(a.) A, a ship-builder, contracts to sell to B, for a stated price, a vessel which is lying in A's yard; the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up, and delivered.

(b.) A contracts to build a ship for B for a price, payable by instalments, dependent on the progress of the building of the ship, and the ship is to be built under B's superin-

tendence. The ownership of the materials incorporated with the ship passes to B at the time of incorporation, as this was intended by the parties, but the materials lying in A's yard, though suited and intended for the ship, do not pass to B until they are actually incorporated with the ship.

81. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Sale of goods when seller has to do anything thereto in order to ascertain price.

Illustrations.

(a.) A, owner of a stack of bark, contracts to sell it to B, weigh and deliver it at 100 rupees per ton. B agrees to take and pay for it on a certain day. Part is weighed and delivered to B; the ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.

(b.) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts, and to weigh each load at a certain weighing machine which his carts must pass over on their way from A's ground to B's place of deposit. Here, nothing more remains to be done by the seller; the sale is complete, and the ownership of the heap of clay is transferred at once.

82. Where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of the sale that the goods shall be ascertained.

Sale when goods are unascertained at date of agreement.

Illustration.

A agrees to sell to B, 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil. No portion of the oil has become the property of B.

83. Where the goods are not ascertained at the time of making the agreement for sale, but goods answering the description in the agreement are subsequently appropriated by one party for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale complete.

Ascertainment of goods by subsequent appropriation.

Illustration.

A, having a quantity of sugar in bulk, more than sufficient to fill 20 hogsheds, contracts to sell B 20 hogsheds of it. After the contract, A fills 20 hogsheds with the sugar, and gives notice to B that the hogsheds are ready, and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A and assent by B, the sugar becomes the property of B.

84. Where the goods are not ascertained at the time of making the contract of sale, and by the terms of the contract the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the contract, and by his doing so, the goods are ascertained.

Ascertainment of goods by seller's selection.

Illustration.

B agrees with A to purchase of him, at a stated price, to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks. The goods have been ascertained.

85. Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property.

Agreement for sale of immoveable and moveable property combined.

Illustration.

A agrees with B for the sale of a house and furniture. The ownership of the furniture does not pass to B until the house is conveyed to B.

86. When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury.
- Buyer's risk.

Illustrations.

(a.) B offers, and A accepts, 100 rupees for a stack of fire-wood standing on A's premises, the fire-wood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the fire-wood is on A's premises, it is accidentally destroyed by fire. B must bear the loss.

(b.) A bids 1,000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls, the loss falls on the seller; if afterwards, on A.

87. When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done after the goods are produced, in pursuance of the contract, by the seller, or by the buyer with the seller's assent.
- Transfer of ownership of goods agreed to be sold while non-existent.

Illustrations.

(a.) A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B from the date of the acknowledgment.

(b.) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this contract, B, with the assent of A, takes possession of some crops grown in succession to the crops standing at the time of the contract. The ownership of the crops, when taken possession of, vests in B.

(c.) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this contract, B applies to A for possession of some crops grown in succession to the crops which were standing at the time of the contract. A refuses to give possession. The ownership of the crops has not passed to B, though A may commit a breach of contract in refusing to give possession.

88. A contract for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at the time of making the contract, and though, at that time, he has no reasonable expectation of acquiring them otherwise than by purchase.
- Contract to sell and deliver at a future day, goods not in seller's possession at date of contract.

Illustration.

A contracts, on the 1st January, to sell B 50 shares in the East Indian Railway Company, to be delivered and paid for on the 1st March of the same year. A, at the time of making the contract, is not in possession of any shares. The contract is valid.

89. Where the price of goods sold is not fixed by the contract of sale, the buyer is bound to pay the seller such a price as the Court considers reasonable.
- Determination of unfixed price.
- Court considers reasonable.

Illustration.

B, living at Patna, orders of A, a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the Court must decide what price it considers reasonable.

DELIVERY.

90. Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf.
- Delivery how made.

Illustrations.

(a.) A sells to B a horse, and causes or permits it to be removed from A's stables to B's. The removal to B's stable is a delivery.

(b.) B, in England, orders 100 bales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

(c.) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown, in order that he may get the goods. This is a delivery.

(d.) A sells to B five specific casks of oil. The oil is in the warehouse of A. B sells the five casks to C. A receives warehouse rent for them from C. This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehouseman of C.

(e.) A sells to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B and C assents to such order, and transfers the rice in his books to B. This is a delivery.

(f.) A agrees to sell B five tons of oil, at 1,000 rupees per ton, to be paid for at the time of delivery. A gives to C, a wharfinger, at whose wharf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer-notice to B and offers to give it him on payment of the bill. B refuses to pay. There has been no delivery to B, as B never assented to make C his agent to hold for him the five tons selected by A.

91. A delivery to a wharfinger or carrier of the goods sold, has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe delivery of the goods.
- Effect of delivery to wharfinger or carrier.

Illustration.

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by railway. A takes three casks of oil directed to B to the railway station, and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B. There has not been a sufficient delivery to charge B in a suit for the price.

92. A delivery of part of goods in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods with an intention of severing it from the whole, does not operate as a delivery of the remainder.
- Effect of part-delivery.

Illustrations.

(a.) A ship arrives in a harbour laden with a cargo assigned to A, the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A in progress of the delivery of the whole. This is a delivery of the cargo to A for the purpose of passing the property in the cargo.

(b.) A sells to B a stack of fire-wood, to be paid for by bill on delivery. After the sale, B applies for and obtains from A leave to take away some of the fire-wood. This has not the legal effect of delivery of the whole.

(c.) A sells 50 maunds of rice to B. The rice remains in A's warehouse. After the sale, B sells to C 10 maunds of the rice, and A, at B's desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

93. In the absence of any special promise to the contrary the seller of goods is not bound to deliver them until the buyer applies for possession.

Seller not bound to deliver until buyer applies for possession.

94. In the absence of any promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale, and goods contracted to be sold are to be delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are produced.

Place of delivery.

SELLER'S LIEN.

95. Unless a contrary intention appears by the contract, a seller has a lien on sold goods as long as they remain in his possession, and the price or any part of it remains unpaid.

Seller's lien.

96. Where, by the contract, the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods without payment. But if the buyer becomes insolvent before delivery of the goods, or if the time appointed for payment arrives before the delivery of the goods, the seller may retain the goods for the price.

Explanation.—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

Illustration.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse. Before the expiry of the three months, B stops payment. A may retain the goods for the price.

97. Where, by the contract the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price.

Where payment to be made at future day, and buyer allows goods to remain in seller's possession.

Illustrations.

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them. A may retain the goods for the price.

98. A seller, in possession of goods sold, may retain them for the price against any subsequent buyer, unless the seller has recognized the title of the subsequent buyer.

Seller's lien against subsequent buyer.

STOPPAGE IN TRANSIT.

99. A seller who has parted with the possession of the goods, and has not received the whole price, may, if buyer becomes insolvent, stop the goods while they are in transit to the buyer.

Power to stop in transit.

100. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course

When goods are to be deemed in transit.

of transmission to the buyer, and are not yet come into the possession of the buyer, or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

Illustrations.

(a.) B, living at Madras, orders goods of A, at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C, a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C, are in transit.

(b.) B, at Delhi, orders goods of A, at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there. B refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(c.) B, who lives at Puná, orders goods of A at Bombay. A sends them to Puná by C, a carrier appointed by B. The goods arrive at Puná, and are placed by C, at B's request, in C's warehouse for B. The goods are no longer in transit.

(d.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

(e.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the master, making the cotton deliverable to A's order or assigns. The cotton arrives at London, but before coming into B's possession, B becomes insolvent. The cotton has not been paid for. A may stop the cotton.

101. The right of stoppage does not, except in the cases hereinafter mentioned, cease on the buyer's reselling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

Continuance of right of stoppage.

102. The right of stoppage ceases if the buyer, having obtained a bill of lading or other document showing title to the goods, assigns it, while the goods are in transit to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

Cessation of right on assignment of bill of lading.

Illustrations.

(a.) A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A cannot stop the goods in transit.

(b.) A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may still stop the goods in transit.

103. Where a bill of lading or other instrument of title to any goods to pledge of amount of such goods by way of pledge, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.

Stoppage on payment to pledgee of amount of such goods by way of pledge.

Illustrations.

(a.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for those goods to C to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. B becomes insolvent, being indebted to C to the amount of 9,000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5,000 rupees.

(b.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for those goods to C, to secure the sum of 5,000 rupees due from him to C, upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C of the 5,000 rupees.

104. The seller may effect stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depositary in whose possession they are.

105. Such notice may be given either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.

106. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

Illustration.

A sells to B 100 bales of cotton; 60 bales having come into B's possession, and 40 being still in transit, B becomes insolvent, and A being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid.

RE-SALE.

107. Where the buyer of goods fails to perform his part of the contract either by not taking the goods sold to him, or by not paying for them, the seller, having a lien on the goods or having stopped them in transit, may after giving notice to the buyer of his intention to do so, re-sell them after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit which may occur on such re-sale.

TITLE.

108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases:—

Exception 1. When any person is, by the consent of the owner in possession of any goods or in possession of any bill of lading, dock-warrant, warehouse-keeper's certificate or wharfinger's certificate or warrant or order for delivery, or other document showing title to the goods, he may transfer the ownership of the goods of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary: Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

Exception 2. If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

Exception 3. When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership

of the goods is transferred to a third person who, before the contract is rescinded, buys them in good faith of the person in possession, unless the circumstances which render the contract voidable amounted to an offence committed by the seller or the person whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

Illustrations.

(a.) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.

(b.) A, a merchant, intrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

(c.) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(d.) A, B and C are joint Hindú brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bona fide*. The property in the cow is transferred to D.

(e.) A, by a misrepresentation not amounting to cheating, persuades B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C; and B is entitled to compensation from A for any loss which D has sustained by being prevented from getting back the horse:

(f.) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and, before B rescinds the contract, sells the horse to C. The property is not transferred to C.

WARRANTY.

109. If the buyer, or any person claiming under him, is, by reason of the invalidity of the seller's title, deprived of the thing sold, the seller is responsible to the buyer, or person claiming under him, for loss thereby caused, unless a contrary intention appears by the contract.

110. An implied warranty of goodness or quality may be established by the custom of any particular trade.

111. On the sale of provisions, there is an implied warranty that they are sound.

112. On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample.

113. Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample, or after inspection of the bulk.

Explanation.—But if the contract specifically states that the goods, though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

Illustrations.

(a.) A, at Calcutta, sells to B twelve bags of "waste silk," then on its way from Moorshedabad to Calcutta. There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of "waste silk."

(b.) A buys, by sample and after having inspected bulk, 100 bales of "Fair Bengal" Cotton. The cotton proves not to be such as is known in the market as "Fair Bengal": there is a breach of warranty.

114. Where goods have been ordered for a specified purpose, for which goods of the denomination employed in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.

Warranty where goods ordered for a specified purpose.

Illustration.

B orders of A, a copper manufacturer, copper for sheathing a vessel. A, on this order, supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

115. Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose.

Sale of article of a well-known ascertained kind.

Illustration.

B writes to A, the owner of a patent invention for cleaning cotton—"Send me your patent cotton-cleaning machine to clean the cotton at my factory." A sends the machine according to order. There is an implied warranty by A that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B's factory.

116. In the absence of fraud and of any express warranty of quality, the seller of an article, which answers the description under which it was sold, is not responsible for a latent defect in it.

Non-responsibility for latent defects.

Illustration.

A sells to B a horse. It turns out that the horse had at the time of the sale a defect of which A was unaware. A is not responsible for this.

117. Where a specific article, sold with a warranty, has been delivered and accepted, and the warranty is broken, the sale is not thereby rendered voidable, but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

Buyer's right on breach of warranty.

Illustration.

A sells to B a horse, warranted sound. The horse proves to have been unsound at the time of sale. B is entitled to compensation from A for loss caused by the unsoundness.

118. Where there has been a contract, with a warranty, for the sale of goods, which at the time of the contract were not ascertained, or not in existence, and the warranty is broken, the buyer may

accept the goods or refuse to accept the goods when tendered,

or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them, provided that, during such time, he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

In any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty; but if he accepts the goods and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

Illustrations.

(a) A agrees to sell and, without application on B's part, deliver to B 200 bales of unascertained cotton by sample. Cotton, not in accordance with sample, is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(b) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it not equal to sample, and informs A that he means to claim compensation. B afterwards uses two sacks, and sells one. He cannot now repudiate the contract and recover the price, but he is entitled to compensation from A for any loss caused by the breach of warranty.

(c) B makes two pairs of shoes for A by A's orders. When the shoes are delivered, they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house, and takes a long walk out of doors in the other pair. He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair.

MISCELLANEOUS.

119. When the seller sends goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

Refusal to accept when goods not ordered are sent.

Illustration.

A orders of B specific articles of china. B sends these articles to A in a hamper with other articles of china which had not been ordered. A may refuse to accept any of the goods sent.

120. If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

Effect of wrongful refusal to accept.

121. When goods sold have been delivered to the buyer, the seller is not entitled to rescind the contract on the buyer's failing to pay the price at the time fixed, unless it was stipulated by the contract that he should be so entitled.

Rescission on failure to pay price at time fixed.

122. Where goods are sold by auction there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

Sale of several lots by auction.

123. If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

Puffers at auction.

CHAPTER VIII.

OF INDEMNITY AND GUARANTEE.

124. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity.

'Indemnity' defined.

Illustration.

(a.) A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—
Rights and liabilities of indemnity-holder when sued.

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit if the compromise was not contrary to the orders of the promisor and was one which it would have been prudent for him to make in the absence of any contract of indemnity or if the promisor authorized him to compromise the suit.

126. A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the surety, the person, in respect of whose default the guarantee is given, is called the principal debtor, and the person to whom the guarantee is given is called the creditor. A guarantee may be either oral or written.

127. Anything done or any promise made for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.
Consideration for guarantee.

Illustrations.

(a.) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(b.) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c.) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.
Surety's liability.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

129. A guarantee which extends to a series of transactions, is called a continuing guarantee.
Continuing guarantee.

Illustrations.

(a.) A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b.) A guarantees B, a tea-dealer, to the amount of £100 for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(c.) A guarantees B the price of five sacks of flour to be delivered by B to C payable in one month. B delivers five sacks to C. A pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

130. A continuing guarantee may be at any time revoked, as to future transactions, by the surety, by notice to the creditor.
Revocation of continuing guarantee.

Illustrations.

(a.) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B for twelve months the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(b.) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the Bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.
Revocation of continuing guarantee by surety's death.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, but being aware of its existence, the liability of each of the two persons to the third person under the first contract is not affected by the existence of the second contract.
Liability of two persons primarily liable, not affected by a private arrangement as to suretyship.

Illustration.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

133. Any variance made without the surety's consent, in the terms of the contract between the principal and the creditor, discharges the surety as to transactions subsequent to the variance.
Discharge of surety by variance in terms of contract.

Illustrations.

(a.) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable to one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(b.) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards B misconducts himself. A is discharged from future liability under his guarantee by the change, though the misconduct of B is in respect of a duty not affected by the later Act.

(c.) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duty accounting for monies received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(d.) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(e.) C contracts to lend B 5,000 rupees on the first March. A guarantees repayment. C pays the 5,000 rupees to B on the 1st January. A is discharged from his liability as the contract has been varied, inasmuch as C might sue B for the money before the first of March.

134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Discharge of surety by release or discharge of principal debtor.

Illustrations.

(a.) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(b.) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for the irrigation of A's land, and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(c.) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

136. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

137. Mere forbearance on the part of the creditor to sue the principal debtor, or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Creditor's forbearance to sue.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free that one from any responsibility to the others.

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

Illustrations.

(a.) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

(b.) C lends money to B on the security of a joint and several promissory note made in C's favour by B and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in satisfaction of the monies due on the note. Subsequently C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

(c.) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised and M embezzles. A is not liable to B on his guarantee.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

141. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Surety's right to benefit of creditor's securities.

Illustrations.

(a.) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b.) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

(c.) A, as surety for B, makes a bond jointly with B to C to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently C gives up the further security. A is not discharged.

142. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee obtained by misrepresentation.

143. Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance, is invalid.

Guarantee obtained by concealment.

Illustrations.

(a.) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(b.) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

144. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Guarantee on agreement that creditor shall not act on it until co-surety joins.

contract that the creditor shall not act upon it until another person has joined in it as co-surety, the

145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Implied promise to indemnify surety.

implied promise by the principal debtor to indemnify the surety, and the

Illustrations.

(a.) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(b.) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and on A's refusal to pay sues A upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(c.) A guarantees to C, to the extent of 2,000 rupees, payment of rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

146. Where two or more persons are co-sureties for the same debt or duty either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable as between themselves to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Co-sureties liable to contribute equally.

for the same debt or duty either jointly or severally, and whether under the

Illustrations.

(a.) A, B and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B, and C are liable as between themselves to pay 1,000 rupees each.

(b.) A, B, and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B, and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

147. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Liability of co-sureties bound in different sums.

Illustrations.

(a.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, viz., A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B, and C are each liable to pay 10,000 rupees.

(b.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, viz., A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(c.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, viz., A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. Each has to pay the full penalty of his bond.

CHAPTER IX.

OF BAILMENT.

148. A bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall when the purpose is accomplished be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the bailor. The person to whom they are delivered is called the bailee.

Explanation.—If a person, already in possession of the goods of another, contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

149. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

Delivery to bailee how made.

150. The bailor is bound to disclose to the bailee faults in the goods bailed of which the bailor is aware and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

Bailor's duty to disclose faults in goods bailed.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(a.) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(b.) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

152. The bailee, in the absence of any contract to the contrary, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of them described in section 151.

153. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Illustration.

A lets to B for hire a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

154. If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Illustrations.

(a.) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(b.) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated, the property in the goods remains in the parties respectively, but the bailee is bound to bear the expense of separation or division and any damage arising from the mixture.

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B without A's consent mixes the 100 bales with other bales of his own bearing a different mark: A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of bales and any other incidental damage.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods,

and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Illustration.

A bails a barrel of Cape flour worth Rs. 45 to B. B, without A's consent mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

158. Where by the conditions of the bailment the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall re-pay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

159. The lender of a thing for use may at any time require its return if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan, the borrower has acted in such a manner that the return of the thing before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

160. It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

161. If by the fault of the bailee the goods are not returned, delivered, or tendered at the proper time, he is responsible to the bailor for any loss, destruction, or deterioration of the goods from that time.

162. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

163. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

164. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

165. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

BAILMENTS OF PLEDGES.

166. If the bailor has no title to the goods, and the bailor, in good faith, delivers them back to, or according to the directions of, the bailor, the bailor is not responsible to the owner in respect of such delivery.

If the bailor delivers the goods to a person who is entitled to them as against the bailor, he is not responsible to the bailor for such delivery; but the burden of proving that such person was so entitled to them is upon the bailor.

167. If a third person claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he has a right to retain the goods against the owner until he receives such compensation; and where the owner has offered a specific reward for the return of goods lost, the finder has a right to sue for such reward and to retain the goods until he receives it.

169. When a thing, which is commonly the subject of sale, is lost, if commonly on sale the owner cannot with reasonable diligence be found, or if he refuses upon demand to pay the lawful charges of the finder, the finder may sell it—

(1.) when the thing is in danger of perishing or of losing the greater part of its value, or

(2.) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

170. Where the bailor has, in accordance with the purpose of the bailment, rendered any service, involving the exercise of labour or skill, on the goods bailed, he has, in the absence of a contract to the contrary, a right to retain the goods until he receives remuneration for the services he has rendered in respect of them

Illustrations.

(a.) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(b.) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give A three months' credit for the price. B is not entitled to retain the coat until he is paid.

171. Bankers, factors, wharfingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

172. The bailment of goods as security for payment of a debt or performance of a promise is called pledge. The bailor is in this case called the pawnor. The bailor is called the pawnee.

173. The pawnee may retain the goods pledged not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

174. The pawnee shall not retain the goods pledged for any other debt or promise than the debt or promise for which they are pledged, except by contract between the parties; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

176. If the pawnor makes default in payment of the debt or performance of the promise in respect of which the goods were pledged, at the stipulated time, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security, or may sell the thing pledged on giving the pawnor reasonable notice of the sale.

If the proceeds of the sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

177. If a time is stipulated for the payment of the debt or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any time before the actual sale of them, but he must, in that case pay, in addition, any expenses which have arisen from his default.

178. A person who is in possession of goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods, or document: Provided that the pawnee acts in good faith and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly.

Provided also that such goods or documents have not been obtained from their lawful owner or from any person in lawful custody of them by means of an offence or fraud.

179. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Pledge where pledgor has only a limited interest.

SUITS BY BAILEES OR BAILORS AGAINST WRONGDOERS.

180. If a third person wrongfully deprives the bailor of the use or possession of the goods bailed, or does them any injury, the bailor is entitled to use such remedies as the owner might have used in the like case if no bailment had been made, and either the bailor or the bailor may bring a suit against a third person for such deprivation or injury.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be apportioned of proceeds of such suits. dealt with according to their respective interests.

CHAPTER X.

AGENCY.

APPOINTMENT AND AUTHORITY OF AGENTS.

182. An agent is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the principal.

183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

184. As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

185. No consideration is necessary to create an agency.

186. The authority of an agent may be expressed or implied.

187. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written or the ordinary course of dealing may be accounted circumstances of the case.

Illustration.

A owns a shop in Serampore, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A, to order goods from C in the name of A for the purposes of the shop.

188. An agent having an authority to do any act, has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on any business, has authority to do every lawful thing necessary for the purpose of or usually done in the course of conducting such business.

Illustrations.

(a.) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b.) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen for the purpose of carrying on the business.

189. An agent has authority in an emergency to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own case under similar circumstances.

Illustrations.

(a.) Agent for sale may have goods repaired.

(b.) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Cuttack. B may sell the provisions at Calcutta if they will not bear the journey without spoiling.

SUB-AGENTS.

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must be employed.

191. A sub-agent is a person employed by and acting under the control of the original agent in the business of the agency.

192. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal. The agent is responsible to the principal for the acts of the sub-agent. The sub-agent is responsible for his acts to the agent but not to the principal, except in cases of fraud or wilful wrong.

193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons, and the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Illustrations.

(a.) A directs B, his solicitor, to sell his estate by auction and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent, for the conduct of the sale.

(b.) A authorizes B, a merchant in Calcutta, to recover the monies due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case, and if he does this he will not be responsible to the principal for the acts or negligence of the agent so selected.

Illustrations.

(a.) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

(b.) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

RATIFICATION.

196. Where acts are done by one person on behalf of another, but without his knowledge, or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

197. Ratification may be expressed or may be implied in the conduct of the persons on whose behalf the acts are done.

Illustrations.

(a.) A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

(b.) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Knowledge requisite to valid ratification.

199. A person, ratifying any unauthorized act done on his behalf, ratifies the whole of the transaction of which such act formed a part.

Effect of ratifying unauthorized act forming part of a transaction.

200. An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages or of terminating any right or interest of a third person, cannot by ratification be made to have such effect.

Illustrations.

(a.) A, an unauthorized person, requires on account of B, the owner of a chattel, the delivery of the chattel to B. This demand cannot be ratified by B, so as to make the holder liable for damages for default.

(b.) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B so as to be binding on A.

REVOCATION OF AUTHORITY.

201. An agency is terminated by the principal revoking his authority or by the agent renouncing the business of the agency or by the business of the agency being completed, or by either the principal or agent dying or becoming of unsound mind: or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

202. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations.

(a.) A gives authority to B to sell A's land, and to pay himself out of the proceeds the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b.) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

203. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

Revocation of agent's authority.

204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Revocation where authority has been partly exercised.

Illustrations.

(a.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's monies remaining in his hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b.) A authorizes B to buy 1,000 bales of cotton on account of A and to pay for it out of A's monies remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

205. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Compensation for revocation or renunciation.

206. Reasonable notice must be given of such revocation or renunciation, or the damage there-by resulting to the principal or the agent, as the case may be, must be made good to him by the other.

Notice of revocation or renunciation.

207. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

208. The termination of the authority of an agent does not, so far as

When termination of agent's authority takes effect. regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Illustrations.

(a.) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards by letter revokes his authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(b.) A, at Madras, by letter directs B to sell some cotton lying in a warehouse in Bombay for him, and afterwards by letter revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(c.) A directs B, his agent, to pay certain money to C. A dies and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

209. When an agency is terminated by the

Agent's duty on termination of agency by principal's death or insanity. principal dying or becoming of unsound mind, the agent is bound to take all reasonable steps for the protection and preservation of the interests entrusted to him on behalf of the representatives of his late principal.

210. The termination of the authority of an

Termination of sub-agent's authority. agent causes the termination of the authority of all sub-agents appointed by him, subject to the rules herein contained regarding the termination of an agent's authority.

AGENT'S DUTY TO PRINCIPAL.

211. An agent is bound to conduct the business of his principal according to the directions

Agent's duty in conducting principal's business. given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and if any profit accrues he must account for it.

Illustrations.

(a.) A, an agent engaged in carrying on for B a business in which it is the custom to invest from time to time at interest the monies which may be in hand, omits to make such investment. A must make good to the principal the interest usually obtained by such investments.

(b.) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

212. An agent is bound to conduct the business of the agency with

Skill and diligence required from agent. as much skill as is generally possessed by persons

engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

Illustrations.

(a.) A, a merchant in Calcutta, has an agent B in London, to whom a large sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid according to the usual rate, and for any further direct loss as, e. g., by variation of rate of exchange, but not further.

(b.) A, an Agent for the sale of goods, having authority to sell on credit, sells to B, on credit, without making the proper and usual inquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(c.) A, an insurance broker employed by B, to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(d.) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

213. An agent is bound to render proper accounts to his principal on demand.

Agent's accounts.

214. It is the duty of an agent in cases of difficulty to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

Agent's duty to communicate with principal.

215. If an agent deals on his own account in the business of the agency

Agent dealing on his own account in business of agency without principal's consent. without first obtaining the consent of the principal, and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction if the case show either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

without first obtaining the consent of the principal, and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction if the case show either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations.

(a.) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(b.) A directs B to sell A's estate. B on looking at the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine.

A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

216. If an agent without the knowledge of his principal deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

Illustration.

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought and buys the house for himself. A may, on discovering that B has bought the house compel him to sell it to A at the price he gave for it.

217. An agent may retain, out of any sums received on account of the principal in the business of the agency, all monies due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's right of retainer out of sums received on principal's account.

received on account of the principal in the business of the agency, all monies due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

Agent's duty to pay sums received for principal.

219. In the absence of any contract to the contrary, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

When agent's remuneration becomes due.

contrary, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

220. An agent who is guilty of misconduct in the business of the agency, is not entitled to any remuneration in respect of that part of the business which has been so misconducted.

Misconduct disentitles agent to remuneration.

in the business of the agency, is not entitled to any remuneration in respect of that part of the business which has been so misconducted.

Illustrations.

(a.) A employs B to recover 1,00,000 rupees from C, and lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security, which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees, and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(b.) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

221. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether moveable, or immovable, of the principal received by him, until the amount due to himself for commission, disbursements, and services in respect of the same has been paid or accounted for to him.

Agent's lien on principal's goods and papers.

contrary, an agent is entitled to retain goods, papers, and other property, whether moveable, or immovable, of the principal received by him, until the amount due to himself for commission, disbursements, and services in respect of the same has been paid or accounted for to him.

PRINCIPAL'S DUTY TO AGENT.

222. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by him in exercise of the authority conferred upon him.

Agent's indemnity against consequences of lawful acts.

of an agent is bound to indemnify him against the consequences of all lawful acts done by him in exercise of the authority conferred upon him.

Illustrations.

(a.) B, at Singapore, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs, and expenses.

(b.) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs, and expenses.

223. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Agent's indemnity against consequences of acts done in good faith.

an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Illustrations.

(a.) A, a decree-holder and entitled to execution of B's goods, requires the officer of the Court to seize certain goods representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum he is compelled to pay to C, in consequence of obeying A's directions.

(b.) B, at request of A sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C, and for B's own expenses.

224. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

Non-liability of employer of agent to do a criminal act.

an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

Illustrations.

(a.) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(b.) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

225. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Compensation to agent for injury caused by principal's neglect.

The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskillfully put up, and B is in consequence hurt. A must make a compensation to B.

EFFECT OF AGENCY ON CONTRACTS WITH THIRD PERSONS.

226. Contracts entered into through an agent and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person.

Enforcement and consequences of agent's contracts.

and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

(a.) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set-off against that claim a debt due to himself from B.

(b.) A being B's agent with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

227. When an agent does more than he is

Principal how far bound authorized to do, and when when agent exceeds authority. the part of what he does which is within his authority can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Illustration.

A being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

228. Where an agent does more than he is

When excess of agent's authority is not separated. authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

229. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Consequences of notice given to agent.

obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Illustrations.

(a.) A is employed by B to buy from C certain goods of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(b.) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

230. In the absence of any contract to the contrary, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Agent cannot personally enforce nor be bound by contracts on behalf of principal.

Implication of contract to contrary.

Such a contract shall be presumed to exist in the following cases:—

- (1.) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad.
- (2.) Where the agent does not disclose the name of his principal.
- (3.) Where the principal, though disclosed, cannot be sued.

231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract, but the other contracting party has the same rights as against the principal as he would have had as against the agent if the agent had been principal.

Rights of parties to a contract made by agent not disclosed. principal may require the performance of the contract, but the other contracting party has the same rights as against the principal as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

232. Where one man makes a contract with another, nether knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the engagement, can only obtain it, subject to the rights and obligations subsisting between the agent and the other party to the contract.

Performance of contract with agent supposed to be principal.

another, nether knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the engagement, can only obtain it, subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Principal's liability where agent personally liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

234. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

235. A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his supposed employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

236. A person, with whom a contract has been entered into in the character of agent, is not entitled to require the performance of it, if he was in reality acting not as agent but on his own account.

Person falsely contracting as agent, not entitled to performance.

237. When an agent has without authority done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he had by his words or conduct induced such

When an agent has without authority done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he had by his words or conduct induced such

persons to believe that such acts and obligations were within the scope of the agent's authority.

Illustrations.

(a.) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(b.) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

238. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if they had been made or committed by the principals; but misrepresentations made, and frauds committed, by agents, in matters, which do not fall within their authority, do not affect their principals.

Illustrations.

(a.) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation which he was not authorized to make by B. The contract is voidable as between B and C at the option of C.

(b.) A, the Captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignee.

CHAPTER IX. OF PARTNERSHIP.

239. Partnership is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.

Persons who have entered into partnership with one another are called collectively a firm.

Illustrations.

(a.) A and B buy 100 bales of cotton, which they agree to sell for their joint account; A and B are partners in respect of such cotton.

(b.) A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners.

(c.) A agrees with B, a goldsmith, to buy and furnish gold to B to be worked up by him and sold, and that they shall share in the resulting profit or loss. A and B are partners.

(d.) A and B agree to work together as carpenters, but that A shall receive all profits, and shall pay wages to B. A and B are not partners.

(e.) A and B are joint owners of a ship. This circumstance does not make them partners.

240. A loan to a person engaged or about to engage in any trade or undertaking upon a contract with such person that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner or render him responsible as such.

241. In the absence of any contract to the contrary, property left by a retiring partner or the representative of a deceased partner to be used in the business, is to be considered a loan within the meaning of the last preceding section,

242. No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein nor give him the rights of a partner.

243. No person being a widow or child of a deceased partner of a trader and receiving by way of annuity a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

244. No person receiving by way of annuity or otherwise a portion of the profits of any business in consideration of the sale by him of the good-will of such business, shall by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.

245. A person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm is responsible to him as a partner in such firm.

246. Any one consenting to allow himself to be represented as a partner is liable as such to third persons who, on the faith thereof, give credit to the partnership.

247. A person who is under the age of majority, according to the laws to which he is subject, may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

248. A person who has been admitted to the benefits of partnership under the age of majority, becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice within a reasonable time of his repudiation of the partnership.

249. Every partner is liable for all debts and obligations incurred in the usual course of business by or on behalf of the partnership while he is a partner; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for any thing done before he became a partner.

250. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

251. Each partner who does any act necessary for or usually done in carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

(a.) A and B trade in partnership—A residing in England and B in India. A draws a bill of exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the fraud.

(b.) A, being one of a firm of solicitors and attorneys draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

(c.) A and B carry on business in partnership as bankers: a sum of money is received by A on behalf of the firm. A does not inform B of such payment, and afterwards A appropriates the money to his own use. The partnership is liable to make good the money.

(d.) A and B are partners. A, with the intention of cheating B, goes to a shop and purchases articles on behalf of the firm such as might be used in the ordinary course of the partnership business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

252. Where partners have by contract regulated and defined as between themselves their rights and obligations; such contract can be annulled or altered only by consent of all of them, which consent must either be expressed or be implied from a uniform course of dealing.

Illustration.

A, B and C intending to enter into partnership execute written articles of agreement, by which it is stipulated that the net profits arising from the partnership business shall be equally divided between them. Afterwards they carry on the partnership business for many years, A, receiving one-half of the net profits, and the other half being divided equally between B and C. All parties know of and acquiesce in this arrangement. This course of dealing supersedes the provision in the articles as to the division of profits.

253. In the absence of any contract to the contrary, the relations of the partners to each other are determined by the following rules:—

General rule determining partner's mutual relations.

(1.) All partners are joint owners of all property originally brought into the partnership stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.

(2.) All partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership.

(3.) Each partner has a right to take part in the management of the partnership business.

(4.) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business.

(5.) When differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the majority of the partners; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners.

(6.) No person can introduce a new partner into a firm without the consent of all the partners.

(7.) If from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members.

(8.) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time.

(9.) Where a partnership has been entered into for a fixed term, no partner can during such term retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of Court.

(10.) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

254. At the suit of a partner the Court may dissolve the partnership in the following cases:—

(1.) When a partner becomes of unsound mind.

(2.) When a partner other than the person suing has been adjudicated an insolvent under any law relating to insolvent debtors.

(3.) When a partner other than the person suing has done any act by which the whole interest of such partner is legally transferred to a third person.

(4.) When any partner becomes incapable of performing his part of the partnership contract.

(5.) When a partner other than the person suing is guilty of gross misconduct in the affairs of the partnership or towards his partners.

(6.) When the business can only be carried on at a loss.

255. A partnership is in all cases dissolved by its business being prohibited by law.

256. If a partnership entered into for a fixed term be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration

of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

257. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

258. A partner must account to the firm for any benefit derived from a transaction affecting partnership.

Illustrations.

(a.) A, B, and C are partners in trade. C, without the knowledge of A and B, obtains for his own sole benefit a lease of the house in which the partnership business is carried on. A and B are entitled to participate, if they please, in the benefit of the lease.

(b.) A, B, and C carry on business together in partnership as merchants, trading between Bombay and London. D, a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments, in consideration of C's using his influence to obtain the consignments for him. C is liable to account to the firm for the money so received by him.

259. If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

260. Every person introduced as a partner into a pre-existing firm, is subject to all the obligations incurred by the firm before he was introduced.

261. A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm, to which, or in respect of the transactions of which, such guarantee was given.

262. The estate of a partner who has died is not liable in respect of any obligation incurred by the firm after his death in the absence of agreement to the contrary.

263. Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner must be paid to him or applied in payment of his separate debts. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

264. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding up the business of the partnership.

265. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they had themselves notice of such dissolution.

266. In the absence of any contract to the contrary, after the termination of a partnership, each partner or his representatives may apply to the Court to wind up the business of the firm, to provide for the payment of its debts, and to distribute the surplus according to the shares of the partners respectively.

Explanation.—The Court in this section means a Court not inferior to the Court of a District Judge within the local limits of whose jurisdiction the place or principal place of business of the firm is situated.

267. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships, and joint-stock companies, shall be regulated by the law now in force in India relating thereto, until further provision shall be made in that behalf.

SCHEDULE.

ENACTMENTS REPEALED.

Statutes.

No. and year of Statute Act.	TITLE.	Extent of repeal.
Stat. 29 Car. 2, cap. 3.	An Act for prevention of Frauds and Perjuries	Sections 1, 2, 3, 4, and 17.
Stat. 11 & 12 Vic., cap. 21.	To consolidate and amend the law relating to insolvent debtors in India.	Section 42.

SCHEDULE—*continued.*ENACTMENTS REPEALED—*continued.*

No. and year of Act.	TITLE.	Extent of repeal.
Act XIII. of 1840 . . .	An Act for the amendment of the law regarding factors by extending to the territories of the East India Company, in cases governed by the English law, the provisions of the Stat. 4 Geo. iv. c. 83, as altered and amended by the Stat. 6 Geo. iv. c. 94.	The whole.
Act XIV. of 1840	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements by extending to the territories of the East India Company, in cases governed by English law, the provisions of Stat. 9 Geo. iv. cap. 14.	The whole, except section 4.
Act XXI. of 1848	An Act for avoiding Wagers.	
Act V. of 1866	An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India.	Section 10.
Act XV. of 1866	An Act to amend the law of Partnership in India.	The whole.

Bombay Act.

No. and year of Act.	TITLE.	Extent of repeal.
Act III. of 1865	An Act to amend Act XXI. of 1848 (for avoiding wagers).	The whole.

H. S. CUNNINGHAM,

*Officiating Secretary to the Council of the Governor General
for making Laws and Regulations.*

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd April 1872 :—

Bill No. 9 of 1872.

A Bill to consolidate and amend the law relating to Land Revenue in the North-Western Provinces.

WHEREAS it is expedient to consolidate and amend the law relating to land-revenue in the North-Western Provinces of the Presidency of Fort William in Bengal; It is hereby enacted as follows :—

Preliminary.

1. This Act may be called "The Land-revenue Act, North-Western Provinces, 1872."
Short title.
- It extends to the territories for the time being under the Government of the Lieutenant-Governor of the said Provinces; and it shall come into force on the passing thereof.
Extent.
2. The Regulations and Acts mentioned in the schedule hereto annexed are repealed to the extent specified in the third column thereof.
Enactments repealed.
3. In this Act—
"Collector." "Collector" includes a Deputy Commissioner.
"Deputy Collector and Assistant Collector" include an Assistant Commissioner or Extra Assistant Commissioner.
"Estate" means any local area for the payment of the revenue assessed upon which a separate engagement has been entered into by any person with the Local Government.
"Estate."

CHAPTER I.

REVENUE OFFICERS.

4. The Chief Controlling Authority in all matters connected with the land-revenue of the said territories is vested in the Board of Revenue, which is to be ordinarily stationed at Allahabad.
Chief Controlling Authority in revenue matters vested in Board of Revenue.
- The Board of Revenue shall consist of such number of members as the Local Government may, with the sanction of the Governor General in Council, appoint.
Constitution of Board.
5. The Local Government may authorize a single member of the said Board, whether on deputation or otherwise, to exercise, either generally or in any particular locality, all the duties and powers vested in the Board collectively, or may assign to each of the members of the Board such part of the said duties and powers to be performed or exercised by them separately as to the said Government may seem fit:
Local Government may arrange for the exercise of powers and duties of Board by Members.

Provided that no single member shall have power to reverse or alter a decree or order passed by any other member; and that, except under the special authority of the Local Government, no decree or order passed by a Commissioner or a Collector in any case in which the decree or order passed by him has been referred direct to the Board without the intervention of the Commissioner shall be reversed or altered, and no final orders regarding the appointment, removal, or punishment of officers subordinate to the Board shall be passed, without the concurrent judgment of members of the said Board.

6. When the members of the Board cannot agree as to the order to be passed in any matter which has come under their consideration either jointly or separately, the question in regard to which there is a difference of opinion shall be referred to the Local Government, whose order thereon shall be final.
Reference to Local Government when Members cannot agree.
7. The Local Government shall appoint in each division a Commissioner of Revenue and Circuit, and in each district a Collector or other head revenue officer, who shall respectively exercise the powers and discharge the duties conferred upon or assigned to a Commissioner or a Collector by this Act, or any other Act for the time being in force within the local limits of such division or district.
Appointment of Commissioners and Collectors.

The local limits of each division and district shall be fixed, and may from time to time be varied, by the said Government.
and fixing limits of divisions and districts.

8. The Local Government may appoint such number of Deputy and Assistant Collectors to assist the Collector of any district in the discharge of his duties as to it may seem fit. And the officers so appointed shall exercise such of the powers of a Collector, and within such local limits, as may be ordered by the said Government.
Appointment of Deputy and Assistant Collectors.

9. The Ministerial officers of the offices of the Board of Revenue, the Commissioner of Revenue and Circuit, and the Collector, shall be appointed, and may be removed or suspended, or fined in the amount of one month's salary, by the heads of such offices respectively.
Appointment and removal of ministerial officers.

10. All such appointments and orders of removal, suspension, or fine shall be final except in respect to Ministerial officers of the Commissioner's establishment whose monthly salary is not less than fifty rupees, and the Treasurer and other Ministerial officers of the Collector's office whose monthly salary is not less than twenty rupees, in which cases such appointments and orders of removal or suspension from office shall be held to require confirmation by the Board of Revenue and the Commissioner respectively.
Appointments and orders of removal when final and when to be confirmed.

11. Where any Deputy Collector, Assistant

Ministerial officers of Deputy and Assistant Collectors provided with separate establishments.

Collector, or other revenue officer subordinate to the Collector is provided with a separate office establishment, the Ministerial officers thereof may be nominated and suspended, or

fined in the amount of one month's salary, by such Deputy or Assistant Collector or other revenue officer, but shall not be appointed or removed without the sanction of the Collector.

Every appointment or order made by the Collector under this section shall be subject to the same rule in regard to

Revision of orders made by Collector.

revision by the Commissioner as such appointments and orders made by him under section ten.

12. The Local Government shall appoint such

Appointment, allotment of duties, and removal of Tahsildárs.

number of Tahsildárs in each district as to it may seem fit, and shall from time to time prescribe the

duties to be performed by such officers. The Tahsildárs so appointed shall not be removed or suspended without the sanction of the said Government.

13. The Collector shall appoint such number

Kánungos and Patwáris.

of Kánungos and Patwáris in each district as the

Board of Revenue shall direct, and shall, subject to the control of the Commissioner, prescribe the duties to be performed by such officers. The Patwáris shall be nominated by the landholders or farmers who have engaged for the payment of the public revenue of the village in which the appointment is to be made; or where two or more persons are under joint engagement for the payment of the public revenue the nomination shall be made by such persons jointly, in accordance with the prevailing local custom in respect to the succession to the office of Patwáris. The Collector may, on sufficient cause being shown, sanction such deviation from the local custom in the nomination of a Patwáris as to him may seem fit.

14. If the landholder or farmer nominates any

Collector may require fresh nomination when person nominated is unfit.

person who in the opinion of the Collector is unfit for the due discharge of the duties of the office,

the Collector may, subject to the control of the Commissioner, require such landholder or farmer to make a fresh nomination.

15. Any landholder or farmer who may refuse

Penalty on landholder or farmer failing to nominate Patwáris.

or omit to nominate a Patwáris to fill any vacancy on the requisition of the Collector, shall be

liable to a daily fine not exceeding fifty rupees in amount from the date of the receipt of such requisition and failure to act thereon, or, in the case of such refusal or omission, the Collector may appoint a Patwáris.

16. If the persons responsible for the payment

Enforcement of payment of remuneration due to Patwáris.

of the remuneration for his services which any Patwáris is entitled to receive refuse or neglect to

pay the same, the Collector may enforce the payment by any of the processes allowed by law for the recovery of an arrear of land-revenue; but no suit by a Patwáris against any landholder or other

person in respect of salary alleged to be due to him shall be cognizable by a Civil Court.

17. Any Kánungo or Patwáris may be removed

Removal of Kánungos and Patwáris.

by the order, or with the approval, of the Collector, and not otherwise, but the

Collector's order shall be subject to revision by the Commissioner.

18. Every Patwáris, and any person performing

Patwáris to be deemed public servants.

the duties ordinarily discharged by a Patwáris in any village to which no

Patwáris has been appointed, shall be deemed to be a public servant within the meaning of the Indian Penal Code.

CHAPTER II.

SETTLEMENT OF THE LAND REVENUE.

19. When the amount of land-revenue chargeable

District under settlement.

in respect of any district or other local area is about to be assessed or

re-assessed, such district or area is said to be under settlement.

20. When any such district or area is to be

Notification of settlement.

put under settlement, the Local Government shall

issue a notification defining the area under settlement, and mentioning the officers, or such of them as to the said Government shall seem fit, by whom the settlement is to be conducted.

21. The Local Government may from time to

Local Government may amend notification, and remove and appoint settlement officers.

time amend the notification, and may remove any of the settlement officers therein mentioned, and appoint others to succeed them.

22. The Local Government shall, with the

Instructions for settlement to state principle of assessment.

previous sanction of the Governor General in Council, transmit through the Chief

Controlling Revenue Authority, written instructions to any officer charged with the duty of making a settlement under the notification mentioned in section twenty, stating the principle on which the revenue demand in such settlement is to be assessed.

23. A district or other local area of which the

District to be deemed under settlement until settlement sanctioned.

land-revenue is being assessed or re-assessed shall be deemed to be under settlement until the settlement has been sanctioned by the Local Government.

WITH WHOM SETTLEMENT IS TO BE MADE.

24. When several persons possess separate

Local Government to determine which of several persons interested in land shall be settled with.

heritable and transferable interests in any land under settlement, the Local Government shall determine which of such persons

shall be permitted to engage for the payment of the revenue demand assessed on such land, due provision being made for securing the rights of the persons not admitted to settlement.

25. When two or more persons possess a joint property consisting of interest of the same kind in any land under settlement, or when such land

Local Government to determine which of coparceners shall be settled with.

is separately possessed by persons subject according to prescriptive usage to common obligations, the settlement officer may make a joint settlement with the persons holding such interests, or a majority of them, or may select one or more of them to engage for the payment of the revenue in behalf of the persons interested in such land generally, due advertence being had to the wishes of all the coparceners and to local custom.

26. When it is proposed to make a joint settlement with the persons possessing a joint interest in the land, the settlement

Procedure where joint settlement is to be made with coparceners.

officer shall issue a notification declaring his intention to make such settlement, and summoning all the interested persons to appear either personally or through their representatives within a reasonable period at a fixed time and place, and to signify their agreement or non-agreement to the proposed assessment.

27. If any person refuses or omits to attend on

Absent coparcener bound by decision of majority.

Rights of dissenting coparcener.

such summons, he shall be bound by the decision of the majority of those who do attend. If any person attends but objects to the proposed assessment, then, in the event of a settlement being made with the other coparceners present, the objecting person shall have the same rights and interests as would have been reserved to him if the land had been farmed or held khás; and the assenting coparceners shall be deemed to be in the position of farmers of the government revenue in relation of that portion of the land to which the interest of the recusant coparcener attaches.

28. When it is proposed to make a settlement

Status of non-engaging coparceners in settlement with one or more of their number.

of any land with one or more coparceners selected to engage in behalf of the general body of the proprietors, the interests of the non-engaging parcners shall not be held responsible for the default of the persons with whom the settlement is made. The non-engaging parcners shall hold their lands as subordinate proprietors subject to the payment of the persons with whom the settlement is made.

29. When persons possessing a proprietary interest in any land under

Allowance to proprietors declining or excluded from engagement.

settlement decline, or are for any cause excluded from, engagement for the payment of the Government revenue, the land may be let in farm or held khás for any term not exceeding twelve years, and such persons shall receive a málikána allowance of not less than five and not more than ten per cent. of the nett amount realized by the Government from such land; provided that if in any case the non-engaging proprietor was called upon to state the amount of revenue for which he was willing to engage and did state such amount, and the amount was higher than that subsequently realized by the Government, the málikána allowance payable to the said proprietor shall be calculated on such higher amount.

30. When any estate or portion of an estate held by several cultivat-

Rent demandable from proprietors for land cultivated by themselves in pattidari or bhynchára estate let in farm or held khás.

ing proprietors in pattidari or bhynchára tenure or the like is let in farm or held khás, the rent demandable from the proprietors of such estate on

account of the land occupied and cultivated by themselves shall be adjusted in accordance with the rates paid by tenants or other resident cultivators, not having an heritable and transferable property in the land, for land of a similar description in the same or adjacent villages, subject to a deduction of five per cent. on account of málikána allowance, or such other rate, not being less than five per cent., as the Local Government may determine.

31. If within the period of six months previous

to the expiration of any term of settlement the Settlement not objected to on notice by Collector before expiry to be continued.

Collector or Settlement Officer shall issue a notice to the person with whom

such settlement was concluded, requiring him to declare whether he is willing to continue his engagement for the year next ensuing after the expiration of the term of such previous settlement, and such person shall not forthwith notify his refusal to such continuation, he shall be deemed to have agreed to the extension of his engagement, and the said engagement shall continue to be in force from year to year, unless and until the Local Government shall otherwise direct.

POWERS OF SETTLEMENT OFFICERS.

32. When existing engagements for the pay-

ment of Government revenue are continued in the manner provided by the last preceding section, the Powers to be exercised in conducting inquiries for revision of settlement continued under section thirty-one.

Collector or Settlement Officer may, with the

sanction of the Chief Controlling Revenue Authority, conduct the necessary inquiries for the revision of the settlement; and for this purpose they and any persons employed under their orders may exercise any of the powers specified in section four of the Land Acquisition Act (X. of 1870).

- If in such revision of settlement it appears that

any portion of the area under settlement was not

reckoned in past settlement. taken into account in the

previous assessment, the Settlement Officer may proceed to assess such portion in the same manner as land not previously brought under settlement.

33. When the settlement of any land is being

made under this Act, the Collector or Settlement Officer may fix the boundaries of the fields or

estates included in such

settlement, and require the owners or occupants to erect and maintain boundary pillars or marks in such manner as he may direct. If such owners or occupants omit after due notice to comply with the requisition, the pillars or other boundary-marks shall be erected or maintained by the officers of Government, and the cost of such erection or maintenance may be recovered from the said owners or occupants in the same manner as an arrear of revenue.

34. When the waste land included in, or adjacent to, any area under settlement is such as to exceed the requirements for pasturage and other useful purposes of the persons with whom such area is being settled, the Collector or Settlement Officer may, with the sanction of the Chief Controlling Revenue Authority, make a separate settlement of such waste lands with any person who desires to engage for the same: Provided that, where the settlement of such land shall be made with others than the persons having a preferential right to engage for the same, the latter shall receive a *málikána* allowance of not less than five and not more than ten per cent. of the amount realized by Government from such separate settlement.

35. In admitting persons to engage for the payment of the revenue assessed on any local area, the Government expressly reserves to itself the power of interference between such persons and the persons holding under them for the purpose of protecting the rights and interests of such last-mentioned persons, and no claim to any remission or abatement of revenue shall be admitted on the ground of loss sustained by the settlement holder through any decision or order passed in the exercise of such power; but where such decision shall operate to reduce materially the profits derived by the person with whom the settlement has been made, such person may relinquish his engagement, and a new settlement shall be made.

RECORD OF RIGHTS.

36. Every settlement of land-revenue shall include a careful investigation and record of the rights and privileges of the various classes of the agricultural community holding any interest in the land under settlement. The Settlement Officer shall frame an accurate record of all local usages connected with the various tenures of the land under settlement, and a specification of all persons enjoying the possession of, and property in the land, or vested with any heritable or transferable property therein, care being taken to distinguish the different kinds of possession and property, and the real nature and extent of the interests held, especially where the interests relate to the same subject-matter but are of different kinds or degrees.

37. In the case of *patáidári* or *bhyachára* villages, or similar holdings, this record shall include an accurate register of all the coparceners, embracing every person who occupies any portion of the land under settlement, or disposes of its produce, or receives the rent thereof either as proprietor or agent for one or more proprietors, together with a detailed statement of the arrangements adopted by the coparceners for the distribution of the profits derived from sources common to the coparcenery where any such exist, and for determining the share of the Government revenue and of the village expenses which each parcener is to contribute, or the manner in which the engaging parceners or intermediate holders collect from the cultivators.

38. The record shall further contain a specification of the rates per *bízá* of each description of land, or kind of produce demandable from the resident cultivators not claiming any transferable property in the land, and the respective shares of the persons engaging for the payment of the Government revenue and the cultivation in land cultivated under engagements for a division of the produce thereof, together with a distinct specification of all cesses or extra collections made by the person paying the revenue to Government.

39. The names of the *Patwáris* and village watchmen shall also be recorded, together with a statement of the amount and nature of the allowance assigned to them for their services.

40. All entries in the above record shall be founded on the basis of actual possession, and the record shall contain a specification of the precise nature of the authority for each entry in the register. Such entries shall be admissible in all Courts of Justice as evidence of the matter stated, and shall be presumed to be true unless and until they are shown to be false.

41. The Settlement Officer may investigate cases of disputed possession, or alleged wrongful dispossession, if the person complaining appears to have been in possession of the land within one year from the date of the alleged dispossession, and the Settlement Officer may proceed in either case to make an award on the question of possession, leaving the other party to his remedy by a regular suit on the question of title.

PROCEDURE.

42. The Collector or other Settlement Officer shall have the same power for compelling the attendance of any person whom he believes to be able to give him information as to the matter into which he is empowered to inquire under this Part as the Judge of a Civil Court has to procure the attendance of witnesses under the Code of Civil Procedure, and all persons who appear before the Collector or Settlement Officer are bound to state the truth upon all such matters, and to produce such documents and other things as may be required of them.

43. The Collector or Settlement Officer may issue a Commission to take evidence or for local investigation according to the provisions of the Code of Civil Procedure, and may, when empowered by the Chief Controlling Revenue Authority, refer any matter in dispute to arbitrators, whether with or without the consent of parties. The arbitrators shall exercise such powers and adopt such procedure as may be prescribed for them by the Board of Revenue in this behalf.

44. The Settlement Officer may, previously to making or revising any settlement, depute any Tahsildár or other subordinate officer to inquire into any of the matters which the Settlement Officer is empowered or required to investigate for the purpose of making a settlement in the manner provided by this Act. Any officer so deputed shall be deemed to be invested with the power of summoning and examining Patwáris, Gomashitas, or other village officers by whom the accounts relating to the land under settlement are kept, and the Settlement Officer shall have the same powers for compelling the attendance of, and the production of papers by, such persons before the officer so deputed as he has for compelling the attendance and giving evidence before himself of any person whom he may desire to examine under the former provisions of this Act.

45. All judicial proceedings of the Collector or Settlement Officer shall, as regards the attendance of the parties to such proceedings and their representation by agents, and all other matters not hereinbefore provided for, be governed by the rules of the Code of Civil Procedure; and the said proceedings may be held in any part of the local jurisdiction of such Collector or Settlement Officer, provided they are held in a place which is open to the public, and in the presence of the interested parties, if in attendance, or their representatives. An appeal shall lie from all decisions of the Collector or Settlement Officer under this Part to the Commissioner, and from the order of the Commissioner, on appeal or otherwise, to the Chief Board of Revenue.

46. The Collector or Settlement Officer may refer any judicial question pending before him under the provisions of this chapter to arbitration. The arbitrators shall be appointed, and the arbitration shall be conducted, in conformity with such rules as may be prescribed from time to time in that behalf by the Board of Revenue.

The arbitrators may be invested with the powers of a Civil Court in the procuring attendance and in the examination of witnesses, and their award shall have the effect of a decree of such Court.

There shall be no appeal against the decision of the arbitrators; but the Commissioner, subject to the control of the Board of Revenue, may direct that any case shall be transferred from the one set of arbitrators to another.

47. The Civil Court may take cognizance of suits brought to set aside any award of the revenue authorities under this Part, if such suit be brought within the period allowed under the law for the time being in force relative to the limitation of suits; but the institution of any such suit shall not operate to stay the execution of the final decree of the revenue authorities, and the Court shall have no power to pass any order affecting the assessment of the revenue payable to Government or the adjustment of the liability to pay the amount assessed amongst coparceners made by competent authority, or in regard to the amount of the malkána allowance to be paid to a non-engaging proprietor, or in

respect to the quantity and description of land assigned in partition to the holder of any specific share of a joint estate, except on the ground that such partition was made contrary to local usage.

48. No suit shall lie to any Civil Court for the purpose of setting aside the award of arbitrators' award. Arbitrators, or against arbitrators jointly or severally in respect of any matter submitted to their arbitration.

LA'KHÍ'RA'J TENURES.

49. When the Collector or Settlement Officer is about to assess or revise the assessment of the Government revenue payable in respect of any local area under settlement, he shall issue a notice, to be posted up in some conspicuous place, calling upon persons holding or claiming to hold any land free from such assessment to appear before him within a reasonable period to be fixed in the notice, and produce the documents and evidence upon which they rest their claim to be exempted from liability to pay revenue to Government in respect of such land, and the Collector or Settlement Officer shall, on the expiration of the period fixed in the notice, proceed to the investigation of such claims, and report the result of his inquiry, and his opinion on the merits of the case, for the orders of the Commissioner.

50. The Commissioner shall, after such further inquiry as may be deemed necessary, on a day to be fixed by public notice posted up in his office, and which shall not be less than six weeks from the date on which the Collector or Settlement Officer furnished the party interested with a copy of his report, pass his decision, the record of which shall contain a statement of the subject-matter of the claim and the grounds upon which the decision rests, together with the names of the witnesses and the title and description of every document examined.

51. If the Commissioner decides that the land in question should not be assessed, the decision shall be considered final, except on proof to be established in a Civil Court of the occurrence of fraud or collusion in the previous inquiry. If the Commissioner declares the land liable to assessment, the Collector or Settlement Officer shall communicate the decision to the person holding the land, and shall proceed to make the necessary assessment.

52. If the person to whom such communication is made within two weeks from the receipt of such communication announces his intention of contesting the decision by a civil suit, and tenders security for the payment of the Government revenue which it is proposed to assess on the land held by him, the assessment shall be stayed pending the result of the suit. If the said person fails to furnish adequate security or to sue within one month from the date of giving such security, the Collector may assess the land.

CHAPTER III.

COLLECTION OF REVENUE.

53. Settlement Officers when engaged in making or revising the settlement of any pargana or other local division may, on the application of persons claiming a right of property in lands held free of assessment or at a rate fixed in perpetuity situated within or adjacent to such local division, receive and determine such claim. And the said officers, if satisfied that the claimants possess an hereditary and transferable property in the land or the rent or produce thereof, may, with the sanction of the Local Government previously obtained, make a settlement with them on behalf of the *lákhirájdár* or *mukararídar* for such period as the Local Government shall direct, and shall grant to the claimants leases defining the conditions on which they are to hold their lands subordinate to the *lákhirájdár* or *mukararídar*.

REGISTRATION.

54. The Collector shall keep registers of 'estates,' which shall be prepared and maintained in such form and according to such rules as may from time to time be prescribed by the Chief Controlling Revenue Authority under the orders of the Local Government.

The Collector shall in like manner keep registers of land exempted from the payment of Government revenue.

55. The registers mentioned in the foregoing section shall be maintained so as to contain full information as to all intermediate mutations by transfer of proprietary rights, and for this purpose every Civil Court is hereby required to transmit to the Collector copies of decrees passed by such Court by which the right in or possession of any land is affected, within twenty days from the passing of such decree.

56. All persons succeeding to the property of any revenue-paying estate or land exempted from the payment of revenue, whether by inheritance, purchase, gift, or other form of transfer, are required to notify the same immediately after it has taken place to the Collector of the District in which the estate or tenure is situated. The Collector on receiving such notification shall make such inquiry as may appear necessary to ascertain the truth of the alleged succession to or transfer of the property; and if the succession or transfer appears to have taken place, he shall make the requisite entry thereof in the proper register: Provided that no such entry shall be held to affect the rights of any other person who may claim and establish any interest in the land to which the entry has reference.

57. Such fees shall be payable in respect of registrations made under the preceding sections as may be fixed by the Local Government from time to time in this behalf; but no fee for a single registration shall exceed one hundred rupees. Any rules framed by the Local Government on this subject shall also prescribe by whom the payment of the fees is to be made.

58. If the whole or a portion of the instalment of Government revenue payable in any month of the era according to which the settlement of any local division has been regulated be unpaid on the first day of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.

No interest or other penalty shall be leviable in respect of any arrear of revenue under this Act.

59. An arrear of revenue may be recovered by Process for recovery any of the following processes:—

- (1). By arrest of the person of the defaulter.
- (2). By attachment of the land in respect of which the arrear has accrued.
- (3). By distraint of the moveable property of the defaulter.
- (4). By sale of the land in respect of which the arrear has accrued, or any other land belonging to the defaulter.

PROCESS OTHER THAN SALE.

60. When it shall be determined to put in force against any defaulter the first of the above processes, the *Tahsildár* where the revenue is payable at the *Tahsil*, and the Collector or other duly empowered officer, where the revenue is payable at the Treasury of the district, shall issue his warrant requiring the defaulter to pay the arrear within a time therein stated. If the arrear is not paid within such period, the defaulter shall be arrested and brought before the Collector, who may keep him under personal restraint for ten days, and shall thereafter, if the default continues, commit the defaulter to imprisonment in the civil jail.

61. The Collector may attach the land in respect of which any arrear has accrued and place it under the management of an agent, who shall in regard to such land occupy the position of the person on account of whose default it was attached, and shall be bound by the engagements or other relations which subsisted between such person and any subordinate proprietors or tenants with rights of occupancy. The said agent shall be entitled to manage the land attached and to receive all rents and profits accruing on such land to the exclusion of the person on account of whose default the land was attached, until the arrears of land-revenue due therefrom have been satisfied, or until the defaulter has been restored to the possession of the land.

62. When the attachment of any land for an arrear of revenue accruing therein has been publicly notified, tenants and occupiers of such land shall cease to pay rent to the defaulter, and no payment made by any tenant to the defaulter subsequent to such notification shall be credited to the person making such payment or relieve him from the

liability to payment to the agent who has been placed in possession of the land from the date of the attachment, unless it can be shown that, when such payment was made, the person making it was not aware of the notification.

63. When an estate is attached or sold for the recovery of an arrear of revenue, no payment made by any under-tenant in anticipation of the usual period for the payment of rents to the defaulting proprietor shall, whether such payment has been made collusively or otherwise, be credited to the person making the same in account with the person who has succeeded to the possession or management of the estate under the sale or attachment thereof.

64. If an arrear has accrued in respect of the share of any member of a village community, and defaulter to solvent co-sharers. such community or any member thereof tenders payment of the amount due, the Collector may make over the share of the defaulting member to such community or member thereof on such conditions as he think fit; provided that no such transfer shall be absolute unless the defaulting member fails to re-pay the amount of the arrear within twelve years from the date of his default.

65. When the attachment of any land in respect of which an arrear has accrued is deemed inexpedient, the Collector may, in lieu of such attachment, proceed to recover such arrear by distraint of the moveable property of the defaulter. Such distraint shall be conducted in the same manner as distraints under the law for the time being in force relating to the recovery of the rent of land.

66. If any person against whom either of the processes of arrest or distraint has been taken denies the accrual of the arrear in respect of which such process has issued, and pays the amount claimed under protest, the process shall be immediately withdrawn and the person against whom it issued may sue the Government in any Civil Court for the amount so paid.

67. A Civil Court may order the discharge of a person confined for the non-payment of an alleged arrear of revenue, provided such person tenders sufficient security for the payment of such arrear and of all costs arising out of the proceedings in the said Court; but the Court shall have no power to interfere with the distraint or sale of moveable property for the recovery of an arrear of revenue.

68. When an arrear of revenue has accrued in respect of an estate which is let in farm or held khás, the Collector may adopt any of the remedies specified in clauses (1), (2), and (3) of section fifty-nine for the recovery of such arrear against the defaulting farmer or cultivating tenants who may have come under direct engagements with

the Government for the payment of the revenue assessed on such estate.

SALE.

69. No sale shall take place in respect of any arrears of land-revenue without the special sanction of the Board of Revenue previously obtained in each case. Provided that the said authority at the time of sanctioning such sale shall fix the latest day on which such arrears or demands shall be received.

70. When an estate is to be sold for any of the following arrears, that is to say,

First.—Arrears due from estates in the Province of Benares.

Secondly.—Arrears due from estates not permanently settled.

Thirdly.—Arrears other than those of the current or of the preceding year.

Fourthly.—Arrears due on account of estates other than that to be sold.

Fifthly.—Arrears of estates under attachment by order of any Judicial Authority.

Sixthly.—Arrears due on account of takkávi, pulbandi, or other demands not being land revenue, but recoverable by the same process as arrears of land-revenue.

The following procedure shall be observed:—

A notification in the language of the district, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, must be affixed for a period of not less than fifteen clear days preceding the date fixed for payment in the office of the Collector or other officer duly authorized to hold sales under this Act, in the Court of the Judge within whose jurisdiction the land advertised lies, in the Courts of the Subordinate Judges and in the Munsif's Court and Police Thána of the Division in which the estate to which the notification relates, or a part of it, is situated, also at the káchákrí of the málguzár of the estate, or at some conspicuous place upon the estate.

Every officer at whose office such Notification is affixed shall give to the person from whom he receives it a certificate that it is so affixed, and every person who affixes or delivers any such notice shall certify the fact that he has so affixed or delivered it to the person under whose orders he did so.

71. The Collector or other officer duly authorized to hold sales under this Act shall, as soon as possible after the latest day of payment, issue notifications in the language of the district, to be affixed in his own office and in the Court of the Judge of the District, and to be published in the official Gazettes, specifying the estate or estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than fifteen or more than thirty clear days from the date of affixing the notification in the office of the

Collector or other officer as aforesaid. And except as hereinafter provided, all estates so specified shall, on the day notified for sale, or on the day or days following, be put up to public auction by and in the presence of the Collector or other officer as aforesaid, and shall be sold to the highest bidder. And no payment or tender of payment, made subsequent to sunset of the said latest day of payment, shall bar or interfere with the sale, either at the time of sale or after its conclusion.

72. Whenever an estate is notified for sale, the Collector or other officer as aforesaid shall affix a proclamation in the language of the district, in his own office, and as soon thereafter as may be in the Munsif's Courts and Police Thánas within which the estate, or any part of it, is situated, and also at the kácháhrí of the proprietor of the estate, or at some conspicuous place upon the estate, forbidding the ryots and under-tenants to pay rent to the defaulter from the date of the day after that fixed for the last day of payment on pain of not being entitled to credit in their accounts with the purchaser for any sums paid after the date aforesaid.

73. No claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of Government, nor any private demand or cause of action whatever held or supposed to be held by any defaulter against Government, shall bar a sale, or render a sale under this Act void or voidable; nor shall the plea that money belonging to the defaulter, and sufficient to pay the balance or part of it, was in the Collector's hands, bar a sale or render a sale under this Act void or voidable, unless such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter, the Collector shall have neglected, or refused on insufficient grounds, to transfer it to the credit of the estate.

74. The Collector shall, at any time before sunset of the latest day of payment, receive as a deposit from any party not being a proprietor of the estate in arrear, the amount of the arrear of revenue due from it, to be carried to the credit of the said estate at sunset as aforesaid, unless before that time the arrear shall have been liquidated by a proprietor of the estate.

If the party so depositing, whose money shall have been credited to the estate in the manner aforesaid, is a plaintiff in a suit pending before a Court of Justice for the possession of the same or any part thereof, the Judge of the District in which such estate is situated may order the said party to be put into temporary possession of the said estate, subject to the rules in force for taking security in the cases of appellants and defendants.

If the party depositing whose money is credited as aforesaid proves before a competent Civil Court that the deposit was made in order to protect an interest of the said party, which would have been endangered or damaged by the sale of the estate, he shall be entitled to recover the amount of the deposit, with interest, from the proprietors of the said estate.

75. No estate shall be liable to sale for the recovery of arrears which Certain estates not have accrued during the liable to sale for arrears. period of its being under the management of the Court of Wards, and no estate, the sole property of a minor or minors, and descended to him or them by the regular course of inheritance duly notified to the Collector for the information of the Court of Wards, but of which the Court of Wards has not assumed the management, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until the minor or minors, or one of them, shall have attained the full age of eighteen years.

No estate held under attachment by the Revenue Authorities, otherwise than by order of a Judicial Authority, shall be liable to sale for an arrear accruing whilst it was so held under attachment.

No estate held under attachment by a Revenue Officer, in pursuance of an order of a Judicial Authority, shall be liable to sale for the recovery of an arrear of revenue accruing during the period of such attachment, until after the end of the year in which such arrear accrued.

76. The Collector may at any time before the sale of an estate commence exempt such estate from sale; and in like manner the Commissioner of Revenue, at any time before the sale of an estate shall have commenced, may exempt such estate from sale, by a special order to the Collector to that effect in each case; and no sale of an estate shall be legal if held after the receipt of an order of exemption in respect to such estate: Provided the Collector or Commissioner shall duly record in a proceeding the reason for granting such exemption; and provided also, that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector of the order for exempting it from sale.

77. Sales shall ordinarily be made by the Collector or other officer duly authorized by Government in that behalf in the land-revenue kácháhrí at the Sadr station of the district; provided it shall be competent to the Board of Revenue to prescribe a place for holding sales other than such kácháhrí, whenever they shall consider it beneficial to the parties concerned.

78. In case the Collector or other officer as aforesaid is unable from sickness, from the occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it, he is unable, from any cause, to complete it, he may adjourn it to the next day following, not being Sunday or other close holiday.

If he does so he shall record his reasons for such adjournment, and forward a copy of such record to the Commissioner of Revenue, and announce the adjournment by a written proclamation stuck up in his kácháhrí, from day to day, until he shall be able to commence or to complete the sale; except in the case of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

79. The purchaser of an estate at any such public sale as aforesaid, shall be required to deposit twenty-five per cent. on the amount of his bid, immediately, or as soon after the conclusion of the sale of the estate as the Collector may think necessary, either in cash, Bank of Bengal Notes or Post Bills, or Government Securities duly indorsed.

In default of such deposit, the estate shall forthwith be put up again and sold.

The remainder of the purchase money must be paid by the purchaser before sunset of the thirtieth day from that on which the sale of the estate took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth.

In default of such payment within the prescribed period as aforesaid, then and afterwards as often as such default shall occur, the deposit shall be forfeited to Government, the estate shall be resold, and the defaulting purchaser shall forfeit all claim to the estate, or to any part of the sum for which it may subsequently be sold.

If the proceeds of the sale which may be eventually completed are being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of public revenue, and it shall be so levied and credited to the defaulting proprietor of the estate sold.

If default of payment of purchase money occurs more than once, the defaulting bidders shall be held jointly and severally responsible for such difference to the extent of the amount of their respective bids.

Every re-sale on account of any such default shall be made after notification and in the forms prescribed by section seventy-one, and such notifications shall not be issued until the expiration of three clear days after the day on which the default shall have occurred.

Payment or tender of payment by or on behalf of the proprietor of the arrear for which the estate was first sold and of the arrear which may have subsequently become due, made before sunset of the day preceding the day of the notification of re-sale, and after the defaulting purchaser has made the deposit required by section seventy-nine, shall bar such re-sale.

80. The Commissioner of Revenue may receive an appeal against any sale made under this Act if preferred to him on or before the fifteenth day from the date of sale, or if preferred to the Collector for transmission to the Commissioner on or before the tenth day from the day of sale, and not otherwise.

The Commissioner may in every case of appeal so preferred, annul any sale of an estate made under this Act, which appears to him not to have been conducted according to the provisions of this Act.

VI.—113 *uu*

If the sale was in his opinion occasioned by the neglect of the proprietor, the Commissioner may award at the same time to the purchaser a payment from the proprietor of compensation for his loss, not exceeding in amount interest at the current rate of Government Securities on the amount of deposit or balances of purchase money during the period of its being retained in the Collector's office. The order of the Commissioner shall, in such cases, be final.

81. The Commissioner of Revenue may suspend the passing of final orders in any case of appeal from a sale on the ground of hardship or injustice, and represent the case to the Board of Revenue, who may recommend the Local Government to annul the sale. The Local Government in any such case may annul the sale and cause the estate to be restored to the proprietor on such conditions as appear equitable and proper.

82. All sales of which the purchase money has been paid up as prescribed in section seventy-nine and against which no appeal has been preferred shall become final at noon of the thirtieth day from the day of sale, reckoning the said day of sale as the first of the said thirty days. And sales against which an appeal may have been preferred, and the appeal dismissed by the Commissioner, shall be final and conclusive from the date of such dismissal, if more than thirty days from the day of sale, or if less, then at noon of the thirtieth day as above provided.

83. Upon a sale becoming final, the Collector or other officer as aforesaid shall give to the purchaser a certificate of title in the following form:

I certify that *A. B.* has purchased at public auction under Act No. *Mahál C.*, and that his purchase has taken effect on and since the day of — (*being the date of the day after that fixed for the last day of payment.*)

(Signed) *D. E.*, Collector.

The said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate sold being vested in the person or persons, named from the date specified. The Collector shall also notify such transfer by written proclamation in his own *Kácháhrí*, in the Court of the *Múnsif* and within whose jurisdiction, and at the *Police* station within the local limits of which, any part of the estate sold is situated, and also at the *Kácháhrí* of the proprietor of the estate, or on some conspicuous place on the estate.

The Collector shall apply the purchase money first to the liquidation of arrears due upon the latest day of payment; and secondly, to the liquidation of all outstanding demands debited to the estate in the public accounts of the district, holding the residue, if any, in deposit on account of the late recorded pro-

prietor or proprietors of the estate sold, to be paid to their receipt on demand in shares proportioned to their recorded interest in the estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt.

If before the payment of any surplus that may remain of the purchase money after liquidation of all Government arrears and dues to the proprietor of the estate sold, or his representative, such surplus is claimed by creditors in satisfaction of debts due by him to them, or by any one creditor, such surplus shall not be payable to any such claimant, nor shall it be withheld from the proprietor by attachment, except under precept, and in satisfaction of decrees of Court for such debts. If the balance of purchase money has in any such case been paid away in liquidation of the proprietor's just debts by order of any Court, and a decree shall afterwards pass for annulling the sale, the proprietor shall not be restored to possession until the amount so paid away be returned by him with interest.

84. Any suit brought to oust the certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person, not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

85. The annulment of a sale by a Commissioner shall be publicly notified by the Collector or other officer as aforesaid in the same manner as the finality of sales is required to be notified by section eighty-three, and the amount of deposit and balance of purchase money shall be forthwith returned to the purchaser, with interest thereon, at the highest rate of the current Public Securities, from the dates on which they were respectively paid in to the date on which the refund is actually made.

86. The party certified as the proprietor of an estate by purchase at public sale for the recovery of arrears of revenue shall be answerable for all instalments of the revenue of Government which may fall due subsequently to the latest day of payment as aforesaid. He must also appear before the Collector, either personally or by his duly authorized agent, and execute the usual engagement for the payment of the revenue assessed upon the land purchased by him.

87. No sale for arrears of revenue or other demands recoverable in the same manner, shall be set aside by a Court of Justice except upon the ground that it was contrary to the provisions of this Act:

And except the contravention thereto the matter in which the sale was contrary to the provisions of this Act must have been declared and specified in an appeal made to the Commissioner under section eighty, and the action in the Civil Court must be instituted within one year from the date of the sale becoming final, as provided in section eighty-two.

No person shall be entitled to contest the legality of a sale after having received any portion of the purchase money.

88. Nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or circumstance connected with a sale under this Act from his remedy in a personal action for damages against the individual by whose act or omission he considers himself to have been wronged. When a sale is reversed by a final decree of a Court of Justice, the purchase money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current Public Securities.

89. The purchaser of an estate sold under this Act, for the recovery of arrears due on account of the same, in the permanently settled districts of Benares, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled after notice given to enhance at discretion the rents of all under-tenures in the said estate, and to eject all tenants thereof, with the following exceptions:—

First.—Tenures which were held as *istemrári* or *mukarári* at a fixed rent more than twelve years before the permanent settlement.

Secondly.—Tenures existing at the time of the decennial settlement, which have not been, or may not be, proved to be liable to increase of assessment on the grounds stated in Section LI., Regulation VIII. of 1793.

Thirdly.—Lands held by *Khod Khast* or *Kudeemee Ryots* having rights of occupancy at fixed rents or at rents assessable according to fixed rules under the Regulations in force.

Fourthly.—Lands held under *boná fide* leases, at fair rents, temporary or perpetual, for the erection of dwelling houses, or manufactories, or for mines, gardens, tanks, canals, places of worship, burying grounds, clearing of jungle, or like beneficial purposes, such lands continuing to be used for the purposes specified in the leases.

Fifthly.—Farms granted in good faith at fair rents and for specified areas by a former proprietor, for terms not exceeding twenty years, under written leases, registered within a month from their date: Provided that a written notice, specifying full particulars of the position, rent, and area of the lands, the terms of the lease and the names of the parties, shall at the same time be given by the latter to the Collector in every case, and the Collector shall be at liberty to object to the same in the event of his seeing reason to believe that the security of the public revenue will be materially affected thereby. The exception declared in this clause shall not extend to leases objected to by the Collector, by a notification to be fixed up in his office, with the sanction of the Commissioner, within three months of the date of the notice so made to him by the parties: Provided

also, that a purchaser of an estate at a sale for arrears of revenue shall be at liberty by suit in Court to set aside all such farms although the same be under written and duly registered leases, and although such notice may have been given as aforesaid, if the same shall not have been granted in good faith at fair rents.

90. The purchaser of an estate sold under this Act for the recovery of arrears due on account of the same in districts other than those mentioned in section eighty-nine, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and may avoid and annul,

all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager,

all agreements with ryots or the like settled or credited by the first engager or his representatives, subsequently to the last settlement,

all tenures which the first engager might, under the conditions of his settlement, have set aside, altered, or renewed, except *bonâ fide* leases of ground for the erection of dwelling-houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water-courses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force;

nothing in this Act contained shall be construed to entitle any purchaser of land at a public sale to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by former proprietors from the old established rates by special favour, or for a consideration, or the like, or in cases in which it may be proved that, according to the custom of the parganas, mouzah, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government.

91. The Local Government may, at any time before a sale for arrears actually made, direct it to be made subject to the leases, assignments, or other encumbrances, with which a proprietor in possession, his ancestors, or predecessors may have burthened his assessed estate, or to such of them as shall appear proper.

In all such cases, notice of the condition imposed by the Local Government shall be given at the time of calling up the lot for sale, and such further notification shall be made as the Local Government may direct.

If the sale so restricted shall not realize an amount equal to the arrear due at the time of sale, or if there appears ground to apprehend that by rea-

son of the restriction the future realization of the revenue will be endangered, the Local Government may, at any time before such restricted sale shall have become final in the manner laid down in section eighty-two, direct the sale to be cancelled, and a new sale of the estate to be made without other restrictions than those contained in the exceptions specified in clauses 1 to 5 of section eighty-nine.

If after the sale has become final, occasion should again arise to bring to sale for arrears an estate purchased with a restriction of the above description, the Local Government may direct that the estate shall be sold without any other restriction than those contained in the exceptions specified in clauses 1 to 5 of section eighty-nine.

In such case should the purchase money realized by the unrestricted sale exceed in a large amount the sum obtained at the restricted sale, the Local Government may direct a portion or the whole of the excess to be paid to persons whose interests, having been reserved at the first, became void at the second sale.

92. Copartners of estates under partition, who may have saved their shares from sale, any recorded or unrecorded proprietor or copartner who may purchase in his own name or in the name of another the estate of which he is proprietor or copartner, or who by re-purchase or otherwise may recover possession of the said estate after it has been sold for arrears under this Act; and likewise any purchaser of an estate sold for other arrears or demands than those accruing upon itself, shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale, and shall not acquire any rights in respect to ryots and under-tenants which were not possessed by the previous proprietor at the time of the sale of the said estate.

PART IV.

MISCELLANEOUS.

Court of Wards.

93. The Commissioners shall, within the local limits of their respective divisions, be Courts of Wards for the superintendence of the persons and property of owners of entire estates paying revenue immediately to Government who are either females not deemed by the Local Government competent to the management of their estates; or minors, *i. e.*, persons who have not completed their eighteenth year; idiots; lunatics or others incapable of managing their property; but the superintendence of the Court shall not extend to the persons or property of the proprietors of land not paying revenue direct to Government, nor to joint proprietors of land paying revenue direct to Government both or all of whom may be incapacitated for the management of their affairs.

94. The Court of Wards may in its discretion refrain from assuming the superintendence of the person or property of any proprietor who, under the conditions of the last preceding section, would be subject to its jurisdiction, where, with reference either to the nature and extent of the property or the circumstances of the proprietors such superintendence may be deemed inexpedient.

95. The Collector shall report every case in which it appears desirable that the Court of Wards should assume the superintendence of the person and property of a disqualified landowner, stating, after he has made a sufficient enquiry into the circumstances of the case, the grounds of such disqualification.

96. If the right of the Court of Wards to assume the superintendence of the person and property of a disqualified proprietor is disputed by such proprietor or on his behalf, the case shall be referred to the principal Civil Court of the district in which such proprietor resides, and the said Court shall after investigation determine whether the grounds of disqualification have been established. The order of the Civil Court shall be subject to an appeal to the High Court.

97. The Court of Wards shall, subject to such rules as may from time to time be issued for its guidance by the Local Government, appoint guardians and managers, and adopt such measures as may be necessary for the care of the person, and in the case of a minor for the education of the disqualified proprietor and the proper management of his property; provided that it shall not be competent to the Court of Wards to farm the said property or make any alienation of any interest therein for a term exceeding the minority or other period of disqualification of the proprietor.

98. The Court of Wards shall exercise its functions under this Act subject to the general control of the Board of Revenue.

LEASES.

99. Every proprietor of land may grant leases to, and receive engagements from, his subordinate proprietors, farmers, and tenants in such forms as may be mutually convenient; but no such leases shall extend beyond the term of the proprietor's engagement with the Government, or convey any interest in excess of that which he possesses in the land which forms the subject of such leases.

100. Every lease shall contain a specification of the entire amount of rent to be paid to the proprietor, and the latter shall not be entitled to levy any cesses or payment in excess of such amount. When under any local usage the rent of the land varies according to the produce thereof, the lease

shall specify the quantity of the land and the different descriptions of produce and the rates of rent applicable thereto.

101. When the rate only and not the entire amount of rent payable in respect of any land can be specified, by reason of such amount being ascertainable only after measurement of the cultivated lands or survey of the crops produced thereon, the lease shall contain a statement of the rate and conditions of payment. Where the rent is made payable in kind, the lease shall state the proportion of the crop to be delivered.

COLLECTOR'S POWERS.

102. The Collector or other officer appointed by Government in that behalf shall be vested with a general control over the embankments which are repaired at the expense of the proprietors and farmers of land, and those which are maintained by the Government.

He may call upon the proprietors or farmers to make the necessary repairs of embankments situated within their lands, and if they fail to comply with such requisition, may cause such repairs to be made by the officers of Government, and may recover the cost thereof from the proprietor or farmer in the same manner as an arrear of revenue.

The Collector may require any landholder, farmer, or other person in the possession or management of land, to provide supplies, boats, and other means of conveyance or transport for the use of troops on march through the land in possession or under the management of such landholder, farmer, or manager. Any landholder, farmer, or manager who without due cause neglects or omits to comply with such requisition to the best of his power, shall be liable to a fine not exceeding one thousand rupees, and such fine may be recovered in the same manner as an arrear of revenue.

An appeal shall lie to the Commissioner against any order under this section if made within six weeks from the date of such order.

When a Civil Court under the law for the Management of land under attachment made over to Collector by Civil Court. time being in force in regard to the attachment of immoveable property makes over any land to the care of the Collector, he shall appoint a manager for the due care and management of such land. If any person holding an interest in such land is dissatisfied either with the appointment made by the Collector, or the conduct of the manager, he may make a representation to the Commissioner, who shall pass such orders thereon as to him may seem fit.

Any land attached by order of a Civil Court, and placed under the care of the Collector, shall remain under such care until the Court withdraws the attachment.

SCHEDULE.

ENACTMENTS REPEALED.

I.—Regulations.

Number and year.	TITLE.	Extent of repeal.
V. of 1795	A Regulation prescribing Rules for the Conduct of the Collector of the Public Revenue in the Province of Benares.	So much as is not repealed.
VI. of 1795	A Regulation prescribing the Process by which the Collector and the Tehseeldars are to realize the Public Revenue payable from the lands in the Province of Benares.	Ditto.
XIX. of 1795	A Regulation for forming a quinquennial Register of the landed Estates in Benares, subject to the payment of Revenue to Government, and of the amount of the fixed annual Revenue payable to Government from each Estate.	Ditto.
LI. of 1795	A Regulation respecting Ryotty Pottahs in the Province of Benares.	Ditto.
LVIII. of 1795	A Regulation for granting to the Collectors a Commission on the Jumma of lands which may be subjected to the payment of Revenue under Section XXVI., Regulation XIX., and Section XXI., Regulation XXXVII., 1793, and Section XXVI., Regulation XLI., and Section XXI., Regulation XLII., 1795; and for determining on what amount such Commission, and the Commission granted to Collectors in case of lands being adjudged liable to the payment of Revenue in consequence of Prosecutions, shall be calculated; and for requiring the Zillah and City Courts in the four provinces to transmit to the Collectors and the Board of Revenue copies of certain decrees in suits between individuals respecting the right to land exempted from the payment of Revenue; and for defining of what decrees regarding malguzarry land the Zillah and City Courts are to furnish the Collectors and the Board of Revenue with copies under Section IX., Regulation IV., 1793, and Section IV., Regulation VIII., 1795.	Ditto.
XV. of 1797	A Regulation for levying certain fees to defray the expense of the Offices for keeping the Records in the Native Languages which relate to the Public Revenue, established under Regulations XXI., 1793, and XXX., 1795.	So far as it relates to the North-Western Provinces.
V. of 1800	A Regulation for extending to the Province of Benares the Rules contained in Regulation VII., 1799, for enabling Proprietors and Farmers of Land to realize their Rents with greater punctuality; as well as such other parts of the above Regulation as are applicable to the Province of Benares.	Ditto.
VIII. of 1800	A Regulation for preparing a general Pergunnah Register of Lands; and for certain alterations in the prescribed Registers of Estates paying Revenue, and Lands held exempt from the payment of Revenue.	Ditto.
I. of 1801	A Regulation to explain and amend part of the Rules for collecting the Public Revenue contained in Regulations VII., 1799, and V., 1800; to expedite the sale of Lands for Arrears of Revenue; to limit the division of Property by such sales; to explain and amend the Rules contained in Regulation XXV., 1793, (extended to Benares by Regulation XXVI., 1795,) for the division of joint Estates, and allotment of the fixed assessment thereupon; and to fix a period for the operation of such part of Regulation VIII., 1793, as authorizes the separation of certain Talooks from the Zemindaries to which they were attached at the time of the Decennial Settlement.	Ditto.

SCHEDULE—continued.

Number and year.	TITLE.	Extent of repeal.
XXV. of 1803	A Regulation prescribing Rules for the conduct of the Board of Revenue and the Collectors; and for declaring the proprietary right in the Lands in the Provinces ceded by the Nawaub Vizier to the Honourable the English East India Company, to be vested in the Zemindars and other Landholders, under the terms and conditions of the Settlement of the Land Revenue formed by the Honourable the late Lieutenant Governor and the Board of Commissioners, pursuant to the authority vested in them by His Excellency the Most Noble the Governor General.	Sections 1 to 28 inclusive.
XXVII. of 1803	A Regulation prescribing the process by which the Collector and the Tehseeldars are to realize the public Revenue payable from the lands in the Provinces ceded by the Nawaub Vizier to the Honourable the English East India Company.	So much as is not repealed.
XXX. of 1803	A Regulation prescribing Rules for the the Grant of Pottals by the Landholders, in the Provinces ceded by the Nawaub Vizier to the Honourable the English East India Company, to their Under-farmers, Tenants, and Ryots.	Ditto.
XLII. of 1803	A Regulation for forming a periodical Register of the Zemindaries and other landed Estates, paying revenue to Government in the Provinces ceded by the Nawaub Vizier to the Honourable the English East India Company.	Ditto.
LII. of 1803	A Regulation for establishing a Court of Wards in the Provinces ceded by the Nawaub Vizier to the Honourable the English East India Company.	Ditto.
VIII. of 1805	A Regulation for extending to the conquered Provinces situated within the Dooab and on the right bank of the river Jumna, and to the Territory ceded to the Honourable the English East India Company in Bundelcund by the Peishwa, such of the Laws and Regulations established for the internal government of the Provinces ceded by the Nawaub Vizier to the Honourable the English East India Company, as have not been already extended to those Territories, and for revising and amending certain Parts of the said Laws and Regulations.	So much as has not been repealed.
VI. of 1806	A Regulation for the more effectual repair of Embankments.	So much as is not repealed.
XI. of 1806	A Regulation for facilitating the progress of Detachments of Troops through the Company's Territories; for affording any requisite assistance to Persons travelling through those Territories; and for extending the Rules contained in Sections LXVIII. and LXXII., Regulation XXII., 1795, in Clauses fifth and sixth, Section XIV., Regulation VIII. 1805, and in Section XXXI. of that Regulation, to the whole of the Company's Provinces subject to the immediate government of the Presidency of Fort William; for the guidance of the Civil Officers in applying for Guards from the regular Battalions; and for modifying the Rule contained in Clause first, Section XII., Regulation I., 1804.	Sections 3 and 4, so far as they relate to the North-Western Provinces.
VII. of 1807	A Regulation for making certain alterations in the provisions which have hitherto been in force in the Province of Benares, respecting persons paying or wishing to pay their Revenue directly to the Treasury of the Collector, instead of paying it through the medium of a Tehseeldar.	So much as is not repealed.
V. of 1812	A Regulation for amending some of the Rules at present in force for the collection of the Land Revenue.	So far as it relates to the North-Western Provinces.
XVIII. of 1812	A Regulation for explaining Section II. Regulation V. 1812, and rescinding Sections III. and IV. Regulation XLIV. 1793, and Sections III. and IV. Regulation L. 1795, and enacting other Rules in lieu thereof.	Ditto.

SCHEDULE—*continued.*

Number and year.	TITLE.	Extent of repeal.
XII. of 1817	A Regulation for securing the better administration of the Office of Putwarry in the Ceded and Conquered Provinces, the Provinces of Behar and Benares, the District of Cuttack, the Pergunnah of Puttaspoore, and its Dependencies.	So far as it relates to the North-Western Provinces.
I. of 1819	A Regulation for replacing the Districts of Dinagepore and Rungpore under the management of the Board of Revenue; for extending the Authority of the Board of Commissioners in Behar and Benares to the District of Goruckpore; for re-establishing Canoongoes and reforming the Office of Putwarry throughout the Province of Bengal; and for explaining and modifying certain Parts of Regulation XII, 1817.	Sections 5, 6, and 7, so far as they relate to the North-Western Provinces.
II. of 1819	A Regulation for modifying the provisions contained in the existing Regulations, regarding the Resumption of the Revenue of Lands held free of Assessment under Illegal or Invalid Tenures, and for defining the right of Government to the Revenue of Lands not included within the limits of Estates for which a settlement has been made.	The whole, so far as it relates to the North-Western Provinces.
IV. of 1821	A Regulation for authorizing a Collector of Land Revenue or other Officer employed in the management or superintendence of any branch of the Territorial Revenues, to exercise, in certain cases, the powers of Magistrate, or Joint Magistrate, and for authorizing a Magistrate or Joint Magistrate, or Assistant to a Magistrate, to exercise in certain cases the powers of a Collector of Land Revenue, or of any other Officer employed in the management or superintendence of any branch of the Territorial Revenues; also, for explaining the duties of an Assistant Collector of Revenue, and for defining the duties and powers vested in Assistant Collectors or other Officers appointed to the charge of the Revenues of Pergunnahs or other local divisions, or employed in the performance of any portion of the functions ordinarily belonging to the Collectors of Land Revenue.	Ditto.
III. of 1822	A Regulation for modifying the Constitution, and altering the jurisdiction of the several Boards vested with the superintendence of the Land Revenue, in the Territories belonging to the Presidency of Fort William.	Ditto.
VI. of 1822	A Regulation to establish a Court of Wards for Benares, and to define and explain certain of the Rules regarding the powers and jurisdiction of the several Courts of Wards.	So much as is not repealed.
VII. of 1822	A Regulation for declaring the principles according to which the settlement of the Land Revenue in the Ceded and Conquered Provinces, including Cuttack, Puttaspoore, and its Dependencies, is to be hereafter made, and the powers and duties belonging to Collectors or other Officers employed in making, revising, or superintending Settlements; for continuing, with certain exceptions, the existing leases within the said Provinces for a further term of five years; for defining, settling, and recording the rights and obligations of various classes and persons possessing an interest in the land, or in the rent or produce thereof; and for vesting the Revenue Authorities with judicial cognizance in certain cases of suits and claims relating to land, the rent, and produce of land.	So far as it relates to the North-Western Provinces.
IX. of 1825	A Regulation for extending the operation of Regulation VII, 1822; for authorizing the Revenue Authorities to let in farm estates under temporary leases, on the default of the Malguzars, or to hold the same Khas for a term of years; for modifying and adding to the Rules contained in Regulation II, 1819; and for making certain other amendments in the existing Regulations.	Ditto.
XIII. of 1825	A Regulation to maintain the Settlement made for certain lands held exempt from the payment of Revenue by Canoongoes, in the Province of Behar; and to provide for the future Settlement of such lands as well as of the lands composing other resumed Lakheraj Tenures, with the present occupants, when so directed by Government.	Ditto.

SCHEDULE—*continued.*

Number and year.	TITLE.	Extent of repeal.
XIV. of 1825	A Regulation to declare the extent of the Authority possessed by the Revenue Authorities, subordinate to the Governor-General in Council, in the Confirmation of Lakheraj Tenures; to define the Principles to be followed in determining on the Force and Validity of Grants made by persons exercising Authority in different quarters previously to the Acquisition of the Country by the British Government; and to provide for the due Application of the General Laws and Regulations respecting Lands held free of Assessment, to the Territory ceded by Gobind Rao to the British Government, and annexed to the Zillah of Bundelcund, under the Provisions of Regulation II. 1818.	So far as it relates to the North-Western Provinces.
V. of 1828	A Regulation for modifying the Rules at present in force for the Management of Estates under Attachment by orders of the Courts of Justice in certain Cases.	Ditto.
III. of 1828	A Regulation for the Appointment of Special Commissioners for the more speedy hearing and determination of appeals from the decisions of the Revenue Authorities in regard to Lands or Rents occupied or collected by Individuals, without payment of the Revenue demandable by Government, under the general Law of the country, and for otherwise more effectually securing the realization of the public dues.	Ditto.
IV. of 1828	A Regulation to declare and extend the Powers to be exercised by Collectors, when making or revising Settlements, under the Provisions of Regulation VII. 1822.	Ditto.
I. of 1829	A Regulation for constituting Commissioners of Revenue and Circuit; for establishing a Sudder Board of Revenue; for modifying the Constitution of the Provincial Courts; for transferring to the said Commissioners the Functions now exercised by the Superintendents of Police and those of the Mofussil Special Commissioners, acting under the Provisions of Regulation I. 1821; and otherwise for providing for the better Administration of Civil and Criminal Justice.	Ditto.
IV. of 1829	A Regulation for modifying, in certain Cases, the Rules laid down in Clauses Fourth and Fifth, Section II. Regulation III. 1828, relative to Appeals to the Special Commissioners appointed under that Regulation; also for modifying part of Clause Second, Section X. Regulation I. 1829.	Ditto.
XI. of 1829	A Regulation for modifying the Rules in force relative to the Construction and Repair of Embankments.	The whole.
X. of 1831	A Regulation for vesting in a Deputation from the Sudder Board of Revenue, to be ordinarily stationed at Allahabad, the exclusive Control over the Revenue affairs of the Province of Benares, the Ceded and Conquered Provinces, including the Districts of Meerut, Saharunpore, Moozuffernuggur, and Boolundshuhar, which are now subject to the Chief Commissioner at Delhi, the Province of Kumaon, the Saugor and Nerbudda Territories.	Ditto.
<i>II.—Acts.</i>		
XII. of 1841	An Act for amending the Bengal Code in regard to sales of land for arrears of Revenue.	So much as is not repealed.
I. of 1845	An Act to amend Act No. XII. of 1841, entitled "An Act for amending the Bengal Code in regard to sales of Land for arrears of Revenue."	Ditto.
I. of 1847	An Act for the establishment and maintenance of Boundary Marks in the North-Western Provinces of Bengal.	The whole.
XXVI. of 1854	An Act for making better provision for the education of male minors subject to the superintendence of the Court of Wards.	Ditto.

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